

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: SUBSTANTIVE CRIMINAL LAW 2.11

SUBJECT:	Substantive Criminal Law
AZ POST DESIGNATION:	2.11.8
HOURS:	1
COURSE CONTENT:	An analysis of the most frequently used statutes in this chapter.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, the students using notes, handouts, and other support materials as references, will:
2.11.8	Identify examples of the following public nuisance crimes:
A.	Liquor control violations - A.R.S. 4-244.
B.	Handguns in a licensed premises; posting of notice - A.R.S. 4-229.

DATE FIRST PREPARED: November 2000

PREPARED BY: SME Committee

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REVIEWED – REVISED :	Sgt. George Sloane, Tucson P.D.	DATE: August 2002
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REVIEWED – REVISED :	Beverly Ginn, Tucson P.D.	DATE: October 2004
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INSTRUCTOR REFERENCES: A.R.S. Title 13, Title 4

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive Lecture

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

DATE OF RELEASE TO SHARE FILE: August 2023

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

II. 4-101 – DEFINITIONS

- A. As it is with most laws, you must have a good understanding of the key definitions to understand and enforce the laws as they were intended.
- B. The definitions listed here are the ones that you must know for a basic understanding and are listed under A.R.S. §4-101. **P.O. 2.11.8A**
- C. Act of violence – means an incident:
 - 1. Consisting of a riot, a fight, an altercation or tumultuous conduct and that meets at least one of the following criteria:
 - a. In which bodily injuries are sustained by any person and the injuries would be obvious to a reasonable person.
 - b. Of sufficient intensity as to require the intervention of a peace officer to restore normal order.
 - c. In which a weapon is brandished, displayed or used.
 - d. Where a licensee or an employee or contractor of the licensee fails to follow a clear and direct lawful order from a law enforcement officer or a fire marshal.
 - e. Does not include the use of nonlethal devices by a peace officer.
- D. Aggrieved party - 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 sooner.
- E. 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.
- F. Biometric identity verification device - A device authorized by the department that instantly verifies the identity and age of a person by an electronic scan of a biometric of the person, through a fingerprint, iris image, facial image or other biometric characteristic, or any combination of these characteristics, references the person's identity and age against any record described in section 4-241, subsection K, and meets all of the following conditions:

1. The authenticity of the record was previously verified by an electronic authentication process.
 2. The identity of and information about the record holder was previously verified through either:
 - a. A secondary, electronic authentication process or set of processes utilizing commercially available data, such as a public records query or a knowledge-based authentication quiz.
 - b. Utilizing a state or federal government system of record for digital authentication.
 3. The authenticated record was securely linked to biometrics contemporaneously collected from the verified record holder and is stored in a centralized, highly secured, encrypted biometric database.
- G. Board – means the state Liquor Board.
- H. Bona fide guest means:
1. An individual who is personally familiar to the member, who is personally sponsored and whose presence as a guest is in response to a specific and personal invitation.
 2. In the case of a club that meets the criteria prescribed below, 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 the United States and of any country allied with the United States during current or past wars or through treaty arrangements.
- I. 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.
- J. Club - Includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is mad only to members, spouses of members, families of members, bona fide guests of members and guests at other events authorized in this title:
1. A post, chapter, camp or other local unit composed solely of veterans and its duly recognized auxiliary that has been chartered by Congress of the United States for patriotic, fraternal or benevolent purposes and that has, as the owner, lessee or occupant, operated an establishment for that purpose in this state.
 2. A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization that 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 at least thirty-six states or have been in active continuous existence for at least twenty years.

