

REFERENCE TITLE: liquor licenses; prohibition; county island

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1322

Introduced by
Senators Hatathlie: Diaz, Epstein, Fernandez, Gabaldón, Gonzales,
Kavanagh, Marsh, Mendez, Miranda, Rogers, Terán; Representatives
Peshlakai, Tsosie

AN ACT

AMENDING SECTION 4-203, ARIZONA REVISED STATUTES; RELATING TO LIQUOR
LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-203, Arizona Revised Statutes, is amended to
3 read:

4 4-203. Licenses; issuance; transfer; reversion to state;
5 prohibition

6 A. A spirituous liquor license shall be issued only after
7 satisfactory showing of the capability, qualifications and reliability of
8 the applicant and, with the exception of wholesaler, producer, government
9 or club licenses, that the public convenience requires and that the best
10 interest of the community will be substantially served by the issuance. If
11 an application is filed for the issuance of a transferable or
12 nontransferable license, other than for a craft distiller license, a
13 microbrewery license or a farm winery license, for a location that on the
14 date the application is filed has a valid license of the same series, or
15 in the case of a restaurant license application filed for a location with
16 a valid hotel-motel license, issued at that location, there shall be a
17 rebuttable presumption that the public convenience and best interest of
18 the community at that location was established at the time the location
19 was previously licensed. The presumption may be rebutted by competent
20 contrary evidence. The presumption shall not apply once the licensed
21 location has not been in use for more than one hundred eighty days and the
22 presumption shall not extend to the personal qualifications of the
23 applicant.

24 B. The license shall be to manufacture, sell or deal in spirituous
25 liquors only at the place and in the manner provided in the license. A
26 separate license shall be issued for each specific business, and each
27 shall specify:

28 1. The particular spirituous liquors that the licensee is
29 authorized to manufacture, sell or deal in.

30 2. The place of business for which issued.

31 3. The purpose for which the liquors may be manufactured or sold.

32 C. A spirituous liquor license issued to a bar, a liquor store or a
33 beer and wine bar shall be transferable as to any permitted location
34 within the same county, if the transfer meets the requirements of an
35 original application. A spirituous liquor license may be transferred to a
36 person qualified to be a licensee, if the transfer is pursuant to either
37 judicial decree, nonjudicial foreclosure of a legal or equitable lien,
38 including security interests held by financial institutions pursuant to
39 section 4-205.05, a sale of the license, a bona fide sale of the entire
40 business and stock in trade, or other bona fide transactions that are
41 provided for by rule. Any change in ownership of the business of a
42 licensee, directly or indirectly, as defined by rule is deemed a transfer,
43 except that there is no transfer if a new artificial person is added to
44 the ownership of a licensee's business but the controlling persons remain

1 identical to the controlling persons that have been previously disclosed
2 to the director as part of the licensee's existing ownership.

3 D. All applications for a new license pursuant to section 4-201 or
4 for a transfer to a new location pursuant to subsection C of this section
5 shall be filed with and determined by the director, except when the
6 governing body of the city or town or the board of supervisors receiving
7 an application pursuant to section 4-201 orders disapproval of the
8 application or when the director, the state liquor board or any aggrieved
9 party requests a hearing. The application shall then be presented to the
10 state liquor board, and the new license or transfer shall not become
11 effective unless approved by the state liquor board.

12 E. A person who assigns, surrenders, transfers or sells control of
13 a liquor license or business that has a spirituous liquor license shall
14 notify the director within thirty business days after the assignment,
15 surrender, transfer or sale. A spirituous liquor license shall not be
16 leased or subleased. A concession agreement entered into under section
17 4-205.03 is not considered a lease or sublease in violation of this
18 section.

