

REFERENCE TITLE: furnishing liquor; underage persons; felony

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1630

Introduced by
Senator Johnson

AN ACT

AMENDING SECTIONS 4-241 AND 4-246, ARIZONA REVISED STATUTES; RELATING TO
LIQUOR OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

7 A. A licensee, an employee or any other person who questions or has
8 reason to question whether or not a person ordering, purchasing, attempting
9 to purchase or otherwise procuring or attempting to procure the serving or
10 delivery of spirituous liquor is under the legal drinking age shall require
11 the person to exhibit a written instrument of identification and may require
12 the person on a card to be retained by the licensee to sign the person's
13 name, the date, ~~and~~ and the number of such identification. An off-sale retail
14 licensee or employee of an off-sale retail licensee shall require an
15 instrument of identification from any customer who appears to be under
16 twenty-seven years of age and who is using a drive-through or other physical
17 feature of the licensed premises that allows a customer to purchase
18 spirituous liquor without leaving the customer's vehicle. The following
19 written instruments are the only acceptable types of identification:

20 1. An unexpired driver license issued by any state or Canada if the
21 license includes a picture of the licensee.

22 2. A nonoperating identification license issued pursuant to section
23 28-3165 or an equivalent form of identification license issued by any state
24 or Canada if the license includes a picture of the person and the person's
25 date of birth.

26 3. An armed forces identification card.

27 4. A valid unexpired passport or border crossing identification card
28 ~~which~~ THAT is issued by a government or A voter card THAT IS issued by the
29 government of Mexico ~~and which~~ IF THE PASSPORT OR CARD contains a photograph
30 of the person and the person's date of birth.

31 B. A licensee, an employee or any other person who sells, gives,
32 serves or furnishes spirituous liquor to a person who is under the legal
33 drinking age without having recorded and retained a record of the person's
34 age, an electronic file or a printed document produced by a device that reads
35 the person's age from the instrument of identification and obtains a
36 signature from any person ~~who~~ WHOM the licensee has reason to question if the
37 identification belonged to the person presenting the identification, or a
38 dated and signed photocopy of the instrument of identification exhibited as
39 prescribed by subsection A of this section is deemed to have constructive
40 knowledge of the person's age. This ~~section shall~~ SUBSECTION DOES not shift
41 the presumption of constructive knowledge of a person's age for anyone using
42 a device that reads the person's age from the instrument of identification,
43 if a reasonable person would have reason to question if the identification
44 belonged to the person presenting the identification.

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

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

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

12 F. A person who uses a driver or nonoperating identification license
13 in violation of subsection C or E of this section is subject to suspension of
14 the driver or nonoperating identification license as provided in section
15 28-3309. A person who does not have a valid driver or nonoperating
16 identification license and who uses a driver or nonoperating identification
17 license of another in violation of subsection C or E of this section has the
18 person's right to apply for a driver or nonoperating identification license
19 suspended as provided by section 28-3309.

20 G. A person who knowingly influences the sale, giving or serving of
21 spirituous liquor to a person under the legal drinking age by misrepresenting
22 the age of such person or who orders, requests, receives or procures
23 spirituous liquor from any licensee, employee or other person with the intent
24 of selling, giving or serving it to a person under the legal drinking age is
25 guilty of a class ~~1-misdemeanor~~ 6 FELONY. In addition to other penalties
26 provided by law, a judge may suspend a driver license issued to or the
27 driving privilege of a person for not more than thirty days for a first
28 conviction and not more than six months for a second or subsequent conviction
29 under this subsection.

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

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

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

37 (b) Permanently residing with such person.

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

41 I. For the purposes of subsection H of this section, "occupant" means
42 a person who has legal possession or the legal right to exclude others from
43 the unlicensed premises.

44 J. A peace officer shall forward or electronically transfer to the
45 director of the department of transportation the affidavit required by

1 section 28-3310 if the peace officer has arrested a person for the commission
2 of an offense for which, on conviction, suspension of the license or
3 privilege to operate a motor vehicle is required by section 28-3309,
4 subsection A, B or D, or if the peace officer has confiscated a false
5 identification document used by the person to gain access to licensed
6 premises.

7 K. A person who acts under a program of testing compliance with this
8 title ~~which~~ THAT is approved by the director is not in violation of section
9 4-244.

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

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

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

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

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

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

36 6. The person does not consume any spirituous liquor.

37 M. The department may adopt rules to carry out the purposes of this
38 section.

39 Sec. 2. Section 4-246, Arizona Revised Statutes, is amended to read:
40 4-246. Violation; classification

41 A. A person violating any provision of this title is guilty of a class
42 2 misdemeanor unless another classification is prescribed.

43 B. A person violating section 4-244, paragraph ~~9~~, 14, 33, 41 or 43 is
44 guilty of a class 1 misdemeanor.

1 C. A PERSON VIOLATING SECTION 4-244, PARAGRAPH 9 IS GUILTY OF A CLASS
2 6 FELONY.

3 ~~C.~~ D. In addition to any other penalty prescribed by law, a person
4 who is convicted of a violation of section 4-244, paragraph 41 shall pay a
5 fine of not less than five hundred dollars.

6 ~~D.~~ E. In addition to any other penalty prescribed by law, a person
7 who is convicted of a violation of section 4-241, ~~paragraph~~ SUBSECTION C, D
8 or E shall pay a fine of not less than two hundred fifty dollars.