

REFERENCE TITLE: immunity; underage drinking; reporting

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SB 1190

Introduced by
Senator Ward

AN ACT

AMENDING SECTION 4-244, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 4-245; RELATING TO UNLAWFUL ACTS INVOLVING SPIRITUOUS LIQUOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 4-244, Arizona Revised Statutes, is amended to
3 read:

4 4-244. Unlawful acts

5 It is unlawful:

6 1. For a person to buy for resale, sell or deal in spirituous liquors
7 in this state without first having procured a license duly issued by the
8 board.

9 2. For a person to sell or deal in alcohol for beverage purposes
10 without first complying with this title.

11 3. For a distiller, vintner, brewer or wholesaler knowingly to sell,
12 dispose of or give spirituous liquor to any person other than a licensee
13 except in sampling wares as may be necessary in the ordinary course of
14 business, except in donating spirituous liquor to a nonprofit organization
15 ~~which~~ THAT has obtained a special event license for the purpose of charitable
16 fund raising activities or except in donating spirituous liquor with a cost
17 to the distiller, brewer or wholesaler of up to five hundred dollars in a
18 calendar year to an organization that is exempt from federal income taxes
19 under section 501(c) (3), (4), (6) or (7) of the internal revenue code and
20 not licensed under this title.

21 4. For a distiller, vintner or brewer to require a wholesaler to offer
22 or grant a discount to a retailer, unless the discount has also been offered
23 and granted to the wholesaler by the distiller, vintner or brewer.

24 5. For a distiller, vintner or brewer to use a vehicle for trucking or
25 transportation of spirituous liquors unless there is affixed to both sides of
26 the vehicle a sign showing the name and address of the licensee and the type
27 and number of the person's license in letters not less than three and
28 one-half inches in height.

29 6. For a person to take or solicit orders for spirituous liquors
30 unless the person is a salesman or solicitor of a licensed wholesaler, a
31 salesman or solicitor of a distiller, brewer, vintner, importer or broker or
32 a registered retail agent.

33 7. For any retail licensee to purchase spirituous liquors from any
34 person other than a solicitor or salesman of a wholesaler licensed in this
35 state.

36 8. For a retailer to acquire an interest in property owned, occupied
37 or used by a wholesaler in the wholesaler's business, or in a license with
38 respect to the premises of the wholesaler.

39 9. Except as provided in paragraphs 10 and 11 of this section, **UNLESS**
40 **THE PERSON IS IMMUNE FROM PROSECUTION UNDER SECTION 4-245**, for a licensee or
41 other person to sell, furnish, dispose of or give, or cause to be sold,
42 furnished, disposed of or given, to a person under the legal drinking age or
43 for a person under the legal drinking age to buy, receive, have in the
44 person's possession or consume spirituous liquor. This paragraph shall not
45 prohibit the employment by an off-sale retailer of persons who are at least

1 sixteen years of age to check out, if supervised by a person on the premises
2 who is at least nineteen years of age, package or carry merchandise,
3 including spirituous liquor, in unbroken packages, for the convenience of the
4 customer of the employer, if the employer sells primarily merchandise other
5 than spirituous liquor.

6 10. For a licensee to employ a person under nineteen years of age to
7 manufacture, sell or dispose of spirituous liquors. This paragraph shall not
8 prohibit the employment by an off-sale retailer of persons who are at least
9 sixteen years of age to check out, if supervised by a person on the premises
10 who is at least nineteen years of age, package or carry merchandise,
11 including spirituous liquor, in unbroken packages, for the convenience of the
12 customer of the employer, if the employer sells primarily merchandise other
13 than spirituous liquor.

14 11. For an on-sale retailer to employ a person under nineteen years of
15 age in any capacity connected with the handling of spirituous liquors. This
16 paragraph does not prohibit the employment by an on-sale retailer of a person
17 under nineteen years of age who cleans up the tables on the premises for
18 reuse, removes dirty dishes, keeps a ready supply of needed items and helps
19 clean up the premises.

20 12. For a licensee, when engaged in waiting on or serving customers, to
21 consume spirituous liquor or for a licensee or on-duty employee to be on or
22 about the licensed premises while in an intoxicated or disorderly condition.

23 13. For an employee of a retail licensee, during that employee's
24 working hours or in connection with such employment, to give to or purchase
25 for any other person, accept a gift of, purchase for himself or consume
26 spirituous liquor, except that:

27 (a) An employee of a licensee, during that employee's working hours or
28 in connection with the employment, while the employee is not engaged in
29 waiting on or serving customers, may give spirituous liquor to or purchase
30 spirituous liquor for any other person.