19 F. If a person other than those persons originally licensed
20 acquires control over a license or licensee, the person shall file notice
21 of the acquisition with the director within thirty business days after the
22 acquisition of control and a list of officers, directors or other
23 controlling persons on a form prescribed by the director. There is no
24 acquisition of control if a new person is added to the ownership of a
25 licensee's business but the controlling persons remain identical to the
26 controlling persons that have been previously disclosed to the director as
27 part of the licensee's existing ownership. All officers, directors or
28 other controlling persons shall meet the qualifications for licensure as
29 prescribed by this title. On request, the director shall conduct a
30 preinvestigation before the assignment, sale or transfer of control of a
31 license or licensee, the reasonable costs of which, not more than \$1,000,
32 shall be borne by the applicant. The preinvestigation shall determine
33 whether the qualifications for licensure as prescribed by this title are
34 met. On receipt of notice of an acquisition of control or request of a
35 preinvestigation, the director, within fifteen days after receipt, shall
36 forward the notice of the acquisition of control to the local governing
37 body of the city or town, if the licensed premises is in an incorporated
38 area, or the county, if the licensed premises is in an unincorporated
39 area. The director shall include in the notice to the local governing
40 body written instructions on how the local governing body may examine,
41 free of charge, the results of the department's investigation regarding
42 the capabilities, qualifications and reliability of all officers,
43 directors or other controlling persons listed in the application for
44 acquisition of control. The local governing body, or the governing body's
45 designee, may provide the director with a recommendation, either in favor

1 of or against the acquisition of control, within sixty days after the
2 director mails the notice, but section 4-201 does not apply to the
3 acquisition of control provided for in this section. A local governing
4 body may charge not more than one fee, regardless of the number of
5 licenses held by the applicant, for review of one or more applications for
6 acquisition of control submitted to the department at the same time and
7 for the same entity. Within one hundred five days after filing the notice
8 of the acquisition of control, the director shall determine whether the
9 applicant is qualified, capable and reliable for licensure. A
10 recommendation by the local governing body, or the governing body's
11 designee, against the acquisition of control or denial by the director
12 shall be set for a hearing before the board. The person who has acquired
13 control of a license or licensee has the burden of an original application
14 at the hearing, and the board shall make its determination pursuant to
15 section 4-202 and this section with respect to capability, reliability and
16 qualification.

17 G. A licensee who holds a license in nonuse status for more than
18 five months shall be required to pay a \$100 surcharge for each month
19 thereafter. The surcharge shall be paid at the time the license is
20 returned to active status. A license automatically reverts to the state
21 after being held in continuous nonuse for more than thirty-six months.
22 The director may waive the surcharge and may extend the time period
23 provided in this subsection for good cause if the licensee files a written
24 request for an extension of time to place the license in active status
25 before the date of the automatic reversion. Unless the reverted license of
26 the licensee has been subsequently reissued, the director shall relieve a
27 licensee or its legal representative from a prior license reversion under
28 this section if the request for such relief is filed in writing not later
29 than two years after the date of reversion. A license shall not be deemed
30 to have gone into active status if the license is transferred to a
31 location that at the time of or immediately before the transfer had an
32 active license of the same type, unless the licenses are under common
33 ownership or control.

34 H. A restructuring of a licensee's business is not an acquisition
35 of control, a transfer of a spirituous liquor license or the issuance of a
36 new spirituous liquor license if both of the following apply:

37 1. All of the controlling persons of the licensee and the new
38 business entity are identical.

39 2. There is no change in control or beneficial ownership.

40 I. If subsection H of this section applies, the licensee's history
41 of violations of this title is the history of the new business entity. The
42 director may prescribe a form and shall require the applicant to provide
43 the necessary information to ensure compliance with this subsection and
44 subsections F and G of this section.