3. A hall or building association of a local unit mentioned in subdivisions 1 and 2 of this paragraph , all of the capital stock of which is owned by the local unit of the members, and that operates the clubroom facilities of the local unit.
 4. A golf club that has more than fifty bona fide members and that owns, maintains or operates a bona fide golf links together with a clubhouse.
 5. 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, that is authorized and incorporated to operate as a nonprofit club under the laws of this state, and that has been continuously incorporated and operating for a period of at least 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 objectives of the club. The club's membership shall consist of bona fide dues-paying members paying at least \$6 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 percent 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 one hundred eighty days before the filing of the application. The club shall qualify for exemption from the payment of state income taxes under title 43. It is the intent of this subdivision that a license shall not be granted to a club that 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.
 6. An airline club operated by or for airlines that are certificated by the United States government and that maintain or operate club quarters located at airports with international status.
- K. Company or association - When used in reference to a corporation, includes successors or assigns.
- L. Control – the power to direct or cause the direction of the management and policies of an applicant or licensee, 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 percent or more of the outstanding voting securities of the applicant or licensee or to control in any manner the election of one or more of the directors of the applicant or licensee. In the case of a partnership, control is presumed to mean the general partner or a limited partner who holds ten percent 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 an officer, partner, employee or agent of the person or a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant or licensee holds a beneficial interest in ten percent or more of the liabilities of the licensee. The presumptions in this paragraph regarding control are rebuttable.

- M. Controlling person – A person directly or indirectly possessing control of an applicant or licensee.
- N. Craft Distiller - A distiller in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.10.
- O. Department – The Department of Liquor Licenses and Control.
- P. Director - the director of the department of liquor licenses and control.
- Q. Distilled spirits – Includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, absinthe or a compound or mixture 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, that may in sufficient quantities produce intoxication.
- R. Employee – 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.
- S. Farm winery - A winery in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.04.
- T. Government license – a license to serve and sell spirituous liquor on specified premises available only to a state agency, state board, state commission, county, city, town, community college or state university or the national guard or Arizona coliseum and exposition center on application by the governing body of a state agency, state board, state commission, county, city, town, community college or state university or the national guard or Arizona exposition and state fair board.
- U. Legal drinking age – 21 years of age or older.
- V. License – a license or an interim retail permit issued pursuant to the provisions of this title.
- W. Licensee – 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.

- X. License fees - fees collected for license issuance, license application, license renewal, interim permit issuance and license transfer between persons or locations.
- Y. 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.
- Z. Menu food Item- means an item prepared by the licensee.
- AA. Microbrewery - a brewery in the United States or in a territory or possession of the United States that meet the requirements of section 4-205.08.
- BB. Mixed cocktail- means an alcoholic drink mixed on premises with other ingredients but excludes manufacturer prepared/pre-packaged mixed drinks.
- CC. 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.
- DD. On-sale retailer – 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.
- EE. Premises or licensed premises – The area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license. Premises or licensed premises includes a patio that is not contiguous to the remainder of the premises or licensed premises if the patio is separated from the remainder of the premises or licensed premises by a public or private walkway or driveway not to exceed thirty feet, subject to rules the director may adopt to establish criteria for noncontiguous premises.
- FF. Registered Alcoholic delivery contractor- with certain exclusions, means a person who delivers spirituous liquor on behalf of a bar, liquor store or restaurant.
- GG. Registered mail - Includes certified mail.
- HH. Registered retail agent - Any person who is authorized pursuant to section 4-222 to purchase spirituous liquors for and on behalf of the person and other retail licensees.
- II. Tamper-proof seal-defined as one preventing consumption without removal of the tamper-proof cap or closure.
- JJ. Repeated acts of violence means:
 - 1. For licensed premises with a permanent occupancy of two hundred or fewer persons,

two or more acts of violence occurring within seven days or three or more acts of violence occurring within thirty days.

2. For licensed premises with a permanent occupancy of more than two hundred but not more than four hundred persons, four or more acts of violence within thirty days.
 3. For licensed premises with a permanent occupancy of more than four hundred but not more than six hundred fifty persons, five or more acts of violence within thirty days.
 4. For licensed premises with a permanent occupancy of more than six hundred fifty but not more than one thousand fifty persons, six or more acts of violence within thirty days.
 5. For licensed premises with a permanent occupancy of more than one thousand fifty persons, seven or more acts of violence within thirty days.
- KK. 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. 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 percent of alcohol by volume.
- LL. Vehicle - Any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.
- MM. Vending machine - A machine that dispenses merchandise through the means of coin, token, credit card or other non personal means of accepting payment for merchandise received.
- NN. Veteran - 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.
- OO. Voting security - Any security presently entitling the owner or holder of the security to vote for the election of directors of an applicant or a licensee.
- PP. Wine - The product obtained by the fermentation of grapes, other agricultural products containing natural or added sugar or cider or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four percent of alcohol by volume.

