

REFERENCE TITLE: vapor products; e-liquids; regulation; permits

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

HB 2073

Introduced by
Representative Shope

AN ACT

AMENDING TITLE 36, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 15; 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. Title 36, chapter 6, Arizona Revised Statutes, is
3 amended by adding article 15, to read:

4 ARTICLE 15. E-LIQUIDS AND VAPOR PRODUCTS

5 36-799. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "APPLICANT" MEANS A PERSON WHO APPLIES FOR A PERMIT UNDER THIS
8 ARTICLE.

9 2. "DELIVERY SALE":

10 (a) MEANS A SALE OF E-LIQUIDS OR VAPOR PRODUCTS TO A PURCHASER IN
11 THIS STATE FOR WHICH THE PURCHASER SUBMITS THE ORDER THROUGH ONE OF THE
12 FOLLOWING METHODS AND AFTER WHICH THE E-LIQUIDS OR VAPOR PRODUCTS ARE
13 SHIPPED THROUGH A DELIVERY SERVICE:

14 (i) TELEPHONE.

15 (ii) INTERNET.

16 (iii) MAIL OR ANOTHER DELIVERY SERVICE.

17 (b) DOES NOT INCLUDE A SALE TO A RETAILER OF E-LIQUIDS OR VAPOR
18 PRODUCTS THAT IS NOT FOR PERSONAL CONSUMPTION.

19 3. "DELIVERY SERVICE" MEANS A PERSON, INCLUDING THE UNITED STATES
20 POSTAL SERVICE, THAT IS ENGAGED IN DELIVERING LETTERS, PACKAGES OR
21 CONTAINERS.

22 4. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

23 5. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

24 6. "DISTRIBUTOR" MEANS A PERSON THAT IS LICENSED AND THAT EITHER:

25 (a) DISTRIBUTES, SELLS, BARTERS OR EXCHANGES E-LIQUIDS OR VAPOR
26 PRODUCTS IN THIS STATE TO RETAILERS FOR THE PURPOSE OF RESALE.

27 (b) PURCHASES E-LIQUIDS OR VAPOR PRODUCTS DIRECTLY FROM A
28 MANUFACTURER FOR THE PURPOSE OF RESALE.

29 7. "E-LIQUID" MEANS A SUBSTANCE THAT:

30 (a) MAY OR MAY NOT CONTAIN NICOTINE.

31 (b) MAY NOT CONTAIN CANABIDIOL OR CANNABIS.

32 (c) IS INTENDED TO BE VAPORIZED AND INHALED USING A VAPOR PRODUCT.

33 8. "EMPLOYEE":

34 (a) MEANS A PERSON WHO WORKS DIRECTLY IN THE SERVICE OF ANOTHER
35 PERSON UNDER AN EXPRESS OR IMPLIED CONTRACT OF HIRE AND WHOSE EMPLOYER HAS
36 THE DIRECT RIGHT TO CONTROL THE DETAILS OF THE EMPLOYEE'S WORK
37 PERFORMANCE.

38 (b) DOES NOT INCLUDE A PERSON WHO WORKS FOR AN INDEPENDENT
39 SUBCONTRACTOR, A TEMPORARY SERVICE PROVIDER OR AN ENTITY OR PERSON THAT IS
40 NOT UNDER THE DIRECT FULL CONTROL OF THE EMPLOYER.

41 9. "FLAVORING" MEANS A FOOD GRADE ADDITIVE OR SYNTHETIC FLAVORING
42 SUBSTANCE THAT IS USED TO ADD FLAVOR TO AN E-LIQUID OR VAPOR PRODUCT AND
43 THAT IS NOT PROHIBITED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
44 AS AN ADDITIVE IN VAPOR PRODUCTS.

