

REFERENCE TITLE: tobacco products; electronic smoking devices

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

# SB 1009

Introduced by  
Senators Carter: Bowie, Brophy McGee

AN ACT

AMENDING SECTIONS 13-3622, 36-798 AND 36-798.06, ARIZONA REVISED STATUTES;  
RELATING TO TOBACCO PRODUCTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-3622, Arizona Revised Statutes, is amended to  
3 read:

4 13-3622. Furnishing of tobacco product to minor; minor  
5 accepting or receiving tobacco product; illegally  
6 obtaining tobacco product by underage person;  
7 classification; definitions

8 A. A person who knowingly sells, gives or furnishes a tobacco  
9 product, ~~a vapor product or any instrument or paraphernalia that is solely~~  
10 ~~designed for the smoking or ingestion of tobacco or shisha, including a~~  
11 ~~hookah or waterpipe,~~ to a minor is guilty of a petty offense.

12 B. A minor who buys, or has in his possession or knowingly accepts  
13 or receives from any person, a tobacco product, ~~a vapor product or any~~  
14 ~~instrument or paraphernalia that is solely designed for the smoking or~~  
15 ~~ingestion of tobacco or shisha, including a hookah or waterpipe,~~ is guilty  
16 of a petty offense, and if the offense involves any instrument or  
17 paraphernalia that is solely designed for the smoking or ingestion of  
18 tobacco or shisha, shall pay a fine of not less than ~~one hundred dollars~~  
19 ~~\$100~~ or perform not less than thirty hours of community restitution.

20 C. A minor who misrepresents the minor's age to ~~any~~ ANOTHER person  
21 by means of a written instrument of identification with the intent to  
22 induce the OTHER person to sell, give or furnish a tobacco product, ~~a~~  
23 ~~vapor product or any instrument or paraphernalia that is solely designed~~  
24 ~~for the smoking or ingestion of tobacco or shisha, including a hookah or~~  
25 ~~waterpipe,~~ in violation of subsection A or B of this section is guilty of  
26 a petty offense and, notwithstanding section 13-802, shall pay a fine of  
27 not more than ~~five hundred dollars~~ \$500.

28 D. This section does not apply to any of the following:

29 1. Cigars, cigarettes or cigarette papers, smoking or chewing  
30 tobacco or any instrument or paraphernalia that is solely designed for the  
31 smoking or ingestion of tobacco or shisha, including a hookah or  
32 waterpipe, if it is used or intended to be used in connection with a bona  
33 fide practice of a religious belief and as an integral part of a religious  
34 or ceremonial exercise.

35 2. Any instrument or paraphernalia that is solely designed for the  
36 smoking or ingestion of tobacco or shisha, including a hookah or  
37 waterpipe, that is given to or possessed by a minor if the instrument or  
38 paraphernalia was a gift or souvenir and is not used or intended to be  
39 used by the minor to smoke or ingest tobacco or shisha.

40 E. For the purposes of this section:

41 1. "ELECTRONIC SMOKING DEVICE":

42 (a) MEANS A DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR  
43 VAPORIZED NICOTINE TO A PERSON WHO INHALES FROM THE DEVICE, INCLUDING AN  
44 E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH, AND ANY COMPONENT,  
45 PART OR ACCESSORY OF THE DEVICE, WHETHER OR NOT SOLD SEPARATELY.

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

3 ~~1.~~ 2. "Shisha" includes any mixture of tobacco leaf and honey,  
4 molasses or dried fruit or any other sweetener.

5 ~~2.~~ 3. "Tobacco product":

6 (a) Means any ~~of the following:~~

7 ~~(a) Cigars.~~

8 ~~(b) Cigarettes.~~

9 ~~(c) Cigarette papers of any kind.~~

10 ~~(d) Smoking tobacco of any kind.~~

11 ~~(e) Chewing tobacco of any kind~~

12 PRODUCT THAT IS MADE OR DERIVED  
13 FROM TOBACCO OR THAT CONTAINS NICOTINE AND THAT IS INTENDED FOR HUMAN  
14 CONSUMPTION OR IS LIKELY TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED,  
15 ABSORBED, DISSOLVED, INHALED OR INGESTED BY ANY OTHER MEANS.