31 (b) An employee of an on-sale retail licensee, during that employee's
32 working hours or in connection with the employment, while the employee is not
33 engaged in waiting on or serving customers, may taste samples of beer or wine
34 not to exceed four ounces per day or distilled spirits not to exceed two
35 ounces per day provided by an employee of a wholesaler or distributor who is
36 present at the time of the sampling.

37 (c) An employee of an on-sale retail licensee, under the supervision
38 of a manager as part of the employee's training and education, while not
39 engaged in waiting on or serving customers may taste samples of distilled
40 spirits not to exceed two ounces per educational session or beer or wine not
41 to exceed four ounces per educational session, and provided that a licensee
42 shall not have more than two educational sessions in any thirty day period.

43 (d) An unpaid volunteer who is a bona fide member of a club and who is
44 not engaged in waiting on or serving spirituous liquor to customers may
45 purchase for himself and consume spirituous liquor while participating in a

1 scheduled event at the club. An unpaid participant in a food competition may
2 purchase for himself and consume spirituous liquor while participating in the
3 food competition.

4 (e) An unpaid volunteer of a special event licensee under section
5 4-203.02 may purchase and consume spirituous liquor while not engaged in
6 waiting on or serving spirituous liquor to customers at the special event.
7 This subdivision does not apply to an unpaid volunteer whose responsibilities
8 include verification of a person's legal drinking age, security or the
9 operation of any vehicle or heavy machinery.

10 14. For a licensee or other person to serve, sell or furnish spirituous
11 liquor to a disorderly or obviously intoxicated person, or for a licensee or
12 employee of the licensee to allow or permit a disorderly or obviously
13 intoxicated person to come into or remain on or about the premises, except
14 that a licensee or an employee of the licensee may allow an obviously
15 intoxicated person to remain on the premises for a period of time of not to
16 exceed thirty minutes after the state of obvious intoxication is known or
17 should be known to the licensee in order that a nonintoxicated person may
18 transport the obviously intoxicated person from the premises. For the
19 purposes of this section, "obviously intoxicated" means inebriated to the
20 extent that a person's physical faculties are substantially impaired and the
21 impairment is shown by significantly uncoordinated physical action or
22 significant physical dysfunction that would have been obvious to a reasonable
23 person.

24 15. For an on-sale or off-sale retailer or an employee of such retailer
25 to sell, dispose of, deliver or give spirituous liquor to a person between
26 the hours of 2:00 a.m. and 6:00 a.m.

27 16. For a licensee or employee to knowingly permit any person on or
28 about the licensed premises to give or furnish any spirituous liquor to any
29 person under twenty-one years of age or knowingly permit any person under
30 twenty-one years of age to have in the person's possession spirituous liquor
31 on the licensed premises.

32 17. For an on-sale retailer or an employee of such retailer to allow a
33 person to consume or possess spirituous liquors on the premises between the
34 hours of 2:30 a.m. and 6:00 a.m.

35 18. For an on-sale retailer to permit an employee or for an employee to
36 solicit or encourage others, directly or indirectly, to buy the employee
37 drinks or anything of value in the licensed premises during the employee's
38 working hours. ~~AN~~ AN on-sale retailer shall NOT serve employees or allow a
39 patron of the establishment to give spirituous liquor to, purchase liquor for
40 or drink liquor with any employee during the employee's working hours.

41 19. For an off-sale retailer or employee to sell spirituous liquor
42 except in the original unbroken container, to permit spirituous liquor to be
43 consumed on the premises or to knowingly permit spirituous liquor to be
44 consumed on adjacent property under the licensee's exclusive control.

1 20. For a person to consume spirituous liquor in a public place,
2 thoroughfare or gathering. The license of a licensee permitting a violation
3 of this paragraph on the premises shall be subject to revocation. This
4 paragraph does not apply to the sale of spirituous liquors on the premises of
5 and by an on-sale retailer. This paragraph also does not apply to a person
6 consuming beer from a broken package in a public recreation area or on
7 private property with permission of the owner or lessor or on the walkways
8 surrounding such private property or to a person consuming beer or wine from
9 a broken package in a public recreation area as part of a special event or
10 festival that is conducted under a license secured pursuant to section
11 4-203.02 or 4-203.03.