III. 4-203.07 OFF-SALE PRIVILEGES; LEASES; MIXED COCKTAILS.

- A. Notwithstanding § 4-203, subsection E and § 4-210, subsection A, paragraph 6, a bar, beer and

wine bar and liquor store licensee may lease the off-sale privileges associated with the licensee's license, except the privilege to sell mixed cocktails for off-premises consumption pursuant to § 4-244, paragraph 32, subdivision (d), to a restaurant licensee. The lease shall be for a period of one year and may be renewable for successive terms of one year. The off-sale privileges of a bar, beer and wine bar or liquor store license that are held in nonuse status may also be leased pursuant to this section.

- B. Leases made pursuant to this section are subject to the following conditions:
1. The department shall establish a minimum of four lease windows throughout the calendar year during which a lease may be agreed to between a bar, beer and wine bar or liquor store licensee and a restaurant licensee for the lease of off-sale privileges.
 2. A restaurant licensee may apply to the department for approval of a lease at least thirty days before the end of the lease window. The restaurant licensee shall provide a completed lease agreement signed by both the lessor and lessee. The department may establish and charge an application fee for administrative and enforcement costs associated with this section.
 3. On the director approving the lease, the director shall transfer the lessor's off-sale privileges, except the privilege to sell mixed cocktails for off-premises consumption pursuant to § 4-244, paragraph 32, subdivision (d), to the restaurant lessee for the term of the lease.
 4. The department shall establish a process to facilitate and approve the lease conveyance and to govern the leases, including the following:
 - a. A standard form of lease.
 - b. The term of the lease shall be one year except for the first year of the lease. During the first year of the lease, the director may establish a lease term that is less than a year in order to align the lease renewal date with the renewal date of the restaurant license.
 - c. The responsibilities of the lessor and lessee.
 - d. The lease may be transferred to another restaurant licensee if the new restaurant licensee purchases the business of the original lessee during the term of the lease.

- e. The privileges conveyed to the lessee during the term of the lease will continue if the bar, beer and wine bar or liquor store lessor has its license suspended or revoked.
 - f. If the bar, beer and wine bar or liquor store lessor sells its license during the term of the lease, the purchaser of the bar, beer and wine bar or liquor store license becomes the new lessor.
 - g. This title and rules adopted pursuant to this title apply to both the lessor and lessee.
 - h. During the term of the lease, all violations and liability for liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.
5. The restaurant licensee shall pay to the department all lease payments in full in advance.
 6. The department of liquor licenses and control may adopt a procedure to pay the lease amount to the lessor and may use the department of administration to facilitate the payments.
 7. During the term of the lease, all violations and liability for the liquor service under the lease shall be attributed only to the restaurant licensee leasing the privilege. Pursuant to § 4-210, the director may immediately suspend a lease for any violation of this title or any rule adopted pursuant to this title by the restaurant licensee. The restaurant licensee leasing the off-sale privilege is not responsible for violations committed by the lessor.
 8. During the term of the lease, a bar, beer and wine bar or liquor store lessor may not sell spirituous liquor for off-premises consumption, except a bar or liquor store licensee may sell mixed cocktails for off-premises consumption pursuant to § 4-244, paragraph 32, subdivision (d).
 9. The restaurant licensee leasing the off-sale privilege is subject to the limit on off-sale use by the restaurant licensee's total spirituous liquor sales as prescribed in § 4-206.01, subsection G.
 10. A lessor may lease its off-sale privileges only to a restaurant licensee located in the same county.

