

REFERENCE TITLE: **electronic smoking devices; restrictions; use**

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2024

Introduced by
Representative Kavanagh

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. "ELECTRONIC SMOKING DEVICE":

9 (a) MEANS ANY DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR
10 VAPORIZED NICOTINE TO THE PERSON INHALING FROM THE DEVICE, INCLUDING AN
11 E-CIGARETTE, E-CIGAR, VAPE PEN OR E-HOOKAH, AND ANY COMPONENT, PART OR
12 ACCESSORY OF THE DEVICE, WHETHER OR NOT SOLD SEPARATELY.

13 (b) INCLUDES ANY SUBSTANCE THAT IS INTENDED TO BE AEROSOLIZED OR
14 VAPORIZED DURING THE USE OF THE DEVICE.

15 ~~1.~~ 2. "Employee" means any person who performs any service on a
16 full-time, part-time or contracted basis whether or not the person is
17 denominated an employee, ~~OR~~ independent contractor or otherwise and
18 whether or not the person is compensated or is a volunteer.

19 ~~2.~~ 3. "Employer" means a person, A business, A partnership, AN
20 association, the state of Arizona and its political subdivisions,
21 corporations, including a municipal ~~corporations~~ CORPORATION, trust, ~~or~~
22 ~~non-profit~~ NONPROFIT entity that employs the services of one or more
23 individual persons.

24 ~~3.~~ 4. "Enclosed area" means all space between a floor and ceiling
25 that is enclosed on all sides by permanent or temporary walls or windows
26 (exclusive of doorways), ~~which~~ THAT extend from the floor to the ceiling.
27 Enclosed area includes a reasonable distance from any entrances, windows
28 and ventilation systems so that persons entering or leaving the building
29 or facility ~~shall~~ ARE not ~~be~~ subjected to breathing tobacco smoke and so
30 that tobacco smoke does not enter the building or facility through
31 entrances, windows, ventilation systems or any other means.

32 ~~4.~~ 5. "Health care facility" means any enclosed area ~~utilized~~ USED
33 by any health care institution licensed according to ~~title 36 chapter 4,~~
34 ~~chapter 6~~ article 7, ~~OF THIS CHAPTER~~ or chapter 4 OR 17 OF THIS TITLE, or
35 any health care professional licensed according to title 32, ~~chapters~~
36 CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29,
37 33, 34, 35, 39, 41, ~~or~~ 42.

38 ~~5.~~ 6. "Person" means an individual, partnership, corporation,
39 limited liability company, entity, association, governmental subdivision
40 or unit of a governmental subdivision, or a public or private organization
41 of any character.

42 ~~6.~~ 7. "Physically separated" means all space between a floor and
43 ceiling ~~which~~ THAT is enclosed on all sides by solid walls or windows
44 (exclusive of door or passageway) and independently ventilated from

1 smoke-free areas, so that air within permitted smoking areas does not
2 drift or get vented into smoke-free areas.

3 ~~7.~~ 8. "Places of employment" means an enclosed area under the
4 control of a public or private employer that employees normally frequent
5 during the course of employment, including office buildings, work areas,
6 auditoriums, employee lounges, restrooms, conference rooms, meeting rooms,
7 classrooms, cafeterias, hallways, stairs, elevators, health care
8 facilities, private offices and vehicles owned and operated by the
9 employer during working hours when the vehicle is occupied by more than
10 one person. A private residence is not a ~~"place of employment"~~ unless
11 it is used as a child care, adult day care, ~~or~~ or health care facility.

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

23 10. "Retail tobacco store" means a retail store that derives the
24 majority of its sales from tobacco products and accessories.

25 11. "Smoking":

26 (a) Means inhaling, exhaling, burning, ~~or~~ or carrying or possessing
27 any lighted tobacco product, including cigars, cigarettes, pipe tobacco
28 and any other lighted tobacco product.

29 (b) INCLUDES THE USE OF AN ELECTRONIC SMOKING DEVICE.

30 12. "Sports facilities" means enclosed areas of sports pavilions,
31 stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller
32 and ice rinks, billiard halls, bowling alleys, ~~and~~ and other similar places
33 where members of the general public assemble to engage in physical
34 exercise, participate in athletic competition, ~~or~~ or witness sporting
35 events.

36 ~~8.~~ 13. "Veteran and fraternal clubs" means a club as defined in
37 ~~A.R.S. 4-101(7)(a)(b) or (c)~~ SECTION 4-101, PARAGRAPH 7, SUBDIVISION (a),
38 (b) OR (c).

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

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

43 2. Hotel and motel rooms that are rented to guests and are
44 designated as smoking rooms; ~~provided, however, that~~ IF not more than

1 fifty percent of rooms rented to guests in a hotel or motel are so
2 designated.

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

6 4. Veterans and fraternal clubs when they are not open to the
7 general public.

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

10 6. Outdoor patios so long as tobacco smoke does not enter areas
11 where smoking is prohibited through entrances, windows, ventilation
12 systems, ~~or~~ or other means.

13 7. A theatrical performance ~~upon~~ ON a stage or in the course of a
14 film or television production if the smoking is part of the performance or
15 production.

16 8. RETAIL STORES THAT SELL ELECTRONIC SMOKING DEVICES EXCLUSIVELY
17 AND THAT HAVE AN INDEPENDENT VENTILATION SYSTEM SO THAT THE EMISSIONS FROM
18 ELECTRONIC SMOKING DEVICES USED IN THE STORE DO NOT INFILTRATE INTO AREAS
19 WHERE SMOKING IS PROHIBITED UNDER THIS SECTION.