12 21. For a person to have possession of or to transport spirituous
13 liquor ~~which~~ THAT is manufactured in a distillery, winery, brewery or
14 rectifying plant contrary to the laws of the United States and this state.
15 Any property used in transporting such spirituous liquor shall be forfeited
16 to the state and shall be seized and disposed of as provided in section
17 4-221.

18 22. For an on-sale retailer or employee to allow a person under the
19 legal drinking age to remain in an area on the licensed premises during those
20 hours in which its primary use is the sale, dispensing or consumption of
21 alcoholic beverages after the licensee, or the licensee's employees, know or
22 should have known that the person is under the legal drinking age. An
23 on-sale retailer may designate an area of the licensed premises as an area in
24 which spirituous liquor will not be sold or consumed for the purpose of
25 allowing underage persons on the premises if the designated area is separated
26 by a physical barrier and at no time will underage persons have access to the
27 area in which spirituous liquor is sold or consumed. A licensee or an
28 employee of a licensee may require a person who intends to enter a licensed
29 premises or a portion of a licensed premises where persons under the legal
30 drinking age are prohibited under this section to exhibit a written
31 instrument of identification that is acceptable under section 4-241 as a
32 condition of entry. The director, or a municipality, may adopt rules to
33 regulate the presence of underage persons on licensed premises provided the
34 rules adopted by a municipality are more stringent than those adopted by the
35 director. The rules adopted by the municipality shall be adopted by local
36 ordinance and shall not interfere with the licensee's ability to comply with
37 this paragraph. This paragraph does not apply:

38 (a) If the person under the legal drinking age is accompanied by a
39 spouse, parent or legal guardian of legal drinking age or is an on-duty
40 employee of the licensee.

41 (b) If the owner, lessee or occupant of the premises is a club as
42 defined in section 4-101, paragraph 7, subdivision (a) and the person under
43 the legal drinking age is any of the following:

44 (i) An active duty military service member.

45 (ii) A veteran.

1 (iii) A member of the United States army national guard or the United
2 States air national guard.

3 (iv) A member of the United States military reserve forces.

4 (c) To the area of the premises used primarily for the serving of food
5 during the hours when food is served.

6 23. For an on-sale retailer or employee to conduct drinking contests,
7 to sell or deliver to a person an unlimited number of spirituous liquor
8 beverages during any set period of time for a fixed price, to deliver more
9 than forty ounces of beer, one liter of wine or four ounces of distilled
10 spirits in any spirituous liquor drink to one person at one time for that
11 person's consumption or to advertise any practice prohibited by this
12 paragraph. ~~The provisions of~~ This paragraph ~~do~~ DOES not prohibit an on-sale
13 retailer or employee from selling and delivering an opened, original
14 container of distilled spirits if:

15 (a) Service or pouring of the spirituous liquor is provided by an
16 employee of the on-sale retailer.

17 (b) The employee of the on-sale retailer monitors consumption to
18 ensure compliance with this paragraph. Locking devices may be used, but are
19 not required.

20 24. For a licensee or employee to knowingly permit the unlawful
21 possession, use, sale or offer for sale of narcotics, dangerous drugs or
22 marijuana on the premises. As used in this paragraph, "dangerous drug" has
23 the same meaning prescribed in section 13-3401.

24 25. For a licensee or employee to knowingly permit prostitution or the
25 solicitation of prostitution on the premises.

26 26. For a licensee or employee to knowingly permit unlawful gambling on
27 the premises.

28 27. For a licensee or employee to knowingly permit trafficking or
29 attempted trafficking in stolen property on the premises.

30 28. For a licensee or employee to fail or refuse to make the premises
31 or records available for inspection and examination as provided in this title
32 or to comply with a lawful subpoena issued under this title.

33 29. For any person other than a peace officer or a member of a
34 sheriff's volunteer posse while on duty who has received firearms training
35 that is approved by the Arizona peace officer standards and training board,
36 the licensee or an employee of the licensee acting with the permission of the
37 licensee to be in possession of a firearm while on the licensed premises of
38 an on-sale retailer. This paragraph ~~shall~~ DOES not ~~be construed to~~ include a
39 situation in which a person is on licensed premises for a limited time in
40 order to seek emergency aid and such person does not buy, receive, consume or
41 possess spirituous liquor. This paragraph shall not apply to:

42 (a) Hotel or motel guest room accommodations.