16 (b) INCLUDES A CIGARETTE, A CIGAR, PIPE TOBACCO, CHEWING TOBACCO,  
17 SHISHA, SNUFF, SNUS AND AN ELECTRONIC SMOKING DEVICE AND ANY COMPONENT,  
18 ACCESSORY, INSTRUMENT OR PARAPHERNALIA THAT IS USED IN THE CONSUMPTION OF  
19 A TOBACCO PRODUCT, WHETHER OR NOT IT CONTAINS NICOTINE, OR THAT IS SOLELY  
20 DESIGNED FOR THE SMOKING OR INGESTING OF TOBACCO OR SHISHA, INCLUDING A  
21 HOOKAH, A WATERPIPE, A FILTER, ROLLING PAPERS, A PIPE OR LIQUIDS USED IN  
22 ELECTRONIC SMOKING DEVICES.

23 (c) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS, AS  
24 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT, THAT  
25 ARE AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

26 ~~3. "Vapor product" means a noncombustible tobacco-derived product  
27 containing nicotine that employs a mechanical heating element, battery or  
28 circuit, regardless of shape or size, that can be used to heat a liquid  
29 nicotine solution contained in cartridges. Vapor product does not include  
30 any product that is regulated by the United States food and drug  
31 administration under chapter V of the federal food, drug and cosmetic act.~~

32 Sec. 2. Section 36-798, Arizona Revised Statutes, is amended to  
33 read:

34 36-798. Definitions

35 In this article, unless the context otherwise requires:

36 1. "Bar" means that portion of any premises licensed under section  
37 4-209, subsection B, paragraph 6, 7, 11, 12 or 14 that is primarily used  
38 for the selling, consumption or serving of alcoholic beverages and that is  
39 not primarily used for the consumption of food on the premises.

40 2. "Beedies" or "bidis" means a product containing tobacco that is  
41 wrapped in temburni leaf (diospyros melanoxyton) or tendu leaf (diospyros  
42 exculpra), or any other product that is offered to, or purchased by,  
43 consumers as beedies or bidis.

44 3. "Cigar" means a roll of tobacco or any lawful substitute for  
tobacco that is wrapped in tobacco.

1 4. "Cigarette" means a roll of tobacco or any lawful substitute for  
2 tobacco that is wrapped in paper or in any substance other than tobacco.

3 5. "ELECTRONIC SMOKING DEVICE":

4 (a) MEANS A DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR  
5 VAPORIZED NICOTINE TO A PERSON WHO INHALES FROM THE DEVICE, INCLUDING AN  
6 E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH, AND ANY COMPONENT,  
7 PART OR ACCESSORY OF THE DEVICE, WHETHER OR NOT SOLD SEPARATELY.

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

10 ~~5-~~ 6. "Minor" means a person who is under eighteen years of age.

11 ~~6-~~ 7. "Retail tobacco vendor" means a person who possesses tobacco  
12 or tobacco products for the purpose of selling them for consumption and  
13 not for resale.

14 ~~7-~~ 8. "Smokeless tobacco" includes shredded tobacco, snuff,  
15 cavendish and plug, twist and other tobacco products that are intended for  
16 oral use but not for smoking.

17 ~~8-~~ 9. "Smoking tobacco" includes any tobacco or tobacco product,  
18 other than cigarettes and cigars, that is intended to be smoked.

19 ~~9-~~ 10. "Tobacco products": ~~includes cigarettes, cigarette papers,~~  
20 ~~cigars, smokeless tobacco and smoking tobacco.~~

21 (a) MEANS ANY PRODUCT THAT IS MADE OR DERIVED FROM TOBACCO OR THAT  
22 CONTAINS NICOTINE AND THAT IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY  
23 TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED,  
24 INHALED OR INGESTED BY ANY OTHER MEANS.

25 (b) INCLUDES A CIGARETTE, A CIGAR, PIPE TOBACCO, CHEWING TOBACCO,  
26 SHISHA, SNUFF, SNUS OR AN ELECTRONIC SMOKING DEVICE AND ANY COMPONENT,  
27 ACCESSORY, INSTRUMENT OR PARAPHERNALIA THAT IS USED IN THE CONSUMPTION OF  
28 A TOBACCO PRODUCT, WHETHER OR NOT IT CONTAINS NICOTINE, OR THAT IS SOLELY  
29 DESIGNED FOR THE SMOKING OR INGESTING OF TOBACCO OR SHISHA, INCLUDING A  
30 HOOKAH, A WATERPIPE, A FILTER, ROLLING PAPERS, A PIPE OR LIQUIDS USED IN  
31 ELECTRONIC SMOKING DEVICES.