1 J. Notwithstanding subsection B of this section, the holder of a
2 retail license in this state having off-sale privileges, except a bar,
3 beer and wine bar or restaurant licensee, may take orders by telephone,
4 mail, fax or catalog, through the internet or by other means for the sale
5 and delivery of spirituous liquor off of the licensed premises to a person
6 in this state in connection with the sale of spirituous liquor.
7 Notwithstanding the definition of "sell" prescribed in section 4-101, the
8 placement of an order and payment pursuant to this section is not a sale
9 until delivery has been made. At the time that the order is placed, the
10 licensee shall inform the purchaser that state law requires a purchaser of
11 spirituous liquor to be at least twenty-one years of age and that the
12 person accepting delivery of the spirituous liquor is required to comply
13 with this state's age identification requirements as prescribed in section
14 4-241, subsections A and K. The licensee may maintain a delivery service
15 and may contract with one or more independent contractors, that may also
16 contract with one or more independent contractors, or may contract with a
17 common carrier for delivery of spirituous liquor if the spirituous liquor
18 is loaded for delivery at the premises of the retail licensee in this
19 state and delivered in this state. Except if the person delivering the
20 order has personally retrieved and bagged or otherwise packaged the
21 container of spirituous liquor for delivery and the licensee records, or
22 requires to be recorded electronically, the identification information for
23 each delivery, all containers of spirituous liquor delivered pursuant to
24 this subsection shall be conspicuously labeled with the words "contains
25 alcohol, signature of person who is twenty-one years of age or older is
26 required for delivery". The licensee is responsible for any violation of
27 this title or any rule adopted pursuant to this title that is committed in
28 connection with any sale or delivery of spirituous liquor. Delivery must
29 be made by an employee of the licensee or other authorized person as
30 provided by this section who is at least twenty-one years of age to a
31 customer who is at least twenty-one years of age and who displays an
32 identification at the time of delivery that complies with section 4-241,
33 subsection K. The retail licensee shall collect payment for the full
34 price of the spirituous liquor from the purchaser before the product
35 leaves the licensed premises. The director shall adopt rules that set
36 operational limits for the delivery of spirituous liquors by the holder of
37 a retail license having off-sale privileges. With respect to the delivery
38 of spirituous liquor, for any violation of this title or any rule adopted
39 pursuant to this title that is based on the act or omission of a
40 licensee's employee or other authorized person, the mitigation provision
41 of section 4-210, subsection G applies, with the exception of the training
42 requirement. For the purposes of this subsection and notwithstanding the
43 definition of "sell" prescribed in section 4-101, section 4-241,
44 subsections A and K apply only at the time of delivery. For the purposes
45 of compliance with this subsection, an independent contractor, a

1 subcontractor of an independent contractor, the employee of an independent
2 contractor or the employee of a subcontractor is deemed to be acting on
3 behalf of the licensee when making a delivery of spirituous liquor for the
4 licensee.

5 K. Except as provided in subsection J of this section, Arizona
6 licensees may transport spirituous liquors for themselves in vehicles
7 owned, leased or rented by the licensee.

8 L. Notwithstanding subsection B of this section, an off-sale retail
9 licensee may provide consumer tasting of wines off of the licensed
10 premises subject to all applicable provisions of section 4-206.01.

11 M. The director may adopt reasonable rules to protect the public
12 interest and prevent abuse by licensees of the activities permitted such
13 licensees by subsections J and L of this section.

14 N. Failure to pay any surcharge prescribed by subsection G of this
15 section or failure to report the period of nonuse of a license shall be
16 grounds for revocation of the license or grounds for any other sanction
17 provided by this title. The director may consider extenuating
18 circumstances if control of the license is acquired by another party in
19 determining whether or not to impose any sanctions under this subsection.

20 O. If a licensed location has not been in use for three years, the
21 location must requalify for a license pursuant to subsection A of this
22 section and shall meet the same qualifications required for issuance of a
23 new license except when the director deems that the nonuse of the location
24 was due to circumstances beyond the licensee's control and an extension of
25 time has been granted pursuant to subsection G of this section.

26 P. If the licensee's interest is forfeited pursuant to section
27 4-210, subsection L, the location shall requalify for a license pursuant
28 to subsection A of this section and shall meet the same qualifications
29 required for issuance of a new license except when a bona fide lienholder
30 demonstrates mitigation pursuant to section 4-210, subsection K.

31 Q. The director may implement a procedure for the issuance of a
32 license with a licensing period of two years.

33 R. For any sale of a farm winery or craft distiller or change in
34 ownership of a farm winery or craft distiller directly or indirectly, the
35 business, stock-in-trade and spirituous liquor may be transferred with the
36 ownership, in compliance with the applicable requirements of this title.

37 S. Notwithstanding subsection B of this section, bar, beer and wine
38 bar, liquor store, beer and wine store or restaurant licensees in this
39 state may take orders by telephone, mail, fax or catalog, through the
40 internet or by other means for the sale and delivery of spirituous liquor
41 off the licensed premises as follows:

42 1. Bar licensees for beer, wine, distilled spirits and mixed
43 cocktails.

44 2. Beer and wine bar licensees for beer and wine.

1 3. Liquor store licensees for beer, wine, distilled spirits and
2 mixed cocktails.

