House Engrossed Senate Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 76

SENATE BILL 1381

AN ACT

REPEALING SECTION 4-203.04, ARIZONA REVISED STATUTES; AMENDING TITLE 4, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 4-203.04; AMENDING SECTIONS 42-3355 AND 42-3356, ARIZONA REVISED STATUTES; RELATING TO LIQUOR LICENSEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Repeal

Section 4-203.04, Arizona Revised Statutes, is repealed.

Sec. 2. Title 4, chapter 2, article 1, Arizona Revised Statutes, is amended by adding a new section 4-203.04, to read:

4-203.04. Direct shipment license; issuance; fee; requirements; renewal; civil penalties; limitations; duties; violation; classification; applicability

A. THE DIRECTOR MAY ISSUE A DIRECT SHIPMENT LICENSE TO ANY WINERY THAT HOLDS A FEDERAL BASIC PERMIT ISSUED BY THE UNITED STATES ALCOHOL AND TOBACCO TAX AND TRADE BUREAU AND A CURRENT LICENSE TO PRODUCE WINE ISSUED BY THIS STATE OR ANY OTHER STATE. A FARM WINERY LICENSED PURSUANT TO SECTION 4-205.04 AND A WINERY HOLDING A PRODUCER'S LICENSE OR A LIMITED PRODUCER'S LICENSE ISSUED BY THIS STATE MAY ALSO HOLD A DIRECT SHIPMENT LICENSE.

B. A PERSON SHALL APPLY FOR A DIRECT SHIPMENT LICENSE ON A FORM PRESCRIBED AND PROVIDED BY THE DIRECTOR. THE DIRECTOR MAY CHARGE AN APPLICATION ISSUANCE FEE TO BE USED FOR ADMINISTRATIVE COSTS ASSOCIATED WITH THE DIRECT SHIPMENT LICENSE. AN APPLICATION FOR A DIRECT SHIPMENT LICENSE SHALL INCLUDE:

1. THE ADDRESS OF THE PREMISES WHERE THE APPLICANT'S PRINCIPAL PLACE OF BUSINESS IS LOCATED.

2. THE NAME, ADDRESS AND TELEPHONE NUMBER OF AN OFFICER OF THE APPLICANT OR AN INDIVIDUAL WHO IS AUTHORIZED TO REPRESENT THE APPLICANT BEFORE THE DIRECTOR.

3. A COMPLETE AND FULL DISCLOSURE BY THE APPLICANT AND BY ANY OFFICER, DIRECTOR, ADMINISTRATOR OR CONTROLLING PERSON OF THE APPLICANT OF ANY CRIMINAL CONVICTIONS IN ANY STATE OR FOREIGN JURISDICTION WITHIN THE FIVE YEARS IMMEDIATELY PRECEDING THE APPLICATION.

4. THE APPLICANT'S FARM WINERY LICENSE, PRODUCER'S LICENSE OR LIMITED PRODUCER'S LICENSE NUMBER OR, FOR A WINERY THAT IS NOT CURRENTLY LICENSED BY THIS STATE, A COPY OF THE WINERY'S FEDERAL BASIC PERMIT ISSUED BY THE UNITED STATES ALCOHOL AND TOBACCO TAX AND TRADE BUREAU AND A COPY OF THAT WINERY'S CURRENT LICENSE TO PRODUCE WINE THAT IS ISSUED BY ANOTHER STATE.

5. THE APPLICANT'S TRANSACTION PRIVILEGE TAX NUMBER ISSUED BY THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF TRANSACTION PRIVILEGE TAXES AND LUXURY TAXES ON WINE THAT IS SOLD TO PURCHASERS IN THIS STATE UNDER THE LICENSE.

C. THE DIRECTOR MAY REFUSE TO ISSUE A DIRECT SHIPMENT LICENSE FOR GOOD CAUSE. THE DIRECTOR MAY NOT ISSUE A DIRECT SHIPMENT LICENSE TO ANY PERSON WHO:

1. HAS HAD A DIRECT SHIPMENT LICENSE OR ANY OTHER LICENSE TO DEAL IN SPIRITUOUS LIQUOR REVOKED IN THIS STATE OR ANY OTHER STATE WITHIN ONE YEAR PRECEDING THE APPLICATION.