- 1 10. "KNOWINGLY ATTRACTIVE TO MINORS" MEANS CONTAINING AN IMAGE OR
2 MARK THAT INCLUDES ANY OF THE FOLLOWING:
- 3 (a) A CARTOON-LIKE FICTIONAL CHARACTER THAT MIMICS CHARACTERS
4 PRIMARILY AIMED AT ENTERTAINING CHILDREN.
- 5 (b) A CHARACTER THAT MIMICS OTHER CHARACTERS IN VIOLATION OF
6 TRADEMARK OR PATENT STATUTES, RULES OR REGULATIONS OF STATE OR FEDERAL
7 LAW.
- 8 (c) A SYMBOL OR CELEBRITY IMAGE THAT IS COMMONLY USED TO MARKET
9 PRODUCTS TO MINORS.
- 10 (d) AN IMAGE OF AN INDIVIDUAL WHO APPEARS TO BE TWENTY-SEVEN YEARS
11 OF AGE OR YOUNGER.
- 12 11. "MANUFACTURER" MEANS A PERSON LOCATED INSIDE OR OUTSIDE OF THIS
13 STATE THAT IS ENGAGED IN MANUFACTURING E-LIQUIDS OR VAPOR PRODUCTS.
- 14 12. "MANUFACTURING" MEANS THE PROCESS BY WHICH AN E-LIQUID IS
15 MIXED, BOTTLED AND PACKAGED OR A VAPOR PRODUCT IS PACKAGED.
- 16 13. "MINOR" MEANS AN INDIVIDUAL WHO IS YOUNGER THAN EIGHTEEN YEARS
17 OF AGE.
- 18 14. "PERMIT" MEANS A WRITTEN AUTHORIZATION ISSUED BY THE DEPARTMENT
19 ENTITLING THE HOLDER TO MANUFACTURE, SELL OR OTHERWISE DEAL IN E-LIQUIDS
20 OR VAPOR PRODUCTS AS PROVIDED IN THIS ARTICLE.
- 21 15. "PERMITTEE":
- 22 (a) MEANS A PERSON WHO HOLDS A VALID PERMIT UNDER THIS ARTICLE.
- 23 (b) INCLUDES AN AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF
24 A PERMITTEE.
- 25 16. "RETAILER" MEANS A PERSON, OTHER THAN A MANUFACTURER, WHO IN
26 THE ORDINARY COURSE OF THE PERSON'S REGULAR TRADE OR BUSINESS:
- 27 (a) ACQUIRES ANY FORM OF E-LIQUIDS OR VAPOR PRODUCTS FOR THE
28 PURPOSE OF RESALE.
- 29 (b) TRANSFERS AN E-LIQUID OR VAPOR PRODUCT TO ANOTHER PERSON FOR
30 MONEY OR OTHER CONSIDERATION.
- 31 17. "SALE" OR "SELL" MEANS TO GIVE AWAY, BARTER, EXCHANGE OR
32 OTHERWISE FURNISH ANY VAPOR PRODUCT TO ANY INDIVIDUAL OF LEGAL AGE.
- 33 18. "VAPOR PRODUCT" MEANS A POWERED VAPORIZER THAT CONVERTS AN
34 E-LIQUID TO A VAPOR INTENDED FOR INHALATION.
- 35 36-799.01. Department of health services; duties
- 36 THE DEPARTMENT SHALL:
- 37 1. REQUIRE THE SUBMISSION OF INFORMATION NECESSARY TO IMPLEMENT
38 THIS ARTICLE.
- 39 2. ISSUE PERMITS.
- 40 3. CHARGE FEES AS SPECIFIED IN THIS ARTICLE. THE FEES MAY NOT
41 EXCEED THE ACTUAL COSTS INCURRED BY THE DEPARTMENT.
- 42 4. APPROVE OR DENY A PERMIT APPLICATION WITHIN SIXTY DAYS AFTER
43 RECEIVING THE APPLICATION.
- 44 5. ADOPT ANY RULES NECESSARY TO IMPLEMENT AND ENFORCE THIS ARTICLE.