32 (c) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS, AS  
33 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT, THAT  
34 ARE AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

35 ~~10-~~ 11. "Vending machine" means any mechanical, electrical or  
36 electronic device that, on insertion of money, tokens or any other form of  
37 payment, automatically dispenses tobacco products.

38 Sec. 3. Section 36-798.06, Arizona Revised Statutes, is amended to  
39 read:

40 36-798.06. Delivery sales prohibited; common carriers; civil  
41 penalty; forfeiture; unlawful practice;  
42 exceptions; violation; classification;  
43 definitions

44 A. A person shall not do either of the following:

1           1. Cause a tobacco product to be ordered or purchased by anyone  
2 other than a licensed person or a retailer who orders or purchases from a  
3 licensed person, including by ordering or purchasing a tobacco product.  
4           2. Knowingly provide substantial assistance to a person who  
5 violates this section.  
6           B. A common carrier shall not knowingly transport a tobacco product  
7 for a person who is in violation of this section.  
8           C. Each order or purchase of a tobacco product in violation of  
9 subsection A, paragraph 1 of this section constitutes a separate violation  
10 under this section.  
11           D. In addition to any other penalty, a person who violates this  
12 section is subject to all of the following:  
13           1. A civil penalty in an amount not to exceed ~~five thousand dollars~~  
14 \$5,000 for each violation.  
15           2. An injunction to restrain a threatened or actual violation of  
16 this section.  
17           3. Recovery by this state for:  
18           (a) The costs of any investigation related to a violation of this  
19 section.  
20           (b) The cost of expert witness fees in any action related to a  
21 violation of this section.  
22           (c) The cost of the action related to a violation of this section.  
23           (d) Reasonable attorney fees.  
24           4. All state tobacco taxes due under title 42, chapter 3, except as  
25 prohibited under section 42-3402, and all transaction privilege or use  
26 taxes due under title 42, chapter 5, including any penalties and interest.  
27           E. All tobacco products that are seized for a violation of this  
28 section shall be forfeited to the state and destroyed pursuant to section  
29 42-1124.  
30           F. A violation of this section is an unlawful practice under  
31 section 44-1522 and is in addition to all other causes of action, remedies  
32 and penalties that are available to this state. The attorney general may  
33 investigate and take appropriate action pursuant to title 44, chapter 10,  
34 article 7.  
35           G. This section does not apply to either of the following:  
36           1. The shipment of a tobacco product to a foreign trade zone that  
37 is established under 19 United States Code ~~section 81~~ SECTIONS 81a  
38 THROUGH 81u and title 44, chapter 18 and that is located in this state if  
39 the tobacco product is from outside of this country, was ordered by a  
40 distributor in another state and is not distributed in this state.  
41           2. A government employee who is acting in the course of the  
42 employee's official duties.  
43           H. A person who violates this section is guilty of a class 6  
44 felony.

- 1 I. For the purposes of this section:  
2 1. "ELECTRONIC SMOKING DEVICE:  
3 (a) MEANS A DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR  
4 VAPORIZED NICOTINE TO A PERSON WHO INHALES FROM THE DEVICE, INCLUDING AN  
5 E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH, AND ANY COMPONENT,  
6 PART OR ACCESSORY OF THE DEVICE, WHETHER OR NOT SOLD SEPARATELY.  
7 (b) INCLUDES ANY SUBSTANCE THAT IS INTENDED TO BE AEROSOLIZED OR  
8 VAPORIZED DURING THE USE OF THE DEVICE.  
9 (c) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS, AS  
10 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT, THAT  
11 ARE AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.  
12 ~~1.~~ 2. "Licensed person" means a person who is required to be  
13 licensed under section 42-3401.  
14 ~~2.~~ 3. "Order or purchase" means any of the following:  
15 (a) By mail or delivery service.  
16 (b) Through the internet or a computer network.  
17 (c) By telephone.  
18 (d) Through any other electronic method.  
19 ~~3.~~ 4. "Person" means an individual, partnership, firm,  
20 association, corporation, limited liability company or partnership, joint  
21 venture or other entity.  
22 ~~4.~~ 5. "Retailer" has the same meaning prescribed in section  
23 42-5001.  
24 ~~5.~~ 6. "Tobacco product" means all luxuries included in section  
25 42-3052, paragraphs 5, 6 and 7 AND INCLUDES AN ELECTRONIC SMOKING DEVICE.  
26 Tobacco product does not include pipe tobacco or cigars.