House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 91

HOUSE BILL 2031

AN ACT

AMENDING SECTION 4-241, ARIZONA REVISED STATUTES; RELATING TO LIQUOR PROHIBITIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 4-241, Arizona Revised Statutes, is amended to read:

4-241. Selling or giving liquor to underage person; illegally obtaining liquor by underage person; violation; classification; definitions

A. If a licensee, an employee of the licensee or any other person questions or has reason to question that the person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or entering a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age, the licensee, employee of the licensee or other person shall do all of the following:

1. Demand identification from the person.

2. Examine the identification to determine that the identification reasonably appears to be a valid, unaltered identification that has not been defaced.

3. Examine the photograph in the identification and determine that the person reasonably appears to be the same person in the identification.

4. Determine that the date of birth in the identification indicates the person is not under the legal drinking age.

B. A licensee or an employee of the licensee who follows the procedures prescribed in subsection A of this section and who records and retains a record of the person's identification on this particular visit is not in violation of subsection J of this section or section 4-244, paragraph 9 or 22. This defense applies to actions of the licensee and all employees of the licensee after the procedure has been employed during the particular visit to the licensed premises by the person. A licensee or an employee of the licensee is not required to demand and examine identification of a person pursuant to subsection A of this section if, during this visit to the licensed premises by the person, the licensee or any employee of the licensee has previously followed the procedure prescribed in subsection A of this section.

C. Proof that the licensee or employee followed the entire procedure prescribed in subsection A of this section but did not record and retain a record as prescribed in subsection B of this section is an affirmative defense to a criminal charge under subsection J of this section or under section 4-244, paragraph 9 or 22 or a disciplinary action under section 4-210 for a violation of subsection J of this section or section 4-244, paragraph 9 or 22. This defense applies to actions of the licensee and all employees of the licensee after the procedure has been employed during the particular visit to the licensed premises by the person.

D. A licensee or an employee who has not recorded and retained a record of the identification prescribed by subsection B of this section is

presumed not to have followed any of the elements prescribed in subsection A of this section.

E. For the purposes of section 4-244, paragraph 22, a licensee or an employee who has not recorded and retained a record of the identification prescribed by subsection B of this section is presumed to know that the person entering or attempting to enter a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age.

F. It is a defense to a violation of subsection A of this section if the person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or to enter a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is not under the legal drinking age.

G. A person penalized for a violation of subsection J of this section or section 4-244, paragraph 22 shall not be additionally penalized for a violation of subsection A of this section relating to the same event.

H. The defenses provided in this section do not apply to a licensee or an employee who has actual knowledge that the person exhibiting the identification is under the legal drinking age.

I. Any of the following types of records are acceptable forms for recording the person's identification:

1. A writing containing the type of identification, the date of issuance of the identification, the name on the identification, the date of birth on the identification and the signature of the person.

2. An electronic file or printed document produced by a device that reads the person's age from the identification.

3. A dated and signed photocopy of the identification.

4. A photograph of the identification.

5. A digital copy of the identification.

J. An off-sale retail licensee or employee of an off-sale retail licensee shall require an instrument of identification from any customer who appears to be under twenty-seven years of age and who is using a drive-through or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle.

K. The following written instruments are the only acceptable types of identification:

1. An unexpired driver license issued by ~~any~~ THIS state~~, the District of Columbia, any territory of the United States or Canada if the license includes a picture of the licensee and the person's date of birth~~. A driver license issued to a person who is under twenty-one years of age is no longer an acceptable type of identification under this paragraph thirty days after the person turns twenty-one years of age.

2. AN UNEXPIRED DRIVER LICENSE ISSUED BY ANY OTHER STATE, THE DISTRICT OF COLUMBIA, ANY TERRITORY OF THE UNITED STATES OR CANADA IF THE LICENSE INCLUDES A PICTURE OF THE PERSON AND THE PERSON'S DATE OF BIRTH.

~~2.~~ 3. An unexpired nonoperating identification license issued pursuant to section 28-3165 ~~or an equivalent form of identification license issued by any state, the District of Columbia, any territory of the United States or Canada if the license includes a picture of the person and the person's date of birth~~. An unexpired nonoperating license issued to a person who is under twenty-one years of age is no longer an acceptable type of identification under this paragraph thirty days after the person turns twenty-one years of age.

4. A FORM OF IDENTIFICATION LICENSE ISSUED BY ANY OTHER STATE, THE DISTRICT OF COLUMBIA, ANY TERRITORY OF THE UNITED STATES OR CANADA IF THE LICENSE IS SUBSTANTIALLY EQUIVALENT TO A NONOPERATING IDENTIFICATION LICENSE ISSUED PURSUANT TO SECTION 28-3165 AND INCLUDES A PICTURE OF THE PERSON AND THE PERSON'S DATE OF BIRTH.