3 4. Beer and wine store licensees for beer and wine.

4 5. Restaurant licensees for any of the following:

5 (a) Mixed cocktails, with the sale of menu food items for
6 consumption on or off the licensed premises, if the restaurant holds a
7 permit issued pursuant to section 4-203.07 and section 4-205.02,
8 subsection K or a lease pursuant to section 4-203.06.

9 (b) Beer if the restaurant holds a permit issued pursuant to
10 section 4-205.02, subsection H.

11 (c) Beer, wine and distilled spirits if the restaurant holds an
12 off-sale privileges lease with a bar or liquor store pursuant to section
13 4-203.07.

14 (d) Beer and wine if the restaurant holds an off-sale privileges
15 lease with a beer and wine bar pursuant to section 4-203.07.

16 T. Notwithstanding the definition of "sell" prescribed in section
17 4-101, placing an order and paying for that order pursuant to subsection S
18 of this section is not a sale until delivery has been made. At the time
19 that the order is placed, the licensee shall inform the purchaser that
20 state law requires a purchaser of spirituous liquor to be at least
21 twenty-one years of age and that the person accepting delivery of the
22 spirituous liquor is required to comply with this state's age
23 identification requirements as prescribed in section 4-241, subsections A
24 and K. The licensee may maintain a delivery service and may contract with
25 one or more alcohol delivery contractors registered pursuant to section
26 4-205.13 for delivery of spirituous liquor if the spirituous liquor is
27 packaged and tamperproof sealed by the bar, beer and wine bar, liquor
28 store, beer and wine store or restaurant licensee or the licensee's
29 employee and is loaded for delivery at the premises of the restaurant,
30 beer and wine bar, liquor store, beer and wine store or bar licensee in
31 this state and delivered in this state on the same business day. A liquor
32 store or beer and wine store licensee may contract with one or more
33 independent contractors as provided in subsection J of this section for
34 delivery of spirituous liquor if the spirituous liquor is loaded for
35 delivery at the premises of the liquor store or beer and wine store
36 licensee in this state and delivered in this state on the same business
37 day. All containers of spirituous liquor delivered pursuant to subsection
38 S of this section shall be tamperproof sealed and conspicuously labeled
39 with the words "contains alcohol, signature of person who is twenty-one
40 years of age or older is required for delivery". The licensee is
41 responsible for any violation of this title or any rule adopted pursuant
42 to this title that is committed in connection with any sale or delivery of
43 spirituous liquor. Delivery must be made by an employee of the licensee
44 or an employee or authorized independent contractor of a registered
45 alcohol delivery contractor as provided by this section who is at least

1 twenty-one years of age and delivery must be made to a customer who is at
2 least twenty-one years of age and who displays an identification at the
3 time of delivery that complies with section 4-241, subsection K. The
4 restaurant, beer and wine bar, liquor store, beer and wine store or bar
5 licensee shall collect payment for the full price of the spirituous liquor
6 from the purchaser before the product leaves the licensed premises. The
7 director shall adopt rules that set operational limits for the delivery of
8 spirituous liquor pursuant to this subsection and subsection S of this
9 section with respect to the delivery of spirituous liquor. For any
10 violation of this title or any rule adopted pursuant to this title that is
11 based on the act or omission of a licensee's employee or a registered
12 alcohol delivery contractor, the mitigation provision of section 4-210,
13 subsection G applies, with the exception of the training requirement. For
14 the purposes of this subsection and notwithstanding the definition of
15 "sell" prescribed in section 4-101, section 4-241, subsections A and K
16 apply only at the time of delivery. An alcohol delivery contractor, a
17 subcontractor of an alcohol delivery contractor, an employee of an alcohol
18 delivery contractor or an employee of a subcontractor is deemed to be
19 acting on behalf of the licensee when making a delivery of spirituous
20 liquor for the licensee. For the purposes of this subsection, "business
21 day" means between the hours of 6:00 a.m. of one day and 2:00 a.m. of the
22 next day.

23 U. NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR MAY NOT ISSUE A
24 LICENSE TO SELL SPIRITUOUS LIQUOR AT A LOCATION IN UNINCORPORATED
25 TERRITORY THAT IS SURROUNDED ON ALL SIDES BY AN INDIAN RESERVATION IN THIS
26 STATE.