1 36-799.02. Manufacturers, distributors and retailers;
2 permits; application requirements; fees

3 A. A MANUFACTURER OF E-LIQUIDS MAY NOT MIX, BOTTLE, PACKAGE OR SELL
4 E-LIQUIDS AND A MANUFACTURER OF VAPOR PRODUCTS MAY NOT PACKAGE OR SELL
5 VAPOR PRODUCTS TO DISTRIBUTORS OR RETAILERS IN THIS STATE WITHOUT A PERMIT
6 ISSUED BY THE DEPARTMENT PURSUANT TO THIS SECTION. A MANUFACTURING PERMIT
7 ISSUED BY THE DEPARTMENT IS VALID FOR FIVE YEARS FROM THE DATE OF
8 ISSUANCE. AN APPLICATION FOR A MANUFACTURING PERMIT MUST INCLUDE ALL OF
9 THE FOLLOWING:

- 10 1. THE APPLICANT'S NAME, TELEPHONE NUMBER AND ADDRESS.
- 11 2. THE MANUFACTURING FACILITY'S NAME, TELEPHONE NUMBER AND ADDRESS.
- 12 3. THE NAME, TELEPHONE NUMBER, TITLE AND ADDRESS OF THE PERSON
13 RESPONSIBLE FOR THE MANUFACTURING FACILITY.
- 14 4. VERIFICATION THAT THE MANUFACTURER WILL COMPLY WITH APPLICABLE
15 TOBACCO PRODUCTS GOOD MANUFACTURING PRACTICES PROMULGATED UNDER 21 UNITED
16 STATES CODE SECTION 387f(e) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.
- 17 5. VERIFICATION THAT THE MANUFACTURER WILL COMPLY WITH THE
18 APPLICABLE INGREDIENT LISTING REQUIRED BY 21 UNITED STATES CODE SECTION
19 387d(a)(1) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.
- 20 6. A NONREFUNDABLE INITIAL APPLICATION FEE OF \$1,000.

21 B. A DISTRIBUTOR OF E-LIQUIDS OR VAPOR PRODUCTS MAY NOT DISTRIBUTE
22 E-LIQUIDS OR VAPOR PRODUCTS IN THIS STATE WITHOUT A VALID PERMIT ISSUED BY
23 THE DEPARTMENT PURSUANT TO THIS SECTION. A DISTRIBUTOR PERMIT ISSUED BY
24 THE DEPARTMENT IS VALID FOR ONE YEAR FROM THE DATE OF ISSUANCE. AN
25 APPLICATION FOR A DISTRIBUTOR PERMIT MUST INCLUDE ALL OF THE FOLLOWING:

- 26 1. THE APPLICANT'S NAME, TELEPHONE NUMBER AND ADDRESS.
- 27 2. THE DISTRIBUTION FACILITY'S NAME, TELEPHONE NUMBER AND ADDRESS.
- 28 3. THE NAME, TELEPHONE NUMBER, TITLE AND ADDRESS OF THE PERSON
29 RESPONSIBLE FOR THE DISTRIBUTION FACILITY.
- 30 4. A NONREFUNDABLE INITIAL APPLICATION FEE OF \$500.

31 C. A RETAILER OF E-LIQUIDS OR VAPOR PRODUCTS MAY NOT SELL E-LIQUIDS
32 OR VAPOR PRODUCTS IN THIS STATE WITHOUT A VALID PERMIT ISSUED BY THE
33 DEPARTMENT PURSUANT TO THIS SECTION. A RETAILER PERMIT ISSUED BY THE
34 DEPARTMENT IS VALID FOR ONE YEAR FROM THE DATE OF ISSUANCE. AN
35 APPLICATION FOR A RETAILER PERMIT MUST INCLUDE ALL OF THE FOLLOWING THE
36 FOLLOWING:

- 37 1. THE APPLICANT'S NAME, TELEPHONE NUMBER AND ADDRESS.
- 38 2. THE RETAIL FACILITY'S NAME, TELEPHONE NUMBER AND ADDRESS.
- 39 3. THE NAME, TELEPHONE NUMBER, TITLE AND ADDRESS OF THE PERSON
40 RESPONSIBLE FOR THE RETAIL FACILITY.
- 41 4. A NONREFUNDABLE INITIAL APPLICATION FEE OF \$150.

