

REFERENCE TITLE: vapor products; restrictions; use

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

# **SB 1516**

Introduced by  
Senator Mendez: Representatives Blanc, Engel, Martinez, Powers Hannley,  
Salman

AN ACT

AMENDING SECTION 36-601.01, ARIZONA REVISED STATUTES; RELATING TO PUBLIC HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Subject to the requirements of article IV, part 1,  
3 section 1, Constitution of Arizona, section 36-601.01, Arizona Revised  
4 Statutes, is amended to read:

5 36-601.01. Smoke-free Arizona act

6 A. Definitions. The following words and phrases, whenever used in  
7 this section, shall be construed as defined in this section:

8 1. "Employee" means any person who performs any service on a  
9 full-time, part-time or contracted basis whether or not the person is  
10 denominated an employee, independent contractor or otherwise and whether  
11 or not the person is compensated or is a volunteer.

12 2. "Employer" means a person, A business, A partnership, AN  
13 association, the state of Arizona and its political subdivisions,  
14 corporations, including ~~a~~ municipal corporations, A trust, ~~or non-profit~~  
15 A NONPROFIT entity that employs the services of one or more individual  
16 persons.

17 3. "Enclosed area" means all space between a floor and ceiling that  
18 is enclosed on all sides by permanent or temporary walls or windows  
19 (exclusive of doorways), ~~which~~ THAT extend from the floor to the ceiling.  
20 Enclosed area includes a reasonable distance from any entrances, windows  
21 and ventilation systems so that persons entering or leaving the building  
22 or facility ~~shall~~ ARE not ~~be~~ subjected to breathing tobacco smoke and so  
23 that tobacco smoke does not enter the building or facility through  
24 entrances, windows, ventilation systems or any other means.

25 4. "Health care facility" means any enclosed area utilized by any  
26 health care institution licensed according to ~~title 36 chapter 4,~~  
27 ~~chapter 6~~ article 7, ~~OF THIS CHAPTER~~ or chapter 4 OR 17 OF THIS TITLE, or  
28 any health care professional licensed according to title 32, ~~chapters~~  
29 CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29,  
30 33, 34, 35, 39, 41, ~~or~~ 42.

31 5. "Person" means an individual, partnership, corporation, limited  
32 liability company, entity, association, governmental subdivision or unit  
33 of a governmental subdivision, or a public or private organization of any  
34 character.

35 6. "Physically separated" means all space between a floor and  
36 ceiling ~~which~~ THAT is enclosed on all sides by solid walls or windows  
37 (exclusive of door or passageway) and independently ventilated from  
38 smoke-free areas, so that air within permitted smoking areas does not  
39 drift or get vented into smoke-free areas.

40 7. "Places of employment" means an enclosed area under the control  
41 of a public or private employer that employees normally frequent during  
42 the course of employment, including office buildings, work areas,  
43 auditoriums, employee lounges, restrooms, conference rooms, meeting rooms,  
44 classrooms, cafeterias, hallways, stairs, elevators, health care  
45 facilities, private offices and vehicles owned and operated by the

1 employer during working hours when the vehicle is occupied by more than  
2 one person. A private residence is not a ~~“place of employment”~~ unless  
3 it is used as a child care, adult day care, ~~or~~ or health care facility.

4 ~~9.~~ 8. "Public place" means any enclosed area to which the public  
5 is invited or in which the public is permitted, including airports, banks,  
6 bars, common areas of apartment buildings, condominiums or other  
7 multifamily housing facilities, educational facilities, entertainment  
8 facilities or venues, health care facilities, hotel and motel common  
9 areas, laundromats, public transportation facilities, reception areas,  
10 restaurants, retail food production and marketing establishments, retail  
11 service establishments, retail stores, shopping malls, sports facilities,  
12 theaters, ~~and~~ and waiting rooms. A private residence is not a ~~“public~~  
13 place~~”~~ unless it is used as a child care, adult day care, ~~or~~ or health care  
14 facility.

15 ~~10.~~ 9. "Retail tobacco store" means a retail store that derives the  
16 majority of its sales from tobacco products and accessories.

17 ~~11.~~ 10. "Smoking":

18 (a) Means inhaling, exhaling, burning, ~~or~~ or carrying or possessing  
19 any lighted tobacco product, including cigars, cigarettes, pipe tobacco  
20 and any other lighted tobacco product.

21 (b) INCLUDES THE USE OF A VAPOR PRODUCT.

22 ~~12.~~ 11. "Sports facilities" means enclosed areas of sports  
23 pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming  
24 pools, roller and ice rinks, billiard halls, bowling alleys, ~~and~~ and other  
25 similar places where members of the general public assemble to engage in  
26 physical exercise, participate in athletic competition, ~~or~~ or witness  
27 sporting events.

