Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
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CHAPTER 220

HOUSE BILL 2213

AN ACT

AMENDING SECTION 4-101, ARIZONA REVISED STATUTES; RELATING TO LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 4-101, Arizona Revised Statutes, is amended to read:

4-101. Definitions

In this title, unless the context otherwise requires:

1. "Act of violence" means an incident consisting of a riot, a brawl or a disturbance, in which bodily injuries are sustained by any person and such injuries would be obvious to a reasonable person, or tumultuous conduct of sufficient intensity as to require the intervention of a peace officer to restore normal order, or an incident in which a weapon is brandished, displayed or used. ACT OF VIOLENCE DOES NOT INCLUDE THE USE OF NONLETHAL DEVICES BY A PEACE OFFICER.

2. "Aggrieved party" means a person who resides at, owns or leases property within a one mile radius of a premises proposed to be licensed and who filed a written request with the department to speak in favor of or opposition to the issuance of the license no later than sixty days after the filing of the application or fifteen days after action by the local governing body, whichever is later.

3. "Beer" means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley malt, hops, or other ingredients not drinkable, or any combination of them.

4. "Board" means the state liquor board.

5. "Bona fide guest" means:

(a) A person who is actually a houseguest or a person whose presence as a guest is in response to a specific and personal invitation.

(b) In the case of a club that meets the criteria prescribed in paragraph 7, subdivision (a) of this section, a current member of the armed services of the United States who presents proper military identification and any member of a recognized veterans' organization of any country allied with the United States during current or past wars or through treaty arrangements.

6. "Broken package" means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed.

7. "Club" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members only:

(a) A post, chapter, camp or other local unit composed solely of veterans and its duly recognized auxiliary which has been chartered by the Congress of the United States for patriotic, fraternal or benevolent purposes and which has, as the owner, lessee or occupant, operated an establishment for that purpose in this state.

(b) A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization which has as the owner, lessee or occupant operated an establishment for fraternal purposes in this state. An American national fraternal organization as used in this subdivision shall actively

operate in not less than thirty-six states or have been in active continuous existence for not less than twenty years.

(c) A hall or building association of a local unit mentioned in subdivisions (a) and (b) of this paragraph, all of the capital stock of which is owned by the local unit or the members, and which operates the clubroom facilities of the local unit.

(d) A golf club which has more than fifty bona fide members and which owns, maintains or operates a bona fide golf links together with a clubhouse.

(e) A social club with more than one hundred bona fide members who are actual residents of the county in which it is located, that owns, maintains or operates club quarters, is authorized and incorporated to operate as a nonprofit club under the laws of this state, and has been continuously incorporated and operating for a period of not less than one year. The club shall have had, during this one year period, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club's membership shall consist of bona fide dues paying members paying at least six dollars per year, payable monthly, quarterly or annually, which have been recorded by the secretary of the club, and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one per cent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the board, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than thirty days prior to the filing of the petition. The club shall qualify for exemption from the payment of state income taxes under title 43. It is the intent of this paragraph that a license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club.

(f) An airline club operated by or for airlines which are certificated by the United States government and which maintain or operate club quarters located at airports with international status.

8. "Company" or "association", when used in reference to a corporation, includes successors or assigns.

9. "Control" means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, whether through the ownership of voting securities or a partnership interest, by agreement or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten per cent or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. In the case of a partnership, control is presumed to mean the general partner or a limited

partner who holds ten per cent or more of the voting rights of the partnership. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated with the voting securities attributed to the person the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial interest in ten per cent or more of the liabilities of the licensee or controlling person.

10. "Controlling person" means a person directly or indirectly possessing control of an applicant or licensee.

11. "Department" means the department of liquor licenses and control.

12. "Director" means the director of the department of liquor licenses and control.

13. "Distilled spirits" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, fruits preserved in ardent spirits, and any alcoholic mixture or preparation, whether patented or otherwise, which may in sufficient quantities produce intoxication.

14. "Employee" means any person who performs any service on licensed premises on a full-time, part-time or contract basis with consent of the licensee, whether or not the person is denominated an employee, independent contractor or otherwise. Employee does not include a person exclusively on the premises for musical or vocal performances, for repair or maintenance of the premises or for the delivery of goods to the licensee.

15. "Government license" means a license to serve and sell spirituous liquor on specified premises available only to a county, city, town or state university or the Arizona coliseum and exposition center upon application by the governing body of a county, city, town or state university or the Arizona exposition and state fair board.

16. "Legal drinking age" means the age of twenty-one years or older.

17. "License" means a license or an interim retail permit issued pursuant to the provisions of this title.

18. "License fees" means fees collected for license issuance, license application, license renewal, interim permit issuance and license transfer between persons or locations.

19. "Licensee" means a person who has been issued a license or an interim retail permit pursuant to the provisions of this title or a special event licensee.

20. "Manager" means a natural person who meets the standards required of licensees and has authority to organize, direct, carry on, control or otherwise operate a licensed business on a temporary or full-time basis.

21. "Off-sale retailer" means any person operating a bona fide regularly established retail liquor store selling spirituous liquors, wines and beer, and any established retail store selling commodities other than spirituous liquors and engaged in the sale of spirituous liquors only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

22. "On-sale retailer" means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

23. "Person" includes a partnership, limited liability company, association, company or corporation, as well as a natural person.

24. "Premises" or "licensed premises" means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license.

25. "Registered mail" includes certified mail.

26. "Registered retail agent" means any person who is authorized pursuant to section 4-222 to purchase spirituous liquors for and on behalf of himself and other retail licensees.

27. "Repeated acts of violence" means two or more acts of violence occurring within seven days, three or more acts of violence occurring within thirty days or acts of violence occurring with any other similar frequency which the director determines to be unusual or deserving of review.

28. "Sell" includes soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, keeping with intent to sell and trafficking in.

29. "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one per cent of alcohol by volume.

30. "Vehicle" means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.

31. "Vending machine" means a machine that dispenses merchandise through the means of coin, token, credit card or other nonpersonal means of accepting payment for merchandise received.

32. "Veteran" means a person who has served in the United States air force, army, navy, marine corps or coast guard, as an active nurse in the services of the American red cross, in the army and navy nurse corps in time of war, or in any expedition of the armed forces of the United States, and who has received a discharge other than dishonorable.

33. "Voting security" means any security presently entitling the owner or holder of the security to vote for the election of directors of an applicant, licensee or controlling person.

34. "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four per cent of alcohol by volume.

Sec. 2. Purpose

This amendment to section 4-101, Arizona Revised Statutes, is a clarification of existing administrative authority and is not intended to be a substantive change.

APPROVED BY THE GOVERNOR MAY 11, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2004.