42 D. IF THE INFORMATION REQUIRED FOR THE INITIAL OR A RENEWAL PERMIT
43 CHANGES, THE APPLICANT OR PERMITTEE SHALL NOTIFY THE DEPARTMENT WITHIN TEN
44 BUSINESS DAYS AFTER THE CHANGE. IF ANY CHANGE IN THE INFORMATION REQUIRED

1 FOR AN APPLICATION RESULTS IN A VIOLATION OF THIS ARTICLE, THE DEPARTMENT
2 MAY IMPOSE A CIVIL PENALTY AS PROVIDED IN THIS ARTICLE.

3 E. ALL FEES COLLECTED UNDER THIS SECTION SHALL BE DEPOSITED IN THE
4 VAPOR PRODUCTS REGULATORY FUND ESTABLISHED BY SECTION 36-799.10.

5 36-799.03. Permits; transfer

6 THE DEPARTMENT SHALL ALLOW A PERMIT ISSUED PURSUANT TO THIS ARTICLE
7 TO BE TRANSFERRED EITHER FROM THE PERMITTEE TO ANOTHER PERSON OR FROM THE
8 LOCATION FOR WHICH THE PERMIT WAS APPROVED OR RENEWED TO ANOTHER LOCATION
9 IF BOTH:

10 1. THE PERMIT HAS NOT BEEN SUSPENDED OR REVOKED.

11 2. THE NEW PERMITTEE OR LOCATION MEETS THE REQUIREMENTS OF THIS
12 ARTICLE.

13 36-799.04. Manufacturer, distributor and retailer
14 requirements; labeling, marketing and safety
15 requirements; prohibitions; definitions

16 A. A MANUFACTURER SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

17 1. AN E-LIQUID CONTAINER MUST USE A CHILD-PROOF CAP THAT HAS THE
18 CHILD-RESISTANT EFFECTIVENESS SET FORTH IN THE FEDERAL POISON PREVENTION
19 PACKAGING STANDARDS, 16 CODE OF FEDERAL REGULATIONS SECTION 1700.15(b)(1).

20 2. AN E-LIQUID CONTAINER MUST USE A TAMPER-EVIDENT PACKAGE THAT IS
21 DESIGNED TO AND DOES REMAIN INTACT WHEN HANDLED IN A REASONABLE MANNER
22 DURING THE MANUFACTURE, DISTRIBUTION AND RETAIL DISPLAY OF THE E-LIQUID
23 CONTAINER.

24 3. THE LABEL ON AN E-LIQUID CONTAINER MUST MEET THE NICOTINE
25 ADDICTIVENESS WARNING STATEMENT REQUIREMENTS SET FORTH IN 21 CODE OF
26 FEDERAL REGULATIONS SECTION 1143.3.

27 4. THE LABEL MUST INCLUDE A SEPARATE DESIGNATION IF THE PRODUCT
28 CONTAINS NICOTINE.

29 5. THE LABEL OR CONTAINER MUST INCLUDE ALL OF THE FOLLOWING:

30 (a) AN IDENTIFIABLE AND TRACKABLE CODE.

31 (b) THE MANUFACTURING DATE.

32 (c) THE FOLLOWING STATEMENT IF NICOTINE IS IN THE PRODUCT:
33 "WARNING: THIS PRODUCT CONTAINS NICOTINE. NICOTINE IS AN ADDICTIVE
34 CHEMICAL."