2. HAS BEEN CONVICTED OF A FELONY IN THIS STATE OR ANY OTHER STATE OR HAS BEEN CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT WOULD BE A FELONY IF

CONVICTED IN THIS STATE WITHIN FIVE YEARS IMMEDIATELY PRECEDING THE APPLICATION.

D. A DIRECT SHIPMENT LICENSE IS VALID FOR ONE YEAR. DIRECT SHIPMENT LICENSES MAY NOT BE TRANSFERRED. A PERSON THAT HOLDS A DIRECT SHIPMENT LICENSE MAY APPLY FOR A RENEWAL BEFORE THE EXPIRATION OF THE PERSON'S CURRENT LICENSE. THE DIRECTOR MAY CHARGE A LICENSE RENEWAL FEE TO BE USED FOR ADMINISTRATIVE COSTS ASSOCIATED WITH THE DIRECT SHIPMENT LICENSE, AUDITING AND ENFORCEMENT.

E. AFTER NOTICE AND A HEARING PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE DIRECTOR MAY SUSPEND, REVOKE OR REFUSE TO RENEW A DIRECT SHIPMENT LICENSE FOR ANY VIOLATION OF THIS SECTION OR FOR GOOD CAUSE. ANY ACT OR OMISSION OF A PERSON WHO MAKES A SALE OR DELIVERY OF WINE FOR A LICENSEE UNDER SUBSECTION F OF THIS SECTION IS DEEMED TO BE AN ACT OR OMISSION OF THE LICENSEE FOR THE PURPOSES OF SECTION 4-210, SUBSECTION A, PARAGRAPH 9. IN LIEU OF SUSPENSION, REVOCATION OR REFUSAL TO RENEW A LICENSE, THE DIRECTOR MAY IMPOSE A CIVIL PENALTY PURSUANT TO SECTION 4-210.01 AGAINST A LICENSEE FOR EACH VIOLATION OF THIS SECTION. THE LICENSEE MAY APPEAL THE FINDING OR DECISION OF THE DIRECTOR TO THE BOARD. THE BOARD MAY AFFIRM, MODIFY OR REVERSE THE FINDING OR DECISION OF THE DIRECTOR.

F. NOTWITHSTANDING ANY OTHER LAW, A LICENSEE ANNUALLY MAY SELL AND SHIP NINE-LITER CASES OF WINE THAT IS PRODUCED BY THE LICENSEE DIRECTLY TO A PURCHASER IN THIS STATE PURSUANT TO ALL OF THE FOLLOWING:

1. THE LICENSEE MAY SELL AND SHIP:

(a) UNTIL DECEMBER 31, 2017, UP TO SIX NINE-LITER CASES OF WINE.

(b) BEGINNING JANUARY 1, 2018 AND UNTIL DECEMBER 31, 2018, UP TO NINE NINE-LITER CASES OF WINE.

(c) BEGINNING JANUARY 1, 2019 AND FOR EACH YEAR THEREAFTER, UP TO TWELVE NINE-LITER CASES OF WINE.

2. THE WINE MAY BE ORDERED BY ANY MEANS, INCLUDING TELEPHONE, MAIL, FAX OR THE INTERNET.

3. THE WINE IS FOR PERSONAL USE ONLY AND NOT FOR RESALE.

4. BEFORE SHIPPING THE WINE, THE LICENSEE SHALL VERIFY THE AGE OF THE PURCHASER WHO IS PLACING THE ORDER BY OBTAINING A COPY OF THE PURCHASER'S VALID PHOTO IDENTIFICATION AS PRESCRIBED IN SECTION 4-241, SUBSECTION K DEMONSTRATING THAT THE PERSON IS AT LEAST TWENTY-ONE YEARS OF AGE OR BY USING AN AGE VERIFICATION SERVICE.