IV. 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 this state. 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.

3. An unexpired non-operating identification license issued pursuant to section 28-3165. An unexpired non-operating 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 non-operating identification license issued pursuant to section 28-3165 and includes a picture of the person and the person's date of birth.
 5. An unexpired armed forces identification card that includes the person's picture and date of birth.
 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 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 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 misdemeanor.
- O. A person who uses a driver or non-operating identification license in violation of subsection L or N of this section is subject to suspension of the driver or non-operating identification license as provided in section 28-3309. A person who does not have a valid driver or non-operating identification license and who uses a driver or non-operating 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 non-operating 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 a 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.

VI. 4-244 – UNLAWFUL ACTS

P.O. 2.11.8A

- A. It is the purpose of this section to present the sections under Title 4, A.R.S. §2-244 and describe violations of each section in a basic manner.
- B. Read each section and then discuss as in Section C.
- C. A.R.S. §2-244 states that it is unlawful:
 1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board, except that the director may issue a temporary permit of any series pursuant to section 4-205.05 to a trustee in bankruptcy to acquire and dispose of the spirituous liquor of a debtor.
 2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title.
 3. For a distiller, vintner, brewer or wholesaler knowingly to sell, dispose of or give spirituous liquor to any person other than a licensee except in sampling wares as may be necessary in the ordinary course of business, except in donating spirituous liquor to a nonprofit organization that has obtained a special event license for the purpose of charitable fund-raising activities or except in donating spirituous liquor with a cost to the distiller, brewer or wholesaler of up to \$500 in a calendar year to an organization that is exempt from federal income taxes under section 501(c) (3), (4), (6) or (7) of the internal revenue code and not licensed under this title.
 4. For a distiller, vintner or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted to the wholesaler by the distiller, vintner or brewer.
 5. For a distiller, vintner or brewer to use a vehicle for trucking or transportation of spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of the person's license in letters not less than three and one-half inches in height.

6. For a person to take or solicit orders for spirituous liquors unless the person is a salesman or solicitor of a licensed wholesaler, a salesman or solicitor of a distiller, brewer, vintner, importer or broker or a registered retail agent.
7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed in this state.
8. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in the wholesaler's business, or in a license with respect to the premises of the wholesaler.
9. Except as provided in paragraphs 10 and 11 of this section, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age or for a person under the legal drinking age to buy, receive, have in the person's possession or consume spirituous liquor. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.
10. For a licensee to employ a person under eighteen years of age to manufacture, sell or dispose of spirituous liquors. This paragraph does not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least eighteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.
11. For an on-sale retailer to employ a person under eighteen years of age in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under eighteen years of age who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helped clean up the premises.
12. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or for a licensee or on-duty employee to be on or about the licensed premises while in an intoxicated or disorderly condition.
13. For an employee of a retail licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for the employee or consume spirituous liquor, except that:
 - a. An employee of a licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting

- on or serving customers, may give spirituous liquor to or purchase spirituous liquor for any other person.
- b. An employee of an on-sale retail licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine of not more than four ounces per day or distilled spirits of not more than two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of the sampling.
 - c. An employee of an on-sale retail licensee, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits of not more than two ounces per educational session or beer or wine of not more than four ounces per educational session, and provided that a licensee does not have more than two educational sessions in any thirty-day period.
 - d. An unpaid volunteer who is a bona fide member of a club and who is not engaged in waiting on or serving spirituous liquor to customers may purchase for himself and consume spirituous liquor while participating in a scheduled event at the club. An unpaid participant in a food competition may purchase for himself and consume spirituous liquor while participating in the food competition.
 - e. An unpaid volunteer of a special event licensee under section 4-203.02 may purchase and consume spirituous liquor while not engaged in waiting on or serving spirituous liquor to customers at the special event. This subdivision does not apply to an unpaid volunteer whose responsibilities include verification of a person's legal drinking age, security or the operation of any vehicle or heavy machinery.
14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for not more than thirty minutes after the state of obvious intoxication is known or should be known to the licensee for an intoxicated person to transport the obviously intoxicated person from the premises. For the purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.
15. For an on-sale or off-sale retailer, delivery contractors or an employee of such retailer to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2:00 a.m. and 6:00 a.m., except that a retailer with off-sale privileges may receive and process

orders, accept payment or package, load or otherwise prepare spirituous liquor for delivery at any time, if the actual deliveries to customers are made between the hours of 6:00 a.m. and 2:00 a.m., at which time section 4-241, subsections A and K apply.