35 B. MANUFACTURERS MAY USE FLAVORING AS AN INGREDIENT IN E-LIQUIDS.

36 C. MANUFACTURERS, DISTRIBUTORS AND RETAILERS MAY NOT ADD AN
37 ADULTERATED PRODUCT TO ANY E-LIQUID PRODUCED FOR SALE IN THIS STATE.

38 D. MANUFACTURERS, DISTRIBUTORS AND RETAILERS MUST SUBMIT TO RANDOM
39 SITE VISITS BY THE DEPARTMENT.

40 E. MANUFACTURERS MAY NOT PRODUCE AND DISTRIBUTORS AND RETAILERS MAY
41 NOT SELL ANY E-LIQUID OR VAPOR PRODUCT THAT IS KNOWINGLY ATTRACTIVE TO
42 MINORS.

43 F. MANUFACTURERS, DISTRIBUTORS AND RETAILERS IN THIS STATE SHALL
44 DISPLAY SIGNAGE THAT STATES: "UNACCOMPANIED MINORS ARE NOT ALLOWED ON THE

1 PREMISES", "PRODUCTS ARE NOT FOR SALE TO MINORS" OR "UNDERAGE SALES
2 PROHIBITED".

3 G. RETAILERS SHALL DISPLAY VAPOR PRODUCTS BEHIND A COUNTER OR IN AN
4 ENCLOSED DISPLAY THAT IS NOT ACCESSIBLE WITHOUT THE ASSISTANCE OF A SALES
5 REPRESENTATIVE.

6 H. MARKETING OF VAPOR PRODUCTS MAY NOT BE DIRECTED AT MINORS AND
7 MANUFACTURERS, DISTRIBUTORS AND RETAILERS OF VAPOR PRODUCTS MAY NOT USE
8 ANY CHANNEL OF MARKETING IF MORE THAN FIFTEEN PERCENT OF THEIR TARGET
9 AUDIENCE ARE MINORS.

10 I. FOR THE PURPOSES OF THIS SECTION:

11 1. "ADULTERATED" MEANS A PRODUCT THAT EITHER:

12 (a) CONSISTS IN WHOLE OR IN PART OF ANY FILTHY, PUTRID OR
13 DECOMPOSED SUBSTANCE.

14 (b) IS CONTAMINATED BY ANY ADDED POISONOUS OR ADDED DELETERIOUS
15 SUBSTANCE THAT MAY RENDER THE PRODUCT INJURIOUS TO A PERSON'S HEALTH.

16 2. "TAMPER-EVIDENT PACKAGE" MEANS A PACKAGE HAVING AT LEAST ONE
17 INDICATOR OR BARRIER TO ENTRY THAT, IF BREACHED OR MISSING, CAN REASONABLY
18 BE EXPECTED TO PROVIDE VISIBLE EVIDENCE TO CONSUMERS THAT TAMPERING HAS
19 OCCURRED.

20 36-799.05. Record requirements; prohibitions; annual report

21 A. ANY PERSON SELLING E-LIQUIDS OR VAPOR PRODUCTS TO A CONSUMER IN
22 THIS STATE SHALL HAVE A VALID RETAILER PERMIT PURSUANT TO THIS ARTICLE.

23 B. A RETAILER MAY PURCHASE E-LIQUIDS AND VAPOR PRODUCTS ONLY FROM A
24 MANUFACTURING PERMITTEE OR A DISTRIBUTOR PERMITTEE.

25 C. A RETAILER SHALL RETAIN ALL INVOICES FOR E-LIQUIDS AND VAPOR
26 PRODUCTS THAT THE RETAILER PURCHASES FOR TWO YEARS.

27 D. A RETAILER MAY NOT SELL AN E-LIQUID THAT CONTAINS MORE THAN
28 SEVENTY-FIVE MILLIGRAMS PER MILLILITER OF NICOTINE.

29 E. A DISTRIBUTOR SHALL RETAIN ALL INVOICES FOR SALES TO A RETAILER
30 OR FROM A MANUFACTURER FOR AT LEAST TWO YEARS.

31 F. A MANUFACTURER SHALL ANNUALLY SUBMIT A REPORT TO THE DEPARTMENT
32 SETTING FORTH:

33 1. EACH NEW PRODUCT THAT THE MANUFACTURER IS PRODUCING AND SELLING
34 IN THIS STATE.

