



ARIZONA STATE SENATE
Fiftieth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1280

tobacco; internet; mail sales; e-cigarettes

Purpose

Prohibits the sale of electronic cigarettes to minors. Prohibits certain persons from purchasing tobacco products from a delivery sale. Requires nonparticipating manufacturers to make quarterly escrow deposits.

Background

Existing statute stipulates that a person who knowingly sells, gives or furnishes a minor with any tobacco product, such as cigars, cigarettes or cigarette papers, or smoking or chewing tobacco is guilty of a petty offence (A.R.S. § 13-3622). A minor who accepts any tobacco product is also guilty of a petty offense. Established by Laws 2011, Chapter 340, statute prohibits minors from using false identification to obtain tobacco products, stipulating that a violation is a petty offense with a fine of up to \$500.

Laws 2004, Chapter 311 established requirements for persons who sell tobacco products through delivery sales. A delivery sale is a sale in which the consumer submits an order through the telephone, internet, mail or other voice transmission or on-line service and the products are delivered by use of mail or delivery service. A seller is required to comply with age verification, disclosure, shipping, registration and reporting and tax collection requirements.

On November 23, 1998, Attorneys General of 46 states, including Arizona, signed an agreement with the five largest tobacco manufacturers to settle claims that financial burdens imposed on states by cigarette smoking be borne by tobacco product manufacturers rather than by the states. The master settlement agreement (MSA) includes provisions placing restrictions on brand name sponsorships, general advertising and marketing, outdoor advertising and youth access to tobacco. The MSA requires participating manufacturers, in return for release from past, present and future claims, to pay substantial amounts of money to the state (tied in part to their volume of sales). The MSA also includes a model statute to create a reserve fund for *nonparticipating* manufacturers to pay future claims, establishing a level playing field between participating and nonparticipating manufacturers and protecting state payments from a downward adjustment if participating manufacturers experience a market share loss to nonparticipating manufacturers. Both participating and nonparticipating manufacturers are required to maintain a qualified escrow fund, which must be approved by the state Attorney General (AG).

The fiscal impact of this legislation is unknown.

Provisions

Electronic Cigarettes

1. Prohibits a person from knowingly selling, giving or furnishing electronic cigarettes to a minor. Specifies that a violation is a petty offense.
2. Prohibits a minor from knowingly purchasing, accepting or possessing electronic cigarettes. Specifies that a violation is a petty offense.
3. Prohibits a minor from using a written instrument of false identification in order to acquire electronic cigarettes. Specifies that a violation is a petty offense and a fine of up to \$500.
4. Defines *electronic cigarette* and *tobacco product*.
5. Reorganizes the section of statute relating to minors and the prohibition of tobacco and smoking products.

Delivery Sale of Tobacco Products

6. Prohibits a person from doing either of the following:
 - a. cause a tobacco product to be ordered or purchased by anyone other than a licensed person or a retailer who orders or purchases from a licensed person, including by ordering or purchasing a tobacco product (purchase restriction);
 - b. knowingly provide substantial assistance to a person who violates the purchase restriction.
7. Stipulates that, in reference to the purchase restriction, a tobacco product does not include pipe tobacco or cigars.
8. Prohibits a common carrier from knowingly transporting a tobacco product for a person who is in violation of the purchase restriction.
9. Stipulates that each order or purchase of a tobacco product in violation of the purchase restriction constitutes a separate violation.
10. Prescribes that, in addition to any other penalty, a person who is in violation of the purchase restriction is subject to all of the following:
 - a. a civil penalty that is no more than \$5,000 per violation;
 - b. an injunction to restrain a threatened or actual violation of the purchase restriction;
 - c. recovery by this state for:
 - i. the costs of any investigation;
 - ii. the cost of expert witness fees in any action;
 - iii. the cost of the action; and
 - iv. reasonable attorney fees.
 - d. all state tobacco, transaction privilege or use taxes due, including any penalties and interests.