43 (b) The exhibition or display of a firearm in conjunction with a
44 meeting, show, class or similar event.

1 (c) A person with a permit issued pursuant to section 13-3112 who
2 carries a concealed handgun on the licensed premises of any on-sale retailer
3 that has not posted a notice pursuant to section 4-229.

4 30. For a licensee or employee to knowingly permit a person in
5 possession of a firearm other than a peace officer or a member of a sheriff's
6 volunteer posse while on duty who has received firearms training that is
7 approved by the Arizona peace officer standards and training board, the
8 licensee or an employee of the licensee acting with the permission of the
9 licensee to remain on the licensed premises or to serve, sell or furnish
10 spirituous liquor to a person in possession of a firearm while on the
11 licensed premises of an on-sale retailer. It shall be a defense to action
12 under this paragraph if the licensee or employee requested assistance of a
13 peace officer to remove such person. This paragraph shall not apply to:

14 (a) Hotel or motel guest room accommodations.

15 (b) The exhibition or display of a firearm in conjunction with a
16 meeting, show, class or similar event.

17 (c) A person with a permit issued pursuant to section 13-3112 who
18 carries a concealed handgun on the licensed premises of any on-sale retailer
19 that has not posted a notice pursuant to section 4-229.

20 31. For any person in possession of a firearm while on the licensed
21 premises of an on-sale retailer to consume spirituous liquor. This paragraph
22 does not prohibit the consumption of small amounts of spirituous liquor by an
23 undercover peace officer on assignment to investigate the licensed
24 establishment.

25 32. For a licensee or employee to knowingly permit spirituous liquor to
26 be removed from the licensed premises, except in the original unbroken
27 package. This paragraph does not apply to any of the following:

28 (a) A person who removes a bottle of wine ~~which~~ THAT has been
29 partially consumed in conjunction with a purchased meal from licensed
30 premises if a cork is inserted flush with the top of the bottle or the bottle
31 is otherwise securely closed.

32 (b) A person who is in licensed premises that have noncontiguous
33 portions that are separated by a public or private walkway or driveway and
34 who takes spirituous liquor from one portion of the licensed premises across
35 the public or private walkway or driveway directly to the other portion of
36 the licensed premises.

37 (c) A bar, beer and wine bar, liquor store, beer and wine store or
38 microbrewery licensee who dispenses beer only in a clean container composed
39 of a material approved by a national sanitation organization with a maximum
40 capacity that does not exceed one gallon and not for consumption on the
41 premises if:

42 (i) The licensee or the licensee's employee fills the container at the
43 tap at the time of sale.

44 (ii) The container is sealed with a plastic adhesive and displays a
45 government warning label.

1 (iii) The dispensing of that beer is not done through a drive-through
2 or walk-up service window.

3 The department shall review the effects of this subdivision and submit a
4 report by July 1, 2015 on the effects of this subdivision to the governor,
5 the speaker of the house of representatives and the president of the senate.
6 The department shall provide a copy of this report to the secretary of state.

7 33. For a person who is obviously intoxicated to buy or attempt to buy
8 spirituous liquor from a licensee or employee of a licensee or to consume
9 spirituous liquor on licensed premises.

10 34. For a person under twenty-one years of age to drive or be in
11 physical control of a motor vehicle while there is any spirituous liquor in
12 the person's body.

13 35. For a person under twenty-one years of age to operate or be in
14 physical control of a motorized watercraft that is underway while there is
15 any spirituous liquor in the person's body. For the purposes of this
16 paragraph, "underway" has the same meaning prescribed in section 5-301.

17 36. For a licensee, manager, employee or controlling person to
18 purposely induce a voter, by means of alcohol, to vote or abstain from voting
19 for or against a particular candidate or issue on an election day.

20 37. For a licensee to fail to report an occurrence of an act of
21 violence to either the department or a law enforcement agency.

22 38. For a licensee to use a vending machine for the purpose of
23 dispensing spirituous liquor.

24 39. For a licensee to offer for sale a wine carrying a label including
25 a reference to Arizona or any Arizona city, town or geographic location
26 unless at least seventy-five ~~per-cent~~ PERCENT by volume of the grapes used in
27 making the wine were grown in Arizona.