35 2. WHETHER THE MANUFACTURER HAS STOPPED PRODUCING A PRODUCT THAT
36 WAS PREVIOUSLY PRODUCED AND SOLD IN THIS STATE.

37 3. THE MILLIGRAMS PER MILLILITER OF NICOTINE IN EACH PRODUCT THE
38 MANUFACTURER PRODUCES.

39 4. THE MILLILITERS OF EACH PRODUCT SOLD IN THE CURRENT YEAR.

40 G. A REPORT SUBMITTED UNDER SUBSECTION F OF THIS SECTION IS
41 CONFIDENTIAL AND IS NOT A PUBLIC RECORD PURSUANT TO TITLE 39, CHAPTER 1,
42 ARTICLE 3. A MANUFACTURER IS NOT REQUIRED TO SUBMIT A REPORT DESCRIBED IN
43 SUBSECTION F OF THIS SECTION IF THE MANUFACTURER CERTIFIES TO THE
44 DEPARTMENT ON OR BEFORE OCTOBER 1 OF EACH YEAR THAT EACH OF THE

1 MANUFACTURER'S E-LIQUIDS OR VAPOR PRODUCTS SOLD IN THIS STATE HAS BEEN
2 FILED WITH THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

3 H. MANUFACTURERS, DISTRIBUTORS AND RETAILERS MAY SELL ANY E-LIQUID
4 OR VAPOR PRODUCT THAT IS MANUFACTURED BEFORE THE EFFECTIVE DATE OF THIS
5 SECTION AND THAT DOES NOT MEET THE REQUIREMENTS OF THIS ARTICLE WITHIN
6 NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

7 36-799.06. Identification required; minor's use or possession
8 prohibited; violation; classification

9 A. A RETAILER THAT SELLS, OFFERS FOR SALE, GIVES OR FURNISHES AN
10 E-LIQUID OR VAPOR PRODUCT TO ANOTHER PERSON, SHALL FIRST VERIFY THAT THE
11 PERSON IS NOT A MINOR BY EITHER:

12 1. EXAMINING THE PERSON'S GOVERNMENT-ISSUED PHOTOGRAPHIC
13 IDENTIFICATION THAT ESTABLISHES THE PERSON IS NOT A MINOR.

14 2. FOR DELIVERY SALES, VERIFYING THE PERSON'S AGE THROUGH AN
15 INDEPENDENT, THIRD-PARTY AGE VERIFICATION SERVICE THAT COMPARES
16 INFORMATION AVAILABLE FROM PUBLIC RECORDS TO THE PERSONAL INFORMATION
17 ENTERED BY THE PERSON DURING THE ORDERING PROCESS THAT ESTABLISHES THE
18 PERSON IS NOT A MINOR.

19 B. A MINOR MAY NOT POSSESS AN E-LIQUID OR VAPOR PRODUCT.

20 C. A MINOR WHO POSSESSES AN E-LIQUID OR VAPOR PRODUCT IS GUILTY OF
21 A PETTY OFFENSE.

22 36-799.07. Delivery sales

23 A. A RETAILER MAY NOT MAKE A DELIVERY SALE OF E-LIQUIDS OR VAPOR
24 PRODUCTS TO A MINOR.

25 B. A RETAILER MAY NOT SHIP E-LIQUIDS OR VAPOR PRODUCTS WITHOUT
26 FIRST MAKING A GOOD FAITH EFFORT TO VERIFY THE AGE OF THE PURCHASER OF THE
27 E-LIQUIDS.