11. Requires all tobacco products that are seized because of a violation be forfeited to the state and destroyed.
12. Specifies that a violation is an unlawful practice and is in addition to all other causes of action, remedies and penalties that are available to Arizona.
13. Allows the AG to investigate and take appropriate action pursuant to the consumer fraud statutes.
14. Excludes the following from the purchase restriction:
 - a. the shipment of a tobacco product to a foreign trade zone located in Arizona if the product is from outside the United States, was ordered by a distributor in another state and is not distributed in Arizona; and
 - b. a government employee who is acting in the course of the employee's official duties.
15. Prescribes that a person who violates the purchase restriction is guilty of a class 6 felony.
16. Requires the DOR to disclose confidential information to the AG for the purposes of determining compliance to the purchase restriction. Permits the DOR and AG to share information with other federal, state or local agencies in order to enforce the purchase restriction.
17. Defines *licensed person*, *person*, *order by purchase*, *retailer* and *tobacco product*.

Taxpayer Bonds

18. Prescribes that the amount of the taxpayer bond related to licenses to sell tobacco products is \$500 or four times the average monthly tax liability, whichever is greater.
19. Stipulates that the average monthly tax liability is equal to the average monthly tax due from the applicant for the preceding six consecutive months.
20. Prescribes that the bond amount is a minimum of \$500 if an applicant does not have a six month payment history.
21. Requires the applicant to deposit with the DOR cash or other security in an amount equal to the lapsed surety bond within five business days after the applicant's receipt of written notification by the DOR if an applicant provides a surety bond and the bond lapses.
22. Allows the bond amount to increase or decrease as necessary based on statutory reasons or a change in the applicant's previous filing period, filing compliance record or payment history.
23. Permits the applicant to request a hearing to show why the order increasing the bond amount is in error if the bond amount is increased above the statutorily computed amount.

Nonparticipating Manufacturers

24. Requires a nonparticipating manufacturer of tobacco products to make the required escrow deposits in quarterly installments during the year in which the sales covered by the deposits are made.
25. Permits the AG to require the production of information that is sufficient to enable the AG to determine the adequacy of the amount of the installment deposit.

Miscellaneous

26. Prohibits the DOR from issuing or renewing a license to sell tobacco products if the applicant is in violation of the purchase restriction or escrow account deposit requirements.
27. Exempts the AG and DOR from rule making requirements for one year after the effective date for the purposes of this act.
28. Makes technical and conforming changes.
29. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Modifies the definition of *electronic cigarette*.
- Defines *tobacco product*.
- Removes the presumption that a common carrier knowingly transported a tobacco product in violation of the purchase restriction if the common carrier delivers the tobacco product to a residential address.

Amendments Adopted by Committee of the Whole

- Reorganizes the section of statute relating to minors and the prohibition of tobacco and smoking products.
- Allows a retailer to order or purchase by delivery sale tobacco products from a licensed person.
- Requires a person who is in violation of the delivery sale restriction to pay all state tobacco, transaction privilege and use taxes, including any penalties and interest.
- Permits the DOR to disclose confidential information to the AG for the purposes of determining compliance to the delivery sale restriction.

FACT SHEET - AMENDED

S.B. 1280

Page 5

- Prescribes that the amount of the taxpayer bond related to licenses to sell tobacco products is \$500 or four times the average monthly tax liability, whichever is greater. Provides guidelines to determine the bond amount.
- Prohibits the DOR from issuing or renewing a license to sell tobacco products if the applicant is in violation of the delivery sale restriction or escrow account deposit requirements.
- Removes the repeal of tobacco delivery statutes to conform to the tax corrections act.
- Exempts the AG and the DOR from rule making requirements for one year after the effective date for the purposes of implementing this act.
- Modifies certain definitions.
- Makes other technical and clarifying changes.

Senate Action

CE	2/8/12	DPA	6-0-0-0
3 rd Read	2/27/12		30-0-0-0-0

Prepared by Senate Research
February 27, 2012
JT/tf