28 12. "VAPOR PRODUCT" HAS THE SAME MEANING PRESCRIBED IN SECTION  
29 13-3622.

30 ~~8.~~ 13. "Veteran and fraternal clubs" means a club as defined in  
31 ~~A.R.S. 4-101(7)(a)(b) or (c)~~ SECTION 4-101, PARAGRAPH 7, SUBDIVISION (a),  
32 (b) OR (c).

33 B. Smoking is prohibited in all public places and places of  
34 employment within the state of Arizona, except the following:

35 1. Private residences, except when used as a licensed child care,  
36 adult day care, ~~or~~ or health care facility.

37 2. Hotel and motel rooms that are rented to guests and are  
38 designated as smoking rooms; ~~provided, however, that~~ IF not more than  
39 fifty percent of rooms rented to guests in a hotel or motel are so  
40 designated.

41 3. Retail tobacco stores that are physically separated so that  
42 smoke from retail tobacco stores does not infiltrate into areas where  
43 smoking is prohibited under ~~the provisions of~~ this section.

44 4. Veterans and fraternal clubs when they are not open to the  
45 general public.

1 5. Smoking when associated with a religious ceremony practiced  
2 pursuant to the American Indian religious freedom act of 1978.

3 6. Outdoor patios so long as tobacco smoke does not enter areas  
4 where smoking is prohibited through entrances, windows, ventilation  
5 systems, or other means.

6 7. A theatrical performance upon ON a stage or in the course of a  
7 film or television production if the smoking is part of the performance or  
8 production.

9 8. RETAIL STORES THAT SELL VAPOR PRODUCTS EXCLUSIVELY AND THAT HAVE  
10 AN INDEPENDENT VENTILATION SYSTEM SO THAT THE EMISSIONS FROM VAPOR  
11 PRODUCTS USED IN THE STORE DO NOT INFILTRATE INTO AREAS WHERE SMOKING IS  
12 PROHIBITED PURSUANT TO THIS SECTION.

13 C. The prohibition on smoking in places of employment shall be  
14 communicated to all existing employees ~~by the effective date of this~~  
15 ~~section~~ and to all prospective employees upon ON their application for  
16 employment.

17 D. Notwithstanding any other provision of this section, an owner,  
18 operator, manager, or other person or entity in control of an  
19 establishment, facility, or outdoor area may declare that entire  
20 establishment, facility, or outdoor area as a nonsmoking place.

21 E. Posting of signs and ashtray removal.

22 1. ~~"No smoking"~~ signs or the international ~~"no smoking"~~ symbol  
23 (consisting of a pictorial representation of a burning cigarette enclosed  
24 in a red circle with a red bar across it) shall be clearly and  
25 conspicuously posted by the owner, operator, manager, or other person in  
26 control of that place identifying where smoking is prohibited by this  
27 section and where complaints regarding violations may be registered.

28 2. Every public place and place of employment where smoking is  
29 prohibited by this section shall have posted at every entrance a  
30 conspicuous sign clearly stating that smoking is prohibited.

31 3. All ashtrays shall be removed from any area where smoking is  
32 prohibited by this section by the owner, operator, manager, or other  
33 person having control of the area.

34 F. ~~No~~ AN employer may NOT discharge or retaliate against an  
35 employee because that employee exercises any rights afforded by this  
36 section or reports or attempts to prosecute a violation of this section.

37 G. ~~The law~~ THIS SECTION shall be implemented and enforced by the  
38 department of health services as follows:

39 1. The department shall design and implement a program, including  
40 the establishment of an internet website, to educate the public regarding  
41 the provisions of this ~~law~~ SECTION.

42 2. The department shall inform persons who own, manage, operate or  
43 otherwise control a public place or place of employment of the  
44 requirements of this ~~law~~ SECTION and how to comply with its provisions,

1 including making information available and providing a toll-free telephone  
2 number and e-mail address to be used exclusively for this purpose.

3 3. Any member of the public may report a violation of this ~~law~~  
4 SECTION to the department. The department shall accept oral and written  
5 reports of violation and establish an e-mail address(es) and toll-free  
6 telephone number(s) to be used exclusively for the purpose of reporting  
7 violations. A person shall not be required to disclose the person's  
8 identity when reporting a violation.

9 4. If the department has reason to believe a violation of this ~~law~~  
10 SECTION exists, the department may enter ~~upon~~ ON and into any public place  
11 or place of employment for purposes of determining compliance with this  
12 ~~law~~ SECTION. However, the department may inspect public places where food  
13 or alcohol is served at any time to determine compliance with this ~~law~~  
14 SECTION.

15 5. If the department determines that a violation of this ~~law~~  
16 SECTION exists at a public place or place of employment, the department  
17 shall issue a notice of violation to the person who owns, manages,  
18 operates or otherwise controls the public place or place of employment.  
19 The notice shall include the nature of each violation, date and time each  
20 violation occurred, and department contact person.