16. For a licensee or employee to knowingly permit any person on or about the licensed premises to give or furnish any spirituous liquor to any person under twenty-one years of age or knowingly permit any person under twenty-one years of age to have in the person's possession spirituous liquor on the licensed premises.
17. For an on-sale retailer or an employee of such retailer to allow a person to consume or possess spirituous liquors on the premises between the hours of 2:30 a.m. and 6:00 a.m.
18. For an on-sale retailer to permit an employee or for an employee to solicit or encourage others, directly or indirectly, to buy the employee drinks or anything of value in the licensed premises during the employee's working hours. An on-sale retailer shall not serve employees or allow a patron of the establishment to give spirituous liquor to, purchase liquor for or drink liquor with any employee during the employee's working hours.
19. For an off-sale retailer or employee to sell spirituous liquor except in the original unbroken container, to permit spirituous liquor to be consumed on the premises or to knowingly permit spirituous liquor to be consumed on adjacent property under the licensee's exclusive control.
20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee permitting a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retailer. This paragraph also does not apply to a person consuming beer or wine from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property or to a person consuming beer or wine from a broken package in a public recreation area as part of a special event or festival that is conducted under a license secured pursuant to section 4-203.02 or 4-203.03.
21. For a person to have possession of or to transport spirituous liquor that is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and this state. Any property used in transporting such spirituous liquor shall be forfeited to the state and shall be seized and disposed of as provided in section 4-221.
22. For an on-sale retailer or employee to allow a person under the legal drinking age to remain in an area on the licensed premises during those hours in which its primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. An on-sale retailer may designate an area of the licensed premises as an area in which spirituous liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical

barrier and at no time will underage persons have access to the area in which spirituous liquor is sold or consumed. A licensee or an employee of a licensee may require a person who intends to enter a licensed premises or a portion of a licensed premises where persons under the legal drinking age are prohibited under this section to exhibit an instrument of identification that is acceptable under section 4-241 as a condition of entry or may use a biometric identity verification device to determine the person's age as a condition of entry. The director, or a municipality, may adopt rules to regulate the presence of underage persons on licensed premises provided the rules adopted by a municipality are more stringent than those adopted by the director. The rules adopted by the municipality shall be adopted by local ordinance and shall not interfere with the licensee's ability to comply with this paragraph. This paragraph does not apply:

- a. If the person under the legal drinking age is accompanied by a spouse, parent or legal guardian of legal drinking age or is an on-duty employee of the licensee.
 - b. If the owner, lessee or occupant of the premises is a club as defined in section 4-101, paragraph 8, subdivision (a) and the person under the legal drinking age is any of the following:
 1. An active duty military service member.
 2. A veteran.
 3. A member of the United States army national guard or the United States air national guard.
 4. A member of the United States military reserve forces.
 - c. To the area of the premises used primarily for the serving of food during the hours when food is served.
23. For an on-sale retailer or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of spirituous liquor beverages during any set period of time for a fixed price, to deliver more than fifty ounces of beer, one liter of wine or four ounces of distilled spirits in any spirituous liquor drink to one person at one time for that person's consumption or to advertise any practice prohibited by this paragraph. The provisions of this paragraph do not prohibit an on-sale retailer or employee from selling and delivering an opened, original container of distilled spirits if:
- a. Service or pouring of the spirituous liquor is provided by an employee of the on-sale retailer.
 - b. The employee of the on-sale retailer monitors consumption to ensure compliance with this paragraph. Locking devices may be used, but are not required.