5. THE WINE MAY BE SHIPPED TO A RESIDENTIAL OR BUSINESS ADDRESS BUT NOT TO A PREMISES LICENSED PURSUANT TO THIS TITLE.

6. ALL CONTAINERS OF WINE SHIPPED PURSUANT TO THIS SUBSECTION SHALL BE CONSPICUOUSLY LABELED WITH THE WORDS "CONTAINS ALCOHOL, SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".

7. THE LICENSEE MAY NOT SELL OR SHIP WINE TO A PURCHASER PURSUANT TO THIS SUBSECTION UNLESS THE PURCHASER COULD HAVE CARRIED THE WINE LAWFULLY INTO OR WITHIN THIS STATE.

8. THE DELIVERY MUST BE MADE BY A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE.

9. THE DELIVERY MUST BE MADE ONLY DURING THE HOURS OF LAWFUL SERVICE OF SPIRITUOUS LIQUOR TO A PERSON WHO IS AT LEAST TWENTY-ONE YEARS OF AGE.

10. THE DELIVERY MUST BE MADE ONLY AFTER INSPECTION OF THE VALID PHOTO IDENTIFICATION AS PRESCRIBED IN SECTION 4-241, SUBSECTION K OF THE PERSON ACCEPTING DELIVERY THAT DEMONSTRATES THAT THE PERSON IS AT LEAST TWENTY-ONE YEARS OF AGE.

11. PAYMENT FOR THE PRICE OF THE WINE MUST BE COLLECTED BY THE LICENSEE NOT LATER THAN AT THE TIME OF DELIVERY.

G. A LICENSEE SHALL:

1. NOT LATER THAN JANUARY 31 OF EACH YEAR, FILE A REPORT REGARDING THE WINE SHIPPED TO PURCHASERS IN THIS STATE DURING THE PRECEDING CALENDAR YEAR THAT INCLUDES THE INFORMATION REQUIRED IN PARAGRAPH 2 OF THIS SUBSECTION.

2. COMPLETE A RECORD OF EACH SHIPMENT AT THE TIME OF SHIPMENT. THE LICENSEE SHALL ENSURE THAT THE RECORD PROVIDES THE FOLLOWING INFORMATION:

(a) THE NAME OF THE LICENSEE MAKING THE SHIPMENT.

(b) THE ADDRESS OF THE LICENSEE MAKING THE SHIPMENT.

(c) THE LICENSE NUMBER.

(d) THE DATE OF SHIPMENT.

(e) THE ADDRESS AT WHICH DELIVERY IS TO BE MADE.

(f) THE AMOUNT SHIPPED.

3. ON REQUEST, ALLOW THE DIRECTOR OR THE DEPARTMENT OF REVENUE TO PERFORM AN AUDIT OF THE RECORDS OF WINE SHIPPED TO PURCHASERS IN THIS STATE. THE DIRECTOR MAY REQUEST THE LICENSEE SUBMIT RECORDS TO DEMONSTRATE COMPLIANCE WITH THIS SECTION. THE LICENSEE SHALL MAINTAIN RECORDS OF EACH SHIPMENT OF WINE MADE TO PURCHASERS IN THIS STATE FOR TWO YEARS.

4. BE DEEMED TO HAVE CONSENTED TO THE JURISDICTION OF THE DEPARTMENT, ANY OTHER AGENCY OF THIS STATE, THE COURTS OF THIS STATE AND ALL RELATED LAWS, RULES OR REGULATIONS.

5. PAY THE DEPARTMENT OF REVENUE ALL TRANSACTION PRIVILEGE TAXES AND LUXURY TAXES ON SALES OF WINE UNDER THE DIRECT SHIPMENT LICENSE TO PURCHASERS IN THIS STATE. FOR TRANSACTION PRIVILEGE TAX AND LUXURY TAX PURPOSES, ALL WINE SOLD PURSUANT TO THIS SECTION SHALL BE DEEMED TO BE SOLD IN THIS STATE.

6. SHIP NOT MORE THAN THE TOTAL NUMBER OF NINE-LITER CASES OF WINE AUTHORIZED UNDER SUBSECTION F, PARAGRAPH 1 OF THIS SECTION TO ANY PURCHASER IN THIS STATE IN ANY CALENDAR YEAR FOR PERSONAL USE.