28 C. BEFORE SHIPPING E-LIQUIDS OR VAPOR PRODUCTS IN A DELIVERY SALE,
29 A RETAILER MUST BE FULLY PAID FOR THE PURCHASE AND SHALL ACCEPT PAYMENT
30 FROM THE PURCHASER BY ANY OF THE FOLLOWING:

31 1. A CHECK DRAWN ON AN ACCOUNT IN THE PURCHASER'S NAME.

32 2. A CREDIT CARD ISSUED IN THE PURCHASER'S NAME.

33 3. A DEBIT CARD ISSUED IN THE PURCHASER'S NAME.

34 D. A RETAILER MAY SHIP E-LIQUIDS OR VAPOR PRODUCTS ONLY TO A
35 PURCHASER.

36 E. A RETAILER TAKING A DELIVERY SALE ORDER MAY REQUEST THE
37 PURCHASER'S E-MAIL ADDRESS.

38 36-799.08. Penalties; compliance with federal law

39 A. THE DEPARTMENT MAY IMPOSE A CIVIL PENALTY OR SUSPEND OR REVOKE A
40 PERMIT ISSUED UNDER THIS ARTICLE FOR ANY VIOLATION OF THIS ARTICLE BY A
41 MANUFACTURER, DISTRIBUTOR OR RETAILER.

42 B. ANY PROVISION IN THIS ARTICLE THAT REQUIRES A MANUFACTURER TO
43 COMPLY WITH A FEDERAL RULE OR LAW IS UNDER THE SOLE JURISDICTION OF THE
44 UNITED STATES FOOD AND DRUG ADMINISTRATION. IF THE UNITED STATES FOOD AND
45 DRUG ADMINISTRATION SEEKS COURT ENFORCEMENT OF ANY FEDERAL RULE OR LAW

1 CITED IN THIS ARTICLE AND A CIVIL PENALTY IS ASSESSED AGAINST THE
2 MANUFACTURER, THE ACT OR OMISSION FOR WHICH THE PENALTY WAS ASSESSED
3 CONSTITUTES A VIOLATION OF THIS ARTICLE.

4 C. THE DEPARTMENT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN
5 \$10,000 AGAINST A MANUFACTURER, DISTRIBUTOR OR RETAILER FOR A VIOLATION OF
6 THIS ARTICLE. A CIVIL PENALTY MAY BE IMPOSED IN ADDITION TO OTHER
7 PENALTIES AUTHORIZED UNDER THIS ARTICLE.

8 D. IF A RETAILER EITHER KNOWINGLY AND INTENTIONALLY SELLS E-LIQUIDS
9 OR VAPOR PRODUCTS TO A MINOR OR KNOWINGLY, INTENTIONALLY OR NEGLIGENTLY
10 FAILS TO VERIFY THE AGE OF A PERSON BY CHECKING A GOVERNMENT-ISSUED
11 IDENTIFICATION AND SELLS THE PERSON AN E-LIQUID OR A VAPOR PRODUCT, A
12 CIVIL PENALTY FOR A VIOLATION OF THIS SUBSECTION IS IMPOSED AS FOLLOWS:

- 13 1. FOR THE FIRST VIOLATION IN A TWENTY-FOUR-MONTH PERIOD, \$250.
- 14 2. FOR A SECOND VIOLATION IN A TWENTY-FOUR-MONTH PERIOD, \$2,500.
- 15 3. FOR A THIRD VIOLATION IN A TWENTY-FOUR-MONTH PERIOD, \$5,000.
- 16 4. FOR A FOURTH VIOLATION IN A TWENTY-FOUR-MONTH PERIOD, PERMANENT
17 REVOCATION OF THE RETAILER'S PERMIT UNDER THIS ARTICLE.

18 E. IT IS NOT A DEFENSE TO A VIOLATION OF THIS ARTICLE THAT THE
19 PERSON TO WHOM AN E-LIQUID OR VAPOR PRODUCT WAS SOLD OR DISTRIBUTED DID
20 NOT INHALE OR OTHERWISE CONSUME OR USE THE E-LIQUID OR VAPOR PRODUCT.