21 6. The department shall impose a civil penalty on the person in an  
22 amount of not less than \$100, but not more than \$500 for each violation.  
23 In considering whether to impose a fine and the amount of the fine, the  
24 department may consider whether the person has been cited previously and  
25 what efforts the person has taken to prevent or cure the violation,  
26 including reporting the violation or taking action under subsection J OF  
27 THIS SECTION. Each day that a violation occurs constitutes a separate  
28 violation. The director may issue a notice that includes the proposed  
29 amount of the civil penalty assessment. A person may appeal the  
30 assessment of a civil penalty by requesting a hearing. If a person  
31 requests a hearing to appeal an assessment, the director shall not take  
32 further action to enforce and collect the assessment until the hearing  
33 process is complete. The director shall impose a civil penalty only for  
34 those days on which the violation has been documented by the department.

35 7. If a civil penalty imposed by this section is not paid, the  
36 attorney general or a county attorney shall file an action to collect the  
37 civil penalty in a justice court or the superior court in the county in  
38 which the violation occurred.

39 8. The department may apply for injunctive relief to enforce these  
40 provisions in the superior court in the county in which the violation  
41 occurred. The court may impose appropriate injunctive relief and impose a  
42 penalty of not less than \$100 but not more than \$500 for each violation.  
43 Each day that a violation occurs constitutes a separate violation. If the  
44 superior court finds the violations are ~~willful~~ WILFUL or evidence a

1 pattern of noncompliance, the court may impose a fine up to \$5000 per  
2 violation.

3 9. The department may contract with a third party to determine  
4 compliance with this law.

5 10. The department may delegate to a state agency or political  
6 subdivision of this state any functions, powers or duties under this law.

7 11. The director of the department may ~~promulgate~~ ADOPT rules for  
8 the implementation and enforcement of this ~~law~~ SECTION. The department is  
9 exempt from the rulemaking procedures in ~~A.R.S. §~~ title 41, chapter 6  
10 except the department shall publish draft rules and thereafter take public  
11 input, including hold at least two public hearings ~~prior to~~ BEFORE  
12 implementing the rules. This exemption expires May 1, 2007.

13 H. Beginning on June 1, 2008 and every other June 1 thereafter, the  
14 director of the ~~Arizona~~ department of health services shall issue a report  
15 analyzing its activities to enforce this law, including the activities of  
16 all of the state agencies or political subdivisions to whom the department  
17 has delegated responsibility under this ~~law~~ SECTION.

18 I. An owner, manager, operator or employee of place regulated by  
19 this ~~law~~ SECTION shall inform any person who is smoking in violation of  
20 this ~~law~~ SECTION that smoking is illegal and request that the illegal  
21 smoking stop immediately.

22 J. This ~~law~~ SECTION does not create any new private right of action  
23 nor does it extinguish any existing common law causes of action.

24 K. A person who smokes where smoking is prohibited is guilty of a  
25 petty offense with a fine of not less than fifty dollars and not more than  
26 three hundred dollars.

27 L. Smoke-free Arizona fund

28 1. The smoke-free Arizona fund is established consisting of all  
29 revenues deposited in the fund pursuant to ~~§42-3251.02~~ SECTION 42-3251.02  
30 and interest earned on those monies. The Arizona department of health  
31 services shall administer the fund. On notice from the department, the  
32 state treasurer shall invest and divest monies in the fund as provided by  
33 ~~§35-313~~ SECTION 35-313 and monies earned from investment shall be credited  
34 to the fund.

35 2. All money in the smoke-free Arizona fund shall be used to  
36 enforce the provisions of this section, ~~provided however~~ EXCEPT that if  
37 there is money remaining after the department has met its enforcement  
38 obligations, that remaining money shall be deposited in the tobacco  
39 products tax fund and used for education programs to reduce and eliminate  
40 tobacco use and for no other purpose.

41 3. Monies in this fund are continuously appropriated, are not  
42 subject to further approval, do not revert to the general fund and are  
43 exempt from the provisions of ~~§36-190~~ SECTION 35-190 relating to the  
44 lapsing of appropriations.

1 M. This section does not prevent a political subdivision of ~~the~~  
2 **THIS** state from adopting ordinances or regulations that are more  
3 restrictive than this section nor does this section repeal any existing  
4 ordinance or regulation that is more restrictive than this section.

5 N. Tribal sovereignty – this section has no application on Indian  
6 reservations as defined in ~~ARS 42-3301(2)~~ SECTION 42-3301.

7 Sec. 2. Requirements for enactment; three-fourths vote

8 Pursuant to article IV, part 1, section 1, Constitution of Arizona,  
9 section 36-601.01, Arizona Revised Statutes, as amended by this act, is  
10 effective only on the affirmative vote of at least three-fourths of the  
11 members of each house of the legislature.