H. A PERSON WHO KNOWINGLY SELLS AND SHIPS WINE DIRECTLY TO A PURCHASER IN THIS STATE SHALL BE DEEMED TO HAVE CONSENTED TO THE JURISDICTION OF THE DEPARTMENT, ANY OTHER AGENCY OF THIS STATE, THE COURTS OF THIS STATE AND ALL RELATED LAWS, RULES OR REGULATIONS. A PERSON WHO KNOWINGLY SELLS AND SHIPS WINE DIRECTLY TO A PURCHASER IN THIS STATE IS GUILTY OF A CLASS 2 MISDEMEANOR IF EITHER:

1. THE PERSON DOES NOT POSSESS A CURRENT DIRECT SHIPMENT LICENSE.

2. THE PERSON DOES NOT POSSESS A CURRENT FARM WINERY LICENSE FOR A WINERY THAT PRODUCES TWENTY THOUSAND GALLONS OR LESS OF WINE IN THE PREVIOUS CALENDAR YEAR.

I. SECTION 4-201 DOES NOT APPLY TO LICENSES ISSUED PURSUANT TO THIS SECTION.

J. COMMON CARRIERS, OTHER THAN RAILROADS AS DEFINED IN SECTION 40-201, THAT TRANSPORT WINE INTO AND WITHIN THIS STATE SHALL:

1. KEEP RECORDS OF WINE SHIPPED TO PURCHASERS IN THIS STATE, INCLUDING THE DIRECT SHIPMENT LICENSEE'S NAME AND ADDRESS, THE RECIPIENT'S NAME AND ADDRESS, THE SHIPMENT AND DELIVERY DATES AND THE WEIGHT OF WINE SHIPPED.

2. REMIT THE RECORDS KEPT PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION ON REQUEST OF THE DEPARTMENT.

K. FARM WINERY LICENSEES UNDER SECTION 4-205.04 THAT PRODUCED TWENTY THOUSAND GALLONS OF WINE OR LESS IN THE PRECEDING CALENDAR YEAR MAY SHIP WINE DIRECTLY TO PURCHASERS IN THIS STATE PURSUANT TO SECTION 4-205.04 AND ARE EXEMPT FROM THE REQUIREMENTS OF THIS SECTION, INCLUDING THE CASE LIMITATIONS PRESCRIBED IN SUBSECTION F OF THIS SECTION.

L. THE DIRECTOR SHALL BEGIN ISSUING DIRECT SHIPMENT LICENSES PURSUANT TO THIS SECTION NOT LATER THAN JANUARY 1, 2017.

Sec. 3. Section 42-3355, Arizona Revised Statutes, is amended to read:

42-3355. <u>Return and payment by farm wineries, manufacturers, direct shipment licensees, microbreweries and craft distillers</u>

A. Every farm winery selling vinous liquor at retail or to a retail licensee pursuant to title 4, chapter 2 manufactured or produced on the premises, ~~or~~ producer of vinous liquor that sells at retail pursuant to section 4-243.02 OR DIRECT SHIPMENT LICENSEE THAT SELLS PURSUANT TO SECTION 4-203.04 shall pay the tax under this chapter on all such liquor sold at retail or to a retail licensee within this state and add the amount of the tax to the sales price.

B. Every microbrewery selling malt liquor at retail or to a retail licensee pursuant to title 4, chapter 2 manufactured or produced on the premises or a manufacturer of beer that sells at retail pursuant to section 4-243.02 shall pay the tax under this chapter on all malt liquor sold at retail or to a retail licensee within this state and add the amount of the tax to the sales price.

C. Every craft distiller selling ~~a~~ spirituous liquor at retail or to a retail licensee pursuant to title 4, chapter 2, manufactured or produced on the premises or a distiller of spirituous liquor that sells at retail pursuant to section 4-243.02 shall pay the tax under this chapter on all spirituous liquor sold at retail or to a retail licensee within this state and add the amount of the tax to the sales price.

D. The farm winery, manufacturer, microbrewery, ~~or~~ craft distiller OR DIRECT SHIPMENT LICENSEE shall pay the tax to the department monthly on or

before the twentieth day of the month next succeeding the month in which the tax accrues.