21 F. THE FOLLOWING DEFENSES ARE AVAILABLE TO A RETAIL PERMITTEE
22 ACCUSED OF SELLING OR DISTRIBUTING E-LIQUIDS OR VAPOR PRODUCTS TO A PERSON
23 WHO IS A MINOR:

- 24 1. THE BUYER OR RECIPIENT PRODUCED A DRIVER LICENSE BEARING THE
25 PURCHASER'S OR RECIPIENT'S PHOTOGRAPH SHOWING THAT THE PURCHASER OR
26 RECIPIENT WAS OF LEGAL AGE TO MAKE THE PURCHASE.
- 27 2. THE BUYER OR RECIPIENT PRODUCED A STATE-ISSUED PHOTOGRAPHIC
28 IDENTIFICATION CARD OR A SIMILAR CARD ISSUED UNDER THE LAWS OF ANOTHER
29 STATE OR THE FEDERAL GOVERNMENT SHOWING THAT THE PURCHASER OR RECIPIENT
30 WAS OF LEGAL AGE TO MAKE THE PURCHASE.

31 G. IT IS A DEFENSE TO A VIOLATION OF THIS ARTICLE THAT THE ACCUSED
32 RETAILOR SOLD OR DELIVERED E-LIQUIDS OR VAPOR PRODUCTS TO A PERSON WHO
33 ACTED IN THE ORDINARY COURSE OF EMPLOYMENT OR BUSINESS CONCERNING
34 E-LIQUIDS OR VAPOR PRODUCTS IN ANY OF THE FOLLOWING:

- 35 1. AGRICULTURE.
- 36 2. PROCESSING.
- 37 3. TRANSPORTING.
- 38 4. WHOLESALING.
- 39 5. RETAILING.

40 H. CIVIL PENALTIES COLLECTED UNDER THIS ARTICLE SHALL BE DEPOSITED,
41 PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE VAPOR PRODUCTS REGULATORY
42 FUND ESTABLISHED BY SECTION 36-799.10.

1 36-799.09. Violations; classification; penalties
2 A. THE DEPARTMENT SHALL IMPOSE THE FOLLOWING CIVIL PENALTIES
3 AGAINST A PERSON WHO SELLS AN E-LIQUID OR A VAPOR PRODUCT IN THIS STATE
4 WITHOUT A PERMIT ISSUED PURSUANT TO THIS ARTICLE:
5 1. FOR THE FIRST VIOLATION, A MINIMUM OF \$1,000.
6 2. FOR A SECOND VIOLATION, A MINIMUM OF \$5,000.
7 3. FOR A THIRD VIOLATION, \$10,000.
8 B. A PERSON WHO SELLS AN E-LIQUID OR A VAPOR PRODUCT WITHOUT A
9 PERMIT ISSUED PURSUANT TO THIS ARTICLE ON PUBLIC OR PRIVATE SCHOOL
10 PROPERTY IS GUILTY OF A CLASS 1 MISDEMEANOR.
11 36-799.10. Vapor products regulatory fund; exemption
12 A. THE VAPOR PRODUCTS REGULATORY FUND IS ESTABLISHED IN THE
13 DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR SHALL ADMINISTER THE FUND.
14 MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION. THE FUND
15 CONSISTS OF ALL FEES AND CIVIL PENALTIES COLLECTED PURSUANT TO THIS
16 ARTICLE.
17 B. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION
18 35-190 RELATING TO LAPSING OF APPROPRIATIONS.
19 Sec. 2. Requirements for enactment; two-thirds vote
20 Pursuant to article IX, section 22, Constitution of Arizona, this
21 act is effective only on the affirmative vote of at least two-thirds of
22 the members of each house of the legislature and is effective immediately
23 on the signature of the governor or, if the governor vetoes this act, on
24 the subsequent affirmative vote of at least three-fourths of the members
25 of each house of the legislature.