

REFERENCE TITLE: liquor; unlicensed business establishments

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1087**

Introduced by  
Senator Gorman

AN ACT

AMENDING SECTION 4-244.05, ARIZONA REVISED STATUTES; RELATING TO LIQUOR PROHIBITIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 4-244.05, Arizona Revised Statutes, is amended to  
3 read:

4 4-244.05. Unlicensed business establishment or premises;  
5 unlawful consumption of spirituous liquor; civil  
6 penalty; seizure and forfeiture of property

7 A. A person owning, operating, leasing, managing or controlling a  
8 business establishment or business premises which are not properly licensed  
9 pursuant to this title and in which any of the following occur shall not  
10 allow the consumption of spirituous liquor in the establishment or on the  
11 premises:

- 12 1. Food or beverages are sold.
- 13 2. Entertainment is provided.
- 14 3. A membership fee or a cover charge for admission is charged.
- 15 4. A minimum purchase or rental requirement for goods or services is  
16 charged.

17 B. A person shall not consume spirituous liquor in a business  
18 establishment or on business premises which are not properly licensed  
19 pursuant to this title in which food or beverages are sold, entertainment is  
20 provided, a membership fee or a cover charge for admission is charged or a  
21 minimum purchase or rental requirement for goods or services is charged.

22 C. In addition to or in lieu of other fines or civil penalties imposed  
23 for a violation of this section or any other action taken by the board or  
24 director, the board or director may conduct a hearing subject to the  
25 requirements of section 4-210, subsection G to determine whether a person has  
26 violated subsection A of this section. If the board or director determines,  
27 after a hearing, that a person has violated subsection A of this section the  
28 board or director may impose a civil penalty of not less than two hundred nor  
29 more than five thousand dollars for each offense. A civil penalty imposed  
30 pursuant to this section by the director may be appealed to the board.

31 D. In addition to any other remedies provided by law, any monies used  
32 or obtained in violation of this chapter may be seized by any peace officer  
33 if the peace officer has probable cause to believe that the money has been  
34 used or is intended to be used in violation of this section.

35 E. In addition to any other remedies provided by law, the records of  
36 an establishment that is in violation of this section may be seized by any  
37 peace officer if the peace officer has probable cause to believe that the  
38 establishment is operating without a valid license issued pursuant to this  
39 title.

40 F. In addition to any other remedies provided by law, any amount of  
41 alcohol may be seized by any peace officer if the peace officer has probable  
42 cause to believe that the alcohol is being used or is intended to be used in  
43 violation of this section.

1 G. In addition to any other remedies provided by law, the following  
2 property shall be forfeited pursuant to section 13-2314 or title 13,  
3 chapter 39:

4 1. All proceeds and other assets that are derived from a violation of  
5 this section.

6 2. Anything of value that is used or intended to be used to facilitate  
7 a violation of this section.

8 H. A person who obtains property through a violation of this section  
9 is deemed to be an involuntary trustee of that property. An involuntary  
10 trustee and any other person who obtains the property, except a bona fide  
11 purchaser who purchases the property for value without notice of or  
12 participation in the unlawful conduct, holds the property, including its  
13 proceeds and other assets, in constructive trust for the benefit of the  
14 persons entitled to remedies pursuant to section 13-2314 or title 13,  
15 chapter 39.

16 I. The board or director may adopt rules authorizing and prescribing  
17 limitations for the possession or consumption of spirituous liquor at  
18 establishments or premises falling within the scope of subsections A and B of  
19 this section. Rules adopted pursuant to this subsection shall authorize the  
20 possession or consumption of spirituous liquor only at establishments or  
21 premises which permit the consumption or possession of minimal amounts of  
22 spirituous liquor and which meet both of the following criteria:

23 1. The possession or consumption of spirituous liquor is permitted  
24 only as an incidental convenience to the customers of the establishment or  
25 premises. FOR THE PURPOSES OF THIS PARAGRAPH, "INCIDENTAL CONVENIENCE" MEANS  
26 THAT A CUSTOMER MAY POSSESS A CONTAINER OF WINE THAT IS READILY AVAILABLE  
27 FROM A LICENSED RETAILER.

28 2. The possession or consumption of spirituous liquor is permitted  
29 only within the hours of lawful sale as prescribed in this title, and is  
30 limited to no more than ten hours per day.

31 J. Any rules adopted pursuant to subsection I of this section shall  
32 prescribe:

33 1. The maximum permitted occupancy of an establishment or premises.

34 2. The hours during which spirituous liquor may be possessed or  
35 consumed.

36 ~~3. The amount of spirituous liquor that a person may possess or~~  
37 ~~consume.~~

38 ~~4.~~ 3. That the director, the director's agents and any peace officer  
39 empowered to enforce the provisions of this title, in enforcing the  
40 provisions of this title, may visit and inspect the establishment or premises  
41 during the business hours of the premises or establishment.

42 K. Any rules adopted pursuant to subsection I of this section may  
43 prescribe separate classifications of establishments or premises at which  
44 spirituous liquor may be possessed or consumed and may establish any other  
45 provisions relating to the possession or consumption of spirituous liquor at

1 establishments or premises falling within the scope of subsections A and B of  
2 this section which are necessary to maintain the health and welfare of the  
3 community.

4 L. This section does not apply to establishments or premises that are  
5 not licensed pursuant to this title and on which occurs the consumption of  
6 spirituous liquor if the establishment or premises are owned, operated,  
7 leased, managed or controlled by the United States, this state or a city or  
8 county of this state.