28 40. For a retailer to knowingly allow a customer to bring spirituous
29 liquor onto the licensed premises, except that an on-sale retailer may allow
30 a wine and food club to bring wine onto the premises for consumption by the
31 club's members and guests of the club's members in conjunction with meals
32 purchased at a meeting of the club that is conducted on the premises and that
33 at least seven members attend. An on-sale retailer who allows wine and food
34 clubs to bring wine onto its premises under this paragraph shall comply with
35 all applicable provisions of this title and any rules adopted pursuant to
36 this title to the same extent as if the on-sale retailer had sold the wine to
37 the members of the club and their guests. For the purposes of this
38 paragraph, "wine and food club" means an association that has more than
39 twenty bona fide members paying at least six dollars per year in dues and
40 that has been in existence for at least one year.

41 41. UNLESS THE PERSON IS IMMUNE FROM PROSECUTION UNDER SECTION 4-245,
42 for a person under twenty-one years of age to have in the person's body any
43 spirituous liquor. In a prosecution for a violation of this paragraph:

44 (a) Pursuant to section 4-249, it is a defense that the spirituous
45 liquor was consumed in connection with the bona fide practice of a religious

1 belief or as an integral part of a religious exercise and in a manner not
2 dangerous to public health or safety.

3 (b) Pursuant to section 4-226, it is a defense that the spirituous
4 liquor was consumed for a bona fide medicinal purpose and in a manner not
5 dangerous to public health or safety.

6 42. For an employee of a licensee to accept any gratuity, compensation,
7 remuneration or consideration of any kind to either:

8 (a) Permit a person who is under twenty-one years of age to enter any
9 portion of the premises where that person is prohibited from entering
10 pursuant to paragraph 22 of this section.

11 (b) Sell, furnish, dispose of or give spirituous liquor to a person
12 who is under twenty-one years of age.

13 43. For a person to purchase, offer for sale or use any device, machine
14 or process ~~which~~ THAT mixes spirituous liquor with pure oxygen or another gas
15 to produce a vaporized product for the purpose of consumption by inhalation
16 or to allow patrons to use any item for the consumption of vaporized
17 spirituous liquor.

18 44. For a retail licensee or an employee of a retail licensee to sell
19 spirituous liquor to a person if the retail licensee or employee knows the
20 person intends to resell the spirituous liquor.

21 45. Except as authorized by paragraph 32, subdivision (c) of this
22 section, for a person to reuse a bottle or other container authorized for use
23 by the laws of the United States or any agency of the United States for the
24 packaging of distilled spirits or for a person to increase the original
25 contents or a portion of the original contents remaining in a liquor bottle
26 or other authorized container by adding any substance.

27 Sec. 2. Title 4, chapter 2, article 3, Arizona Revised Statutes, is
28 amended by adding section 4-245, to read:

29 4-245. Immunity for persons under twenty-one years of age who
30 request emergency medical or law enforcement
31 assistance

32 NOTWITHSTANDING ANY OTHER LAW, A PERSON WHO IS UNDER TWENTY-ONE YEARS
33 OF AGE IS IMMUNE FROM PROSECUTION FOR A VIOLATION OF SECTION 4-244,
34 PARAGRAPHS 9 OR 41 IF ALL OF THE FOLLOWING OCCUR:

35 1. A LAW ENFORCEMENT OFFICER HAS CONTACT WITH THE PERSON BECAUSE THE
36 PERSON REQUESTS EMERGENCY MEDICAL OR LAW ENFORCEMENT ASSISTANCE FOR THAT
37 PERSON OR ANOTHER PERSON.

38 2. IF THE PERSON WHO HAS CONTACT WITH A LAW ENFORCEMENT OFFICER
39 PURSUANT TO PARAGRAPH 1 OF THIS SECTION REQUESTS EMERGENCY OR LAW ENFORCEMENT
40 ASSISTANCE FOR ANOTHER PERSON, THE PERSON WHO REQUESTED EMERGENCY OR LAW
41 ENFORCEMENT ASSISTANCE PROVIDES ASSISTANCE TO THE OTHER PERSON AND REMAINS
42 WITH THE OTHER PERSON UNTIL MEDICAL OR LAW ENFORCEMENT ASSISTANCE ARRIVES.

43 3. THE PERSON WHO HAS CONTACT WITH A LAW ENFORCEMENT OFFICER PURSUANT
44 TO PARAGRAPH 1 OF THIS SECTION COOPERATES WITH EMERGENCY MEDICAL ASSISTANCE
45 PERSONNEL AND LAW ENFORCEMENT OFFICERS.