~~3.~~ 5. An unexpired armed forces identification card that includes the person's picture and date of birth.

~~4.~~ 6. A valid unexpired passport or a valid unexpired resident alien card that contains a photograph of the person and the person's date of birth.

L. A person who is under the legal drinking age and who misrepresents the person's age to any person by means of a written instrument of identification with the intent to induce a person to sell, serve, give or furnish spirituous liquor contrary to law is guilty of a class 1 misdemeanor.

M. A person who is under the legal drinking age and who solicits another person to purchase, sell, give, serve or furnish spirituous liquor contrary to law is guilty of a class 3 misdemeanor.

N. A person who is under the legal drinking age and who uses a fraudulent or false written instrument of identification or identification of another person or uses a valid license or identification of another person to gain access to a licensed establishment is guilty of a class 1 misdemeanor.

O. A person who uses a driver or nonoperating identification license in violation of subsection L or N of this section is subject to suspension of the driver or nonoperating identification license as provided in section 28-3309. A person who does not have a valid driver or nonoperating identification license and who uses a driver or nonoperating identification license of another in violation of subsection C or E of this section has the person's right to apply for a driver or nonoperating identification license suspended as provided by section 28-3309.

P. A person who knowingly influences the sale, giving or serving of spirituous liquor to a person under the legal drinking age by misrepresenting the age of such person or who orders, requests, receives or procures spirituous liquor from any licensee, employee or other person with the intent of selling, giving or serving it to a person under the legal drinking age is guilty of a class 1 misdemeanor. A licensee or employee of a licensee who

has actual knowledge that a person is under the legal drinking age and who admits the person into any portion of the licensed premises in violation of section 4-244, paragraph 22 is in violation of this subsection. In addition to other penalties provided by law, a judge may suspend a driver license issued to or the driving privilege of a person for not more than thirty days for a first conviction and not more than six months for a second or subsequent conviction under this subsection.

Q. A person who is of legal drinking age and who is an occupant of unlicensed premises is guilty of a class 1 misdemeanor if both of the following apply:

1. The person knowingly allows a gathering on such unlicensed premises of two or more persons who are under the legal drinking age and who are neither:

(a) Members of the immediate family of such person.

(b) Permanently residing with the person.

2. The person knows or should know that one or more of the persons under the legal drinking age is in possession of or consuming spirituous liquor on the unlicensed premises.

R. For the purposes of subsection Q of this section, "occupant" means a person who has legal possession or the legal right to exclude others from the unlicensed premises.

S. A peace officer shall forward or electronically transfer to the director of the department of transportation the affidavit required by section 28-3310 if the peace officer has arrested a person for the commission of an offense for which, on conviction, suspension of the license or privilege to operate a motor vehicle is required by section 28-3309, subsection A, B or D, or if the peace officer has confiscated a false identification document used by the person to gain access to licensed premises.

T. A person who acts under a program of testing compliance with this title that is approved by the director is not in violation of section 4-244.

U. Law enforcement agencies may use persons who are under the legal drinking age to test compliance with this section and section 4-244, paragraph 9 by a licensee if the law enforcement agency has reasonable suspicion that the licensee is violating this section or section 4-244, paragraph 9. A person who is under the legal drinking age and who purchases or attempts to purchase spirituous liquor under the direction of a law enforcement agency pursuant to this subsection is immune from prosecution for that purchase or attempted purchase. Law enforcement agencies may use a person under the legal drinking age pursuant to this subsection only if:

1. The person is at least fifteen but not more than nineteen years of age.

2. The person is not employed on an incentive or quota basis.

3. The person's appearance is that of a person who is under the legal drinking age.

4. A photograph of the person is taken no more than twelve hours before the purchase or attempted purchase. The photograph shall accurately depict the person's appearance and attire. A licensee or an employee of a licensee who is cited for selling spirituous liquor to a person under the legal drinking age pursuant to this subsection shall be permitted to inspect the photograph immediately after the citation is issued. The person's appearance at any trial or administrative hearing that results from a citation shall not be substantially different from the person's appearance at the time the citation was issued.

5. The person places, receives and pays for the person's order of spirituous liquor. An adult shall not accompany the person onto the premises of the licensee.

6. The person does not consume any spirituous liquor.

V. The department may adopt rules to carry out the purposes of this section.

Sec. 2. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR APRIL 5, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2016.

Passed the House February 8, 2016

by the following vote: 46 Ayes,

10 Nays, 4 Not Voting

w/ emergency

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate March 28 2016

by the following vote: 25 Ayes,

2 Nays, 3 Not Voting

With Emergency

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

30 day of March, 2016

at 11 o'clock A. M.

Valerie Hanna

Secretary to the Governor

Approved this 5th day of

April

at 2:44 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 6 day of April, 2016

at 8:14 o'clock A M.

Michele Reagan

Secretary of State

H.B. 2031