20 C. The prohibition on smoking in places of employment shall be
21 communicated to all existing employees ~~by the effective date of this~~
22 ~~section~~ and to all prospective employees ~~upon~~ ON their application for
23 employment.

24 D. Notwithstanding any other provision of this section, an owner,
25 operator, manager, ~~or~~ or other person or entity in control of an
26 establishment, facility, ~~or~~ or outdoor area may declare that entire
27 establishment, facility, ~~or~~ or outdoor area as a nonsmoking place.

28 E. Posting of signs and ashtray removal.

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

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

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

41 F. ~~NO~~ AN employer may NOT discharge or retaliate against an
42 employee because that employee exercises any rights afforded by this
43 section or reports or attempts to prosecute a violation of this section.

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

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

6 2. The department shall inform persons who own, manage, operate or
7 otherwise control a public place or place of employment of the
8 requirements of this law SECTION and how to comply with its provisions,
9 including making information available and providing a toll-free telephone
10 number and e-mail address to be used exclusively for this purpose.

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

17 4. If the department has reason to believe a violation of this law
18 SECTION exists, the department may enter ~~upon~~ ON and into any public place
19 or place of employment for purposes of determining compliance with this
20 law SECTION. However, the department may inspect public places where food
21 or alcohol is served at any time to determine compliance with this law
22 SECTION.

23 5. If the department determines that a violation of this law
24 SECTION exists at a public place or place of employment, the department
25 shall issue a notice of violation to the person who owns, manages,
26 operates or otherwise controls the public place or place of employment.
27 The notice shall include the nature of each violation, date and time each
28 violation occurred, and department contact person.

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

43 7. If a civil penalty imposed by this section is not paid, the
44 attorney general or a county attorney shall file an action to collect the

1 civil penalty in a justice court or the superior court in the county in
2 which the violation occurred.

3 8. The department may apply for injunctive relief to enforce these
4 provisions in the superior court in the county in which the violation
5 occurred. The court may impose appropriate injunctive relief and impose a
6 penalty of not less than \$100 but not more than \$500 for each violation.
7 Each day that a violation occurs constitutes a separate violation. If the
8 superior court finds the violations are ~~wilful~~ WILFUL or evidence a
9 pattern of noncompliance, the court may impose a fine up to ~~\$5000~~ \$5,000
10 per violation.

11 9. The department may contract with a third party to determine
12 compliance with this law.

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

15 11. The director of the department may ~~promulgate~~ ADOPT rules for
16 ~~the implementation TO IMPLEMENT and enforcement of ENFORCE~~ this ~~law~~
17 SECTION. ~~The department is exempt from the rulemaking procedures in~~
18 ~~A.R.S. § title 41, chapter 6 except the department shall publish draft~~
19 ~~rules and thereafter take public input including hold at least two public~~
20 ~~hearings prior to implementing the rules. This exemption expires May 1,~~
21 ~~2007.~~

22 H. ~~Beginning On June 1, 2008 and every other~~ June 1 ~~thereafter~~ EACH
23 YEAR, the director of the ~~Arizona~~ department of health services shall
24 issue a report analyzing its activities to enforce this ~~law~~ SECTION,
25 including the activities of all of the state agencies or political
26 subdivisions to whom the department has delegated responsibility under
27 this ~~law~~ SECTION.

28 I. An owner, manager, operator or employee of A place regulated by
29 this ~~law~~ SECTION shall inform any person who is smoking in violation of
30 this ~~law~~ SECTION that smoking is illegal and request that the illegal
31 smoking stop immediately.

32 J. This ~~law~~ SECTION does not create any new private right of action
33 ~~nor~~ AND does ~~it~~ NOT extinguish any existing common law causes of action.

34 K. A person who smokes where smoking is prohibited is guilty of a
35 petty offense with a fine of not less than ~~fifty dollars~~ \$50 and not more
36 than ~~three hundred dollars~~ \$300.

37 L. Smoke-free Arizona fund.

38 1. The smoke-free Arizona fund is established consisting of all
39 revenues deposited in the fund pursuant to ~~\$42-3251.02~~ SECTION 42-3251.02
40 and interest earned on those monies. The ~~Arizona~~ department of health
41 services shall administer the fund. On notice from the department, the
42 state treasurer shall invest and divest monies in the fund as provided by
43 ~~§35-313~~ SECTION 35-313, and monies earned from investment shall be
44 credited to the fund.

1 2. All ~~money~~ MONIES in the smoke-free Arizona fund shall be used to
2 enforce ~~the provisions of~~ this section, ~~provided however~~ EXCEPT that if
3 ~~there is money remaining~~ MONIES REMAIN after the department has met its
4 enforcement obligations, ~~that~~ THE remaining ~~money~~ MONIES shall be
5 deposited in the tobacco products tax fund and used for education programs
6 to reduce and eliminate tobacco use and for no other purpose.

7 3. Monies in this fund are continuously appropriated, are not
8 subject to further approval, do not revert to the STATE general fund and
9 are exempt from the provisions of ~~§36-190~~ SECTION 35-190 relating to the
10 lapsing of appropriations.

11 M. This section does not prevent a political subdivision of ~~the~~
12 THIS state from adopting ordinances or regulations that are more
13 restrictive than this section. ~~nor does~~ This section DOES NOT repeal any
14 existing ordinance or regulation that is more restrictive than this
15 section.

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

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

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