E. On or before that date, the farm winery, manufacturer, microbrewery, ~~or~~ craft distiller OR DIRECT SHIPMENT LICENSEE shall prepare a sworn return for the month in which the tax accrues in the form prescribed by the department, showing:

1. The amount of liquors or beer sold in this state during the month in which the tax accrues.

2. The amount of tax for the period covered by the return.

3. Any other information that the department deems necessary for the proper administration of this chapter.

F. The farm winery, manufacturer, microbrewery, ~~or~~ craft distiller OR DIRECT SHIPMENT LICENSEE shall deliver the return, together with a remittance of the amount of the tax due, to the department.

G. Any taxpayer who fails to pay the tax within ten days ~~from~~ AFTER the date ~~upon~~ ON which the payment becomes due is subject to and shall pay a penalty determined under section 42-1125, plus interest at the rate determined pursuant to section 42-1123 from the time the tax was due and payable until paid.

Sec. 4. Section 42-3356, Arizona Revised Statutes, is amended to read:

42-3356. Bonds required of farm wineries and direct shipment licensees; exemption

A. Every farm winery that makes deliveries pursuant to section 4-205.04, subsection C, paragraph 7 or 9 OR DIRECT SHIPMENT LICENSEE THAT MAKES DELIVERIES PURSUANT TO SECTION 4-203.04 shall file with the department, in a form prescribed by the department, a bond or bonds, duly executed by the farm winery OR DIRECT SHIPMENT LICENSEE as principal, and with a corporation duly authorized to execute and write bonds within this state as surety, payable to this state and conditioned on the payment of all taxes, penalties and other obligations of the farm winery OR DIRECT SHIPMENT LICENSEE arising under this chapter and chapter 5 of this title.

B. The department shall fix the total amount of the bond or bonds required of the farm winery OR DIRECT SHIPMENT LICENSEE and may increase or reduce the total amount at any time. In fixing the total amount, the department shall require a bond or bonds equivalent in total amount to twice the farm winery's OR DIRECT SHIPMENT LICENSEE'S estimated monthly tax, ascertained in a manner deemed proper by the department. The total amount of the bond or bonds required of any farm winery OR DIRECT SHIPMENT LICENSEE shall not be less than five hundred dollars.

C. A farm winery OR DIRECT SHIPMENT LICENSEE is exempt from the requirements of this section if the farm winery OR DIRECT SHIPMENT LICENSEE has made timely payment of any taxes imposed by this chapter for the twelve consecutive months immediately preceding the current month.

1 Sec. 5. Applicability to existing licenses; rules
2 A. All direct shipment licenses, except direct shipment licenses held
3 by wineries, that are in effect on the effective date of this act shall
4 remain in effect if those licenses are timely renewed. A person that holds a
5 direct shipment license on the effective date of this act and that delivers
6 spirituous liquor other than wine shall continue to make such sales and
7 deliveries in accordance with the version of section 4-203.04, Arizona
8 Revised Statutes, that was in existence the day before the effective date of
9 this act.
10 B. The legislature intends for the continued application of rules
11 adopted by the department of liquor licenses and control that relate to the
12 delivery of alcohol and that were adopted to prevent the sale and delivery of
13 alcohol to minors. Nothing in this act is intended to affect the continued
14 applicability of rules adopted by the department under section 4-203.04,
15 Arizona Revised Statutes, as repealed by this act, regarding the record of
16 delivery of spirituous liquor by farm wineries or retailers having off-sale
17 privileges.

APPROVED BY THE GOVERNOR MARCH 30, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2016.

Passed the House March 23, 2016,

by the following vote: 54 Ayes,

3 Nays, 3 Not Voting

Speaker of the House

Pro Tempore

Jim Drake

Chief Clerk of the House

Passed the Senate February 25, 2016,

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

President of the Senate

Susan Aceves

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1381

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate March 24, 2016

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

28th day of March, 2016

at 2:38 o'clock P. M.

Secretary to the Governor

Approved this 30th day of

March

at 3:22 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 31 day of March, 2016

at 5:07 o'clock P M.

Secretary of State

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