24. For a licensee or employee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises. For the purposes of this paragraph, "dangerous drug" has the same meaning prescribed in section 13-3401.
25. For a licensee or employee to knowingly permit prostitution or the solicitation of prostitution on the premises.
26. For a licensee or employee to knowingly permit unlawful gambling on the premises.
27. For a licensee or employee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.
28. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination as provided in this title or to comply with a lawful subpoena issued under this title.
29. For any person other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retailer. This paragraph does not include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume or possess spirituous liquor. This paragraph does not apply to:
 - a. Hotel or motel guest room accommodations.
 - b. The exhibition or display of a firearm in conjunction with a meeting, show, class or similar event.
 - c. A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.
30. For a licensee or employee to knowingly permit a person in possession of a firearm other than a peace officer while on duty or off duty or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, a retired peace officer as defined in section 38-1113 or an honorably retired law enforcement officer who has been issued a certificate of firearms proficiency pursuant to section 13-3112, subsection T, the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retailer. It is a

defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such a person. This paragraph does not apply to:

- a. Hotel or motel guest room accommodations.
 - b. The exhibition or display of a firearm in conjunction with a meeting, show, class or similar event.
 - c. A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.
31. For any person in possession of a firearm while on the licensed premises of an on-sale retailer to consume spirituous liquor. This paragraph does not prohibit the consumption of small amounts of spirituous liquor by an undercover peace officer on assignment to investigate the licensed establishment.
32. For a licensee or employee to knowingly permit spirituous liquor to be removed from the licensed premises, except in the original unbroken package. This paragraph does not apply to any of the following:
- a. A person who removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.
 - b. A person who is in licensed premises that have noncontiguous portions that are separated by a public or private walkway or driveway and who takes spirituous liquor from one portion of the licensed premises across the public or private walkway or driveway directly to the other portion of the licensed premises.
 - c. A licensee of a bar, beer and wine bar, liquor store, beer and wine store, microbrewery or restaurant that has a permit pursuant to section 4-205.02, subsection H that dispenses beer only in a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed one gallon and not for consumption on the premises if:
 - i. The licensee or the licensee's employee fills the container at the tap at the time of sale.
 - ii. The container is sealed and displays a government warning label.
 - iii. The dispensing of that beer is not done through a drive-through or walk-up service window.
 - d. Allow bar/liquor store licenses or restaurant licensees with leased privileges to

sell mixed cocktails for consumption off premises in an after-market container that meets certain specifications and requirements.

- e. Premises in an after-market container that meets certain specifications and requirements.
33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on licensed premises.
 34. For a person under twenty-one years of age to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.
 35. For a person under twenty-one years of age to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body. For the purposes of this paragraph, "underway" has the same meaning prescribed in section 5-301.
 36. For a licensee, manager, employee or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.
 37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.
 38. For a licensee to use a vending machine for the purpose of dispensing spirituous liquor.
 39. For a licensee to offer for sale a wine carrying a label including a reference to Arizona or any Arizona city, town or geographic location unless at least seventy-five percent by volume of the grapes used in making the wine were grown in Arizona.
 40. For a retailer to knowingly allow a customer to bring spirituous liquor onto the licensed premises, except that an on-sale retailer may allow a wine and food club to bring wine onto the premises for consumption by the club's members and guests of the club's members in conjunction with meals purchased at a meeting of the club that is conducted on the premises and that at least seven members attend. An on-sale retailer that allows wine and food clubs to bring wine onto its premises under this paragraph shall comply with all applicable provisions of this title and any rules adopted pursuant to this title to the same extent as if the on-sale retailer had sold the wine to the members of the club and their guests. For the purposes of this paragraph, "wine and food club" means an association that has more than twenty bona fide members paying at least \$6 per year in dues and that has been in existence for at least one year.
 41. For a person under twenty-one years of age to have in the person's body any spirituous liquor. In a prosecution for a violation of this paragraph:

- a. Pursuant to section 4-249, it is a defense that the spirituous liquor was consumed in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise and in a manner not dangerous to public health or safety.
 - b. Pursuant to section 4-226, it is a defense that the spirituous liquor was consumed for a bona fide medicinal purpose and in a manner not dangerous to public health or safety.
42. For an employee of a licensee to accept any gratuity, compensation, remuneration or consideration of any kind to either:
- a. Permit a person who is under twenty-one years of age to enter any portion of the premises where that person is prohibited from entering pursuant to paragraph 22 of this section.
 - b. Sell, furnish, dispose of or give spirituous liquor to a person who is under twenty-one years of age.
43. For a person to purchase, offer for sale or use any device, machine or process that mixes spirituous liquor with pure oxygen or another gas to produce a vaporized product for the purpose of consumption by inhalation or to allow patrons to use any item for the consumption of vaporized spirituous liquor.
44. For a retail licensee or an employee of a retail licensee to sell spirituous liquor to a person if the retail licensee or employee knows the person intends to resell the spirituous liquor.
45. Except as authorized by paragraph 32, subdivision (c) of this section, for a person to reuse a bottle or other container authorized for use by the laws of the United States or any agency of the United States for the packaging of distilled spirits or for a person to increase the original contents or a portion of the original contents remaining in a liquor bottle or other authorized container by adding any substance.
46. For a direct shipment licensee, a farm winery licensee or an employee of those licensees to sell, dispose of, deliver or give spirituous liquor to an individual purchaser between the hours of 2:00 a.m. and 6:00 a.m., except that a direct shipment licensee or a farm winery licensee may receive and process orders, accept payment, package, load or otherwise prepare wine for delivery at any time without complying with section 4-241, subsections A and K, if the actual deliveries to individual purchasers are made between the hours of 6:00 a.m. and 2:00 a.m. and in accordance with section 4-203.04 for direct shipment licensees and section 4-205.04 for farm winery licensees.

VII. HANDGUNS IN LICENSED PREMISES**P.O. 2.11.8B**

- A. A person may carry a concealed handgun on the premises of a licensee who is an on-sale

retailer unless the licensee posts a sign that clearly prohibits the possession of weapons on the licensed premises. The sign shall conform to the following requirements:

1. Be posted in a conspicuous location accessible to the general public and immediately adjacent to the liquor license posted on the licensed premises.
 2. Contain a pictogram that shows a firearm within a red circle and a diagonal red line across the firearm.
 3. Contain the words, "no firearms allowed pursuant to A.R.S. section 4-229".
- B. A person shall not carry a firearm on the licensed premises of an on-sale retailer if the licensee has posted the notice prescribed in subsection A of this section.
- C. It is an affirmative defense to a violation of subsection B of this section if:
1. The person was not informed of the notice prescribed in subsection A of this section before the violation.
 2. Any one or more of the following apply:
 - a. At the time of the violation the notice prescribed in subsection A of this section had fallen down.
 - b. At the time of the violation the person was not a resident of this state.
 - c. The licensee had posted the notice prescribed in subsection A of this section not more than thirty days before the violation.
- D. The department of liquor licenses and control shall prepare the signs required by this section and make them available at no cost to licensees.
- E. The signs required by this section shall be composed of block capital letters printed in black on white laminated paper at a minimum weight of one hundred ten pound index. The lettering and pictogram shall consume a space at least six inches by nine inches. The letters constituting the words "no firearms allowed" shall be at least three-fourths of a vertical inch and all other letters shall be at least one-half of a vertical inch. Nothing shall prohibit a licensee from posting additional signs at one or more locations on the premises.
- F. This section does not prohibit a person who possesses a handgun from entering the licensed premises for a limited time for the specific purpose of either:
1. Seeking emergency aid.
 2. Determining whether a sign has been posted pursuant to subsection A of this section.

VIII. CONCLUSION

- A. Review Of Performance Objectives
- B. Final Questions And Answers
- C. Instructor Closing Comment(S).