

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

# HOUSE BILL 2357

AN ACT

AMENDING SECTIONS 13-3622, 36-601.01, 36-798 AND 36-798.06, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-798.07; RELATING TO PUBLIC HEALTH CONTROL.

(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, vapor product or  
5 tobacco or shisha instruments or paraphernalia to  
6 minor; minor accepting or receiving tobacco  
7 product, vapor product or tobacco or shisha  
8 instruments or paraphernalia; illegally obtaining  
9 tobacco product, vapor product or tobacco or  
10 shisha instruments or paraphernalia by underage  
11 person; classification; definitions

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

16 B. A minor who buys, or has in his possession or knowingly accepts  
17 or receives from any person, a tobacco product, ~~a vapor product or any~~  
18 ~~instrument or paraphernalia that is solely designed for the smoking or~~  
19 ~~ingestion of tobacco or shisha, including a hookah or waterpipe,~~ is guilty  
20 of a petty offense, and if the offense involves any instrument or  
21 paraphernalia that is solely designed for the smoking or ingestion of  
22 tobacco or shisha, shall pay a fine of not less than ~~one hundred dollars~~  
23 ~~\$100~~ or perform not less than thirty hours of community restitution.

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

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

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

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

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

11 ~~2.~~ 3. "Tobacco product":

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

13 ~~(a) Cigars.~~

14 ~~(b) Cigarettes.~~

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

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

17 ~~(e) Chewing tobacco of any kind~~ PRODUCT THAT IS MADE OR DERIVED

18 FROM TOBACCO OR THAT CONTAINS NICOTINE AND THAT IS INTENDED FOR HUMAN  
19 CONSUMPTION OR IS LIKELY TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED,  
20 ABSORBED, DISSOLVED, INHALED OR INGESTED BY ANY OTHER MEANS.

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

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

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

37 Sec. 2. Subject to the requirements of article IV, part 1,  
38 section 1, Constitution of Arizona, section 36-601.01, Arizona Revised  
39 Statutes, is amended to read:

40 36-601.01. Smoke-free Arizona act

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

1           1. "ELECTRONIC SMOKING DEVICE":  
2           (a) MEANS ANY PRODUCT CONTAINING OR DELIVERING NICOTINE OR ANY  
3 OTHER SUBSTANCE INTENDED FOR HUMAN CONSUMPTION THAT CAN BE USED BY A  
4 PERSON IN ANY MANNER TO INHALE VAPOR OR AEROSOL FROM THE PRODUCT.  
5           (b) INCLUDES ANY DEVICE THAT IS MANUFACTURED, DISTRIBUTED, MARKETED  
6 OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH OR VAPE PEN OR UNDER  
7 ANY OTHER PRODUCT NAME OR DESCRIPTOR.  
8           ~~1.~~ 2. "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, ~~OR~~ independent contractor or otherwise and  
11 whether or not the person is compensated or is a volunteer.  
12           ~~2.~~ 3. "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~~ CORPORATION, trust, ~~or~~  
15 ~~non-profit~~ NONPROFIT entity that employs the services of one or more  
16 individual persons.  
17           ~~3.~~ 4. "Enclosed area" means all space between a floor and ceiling  
18 that is ~~enclosed on all sides by permanent or temporary walls or windows~~  
19 ~~(exclusive of doorways), which 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 not be subjected to breathing tobacco smoke and so that~~  
23 ~~tobacco smoke does not enter the building or facility through entrances,~~  
24 ~~windows, ventilation systems or any other means~~ BOUNDED ON AT LEAST TWO  
25 SIDES BY WALLS, DOORWAYS OR WINDOWS, WHETHER OPEN OR CLOSED. FOR THE  
26 PURPOSES OF THIS PARAGRAPH, "WALL" INCLUDES ANY RETRACTABLE DIVIDER,  
27 GARAGE DOOR OR OTHER PHYSICAL BARRIER, WHETHER TEMPORARY OR PERMANENT AND  
28 WHETHER OR NOT CONTAINING OPENINGS OF ANY KIND.  
29           ~~4.~~ 5. "Health care facility" means any enclosed area ~~utilized~~ USED  
30 by any health care institution licensed according to ~~title 36 chapter 4,~~  
31 ~~chapter 6~~ article 7, ~~OF THIS CHAPTER~~ or chapter 4 OR 17 OF THIS TITLE, or  
32 any health care professional licensed according to title 32 ~~chapters~~  
33 CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29,  
34 33, 34, 35, 39, 41, ~~or~~ 42.  
35           ~~5.~~ 6. "Person" means an individual, partnership, corporation,  
36 limited liability company, entity, association, governmental subdivision  
37 or unit of a governmental subdivision, or a public or private organization  
38 of any character.  
39           ~~6.~~ 7. "Physically separated" means all space between a floor and  
40 ceiling ~~which~~ THAT is enclosed on all sides by solid walls or windows  
41 (exclusive of door or passageway) and independently ventilated from smoke-  
42 free areas, so that air within permitted smoking areas does not drift or  
43 get vented into smoke-free areas.  
44           ~~7.~~ 8. "Places of employment" means an enclosed area under the  
45 control of a public or private employer that employees normally frequent

1 during the course of employment, including office buildings, work areas,  
2 auditoriums, employee lounges, restrooms, conference rooms, meeting rooms,  
3 classrooms, cafeterias, hallways, stairs, elevators, health care  
4 facilities, private offices and vehicles owned and operated by the  
5 employer during working hours when the vehicle is occupied by more than  
6 one person. A private residence is not a ~~"place of employment"~~ unless  
7 it is used as a child care, adult day care, ~~or~~ or health care facility.

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

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

21 11. "Smoking":

22 (a) Means inhaling, exhaling, burning, ~~or~~ or carrying ~~or possessing~~  
23 any lighted ~~tobacco product, including cigars, cigarettes, pipe tobacco~~  
24 ~~and any other lighted tobacco product~~ OR HEATED CIGAR, CIGARETTE, PIPE,  
25 HOOKAH OR OTHER LIGHTED OR HEATED TOBACCO OR PLANT PRODUCT INTENDED FOR  
26 INHALATION, INCLUDING MARIJUANA, WHETHER NATURAL OR SYNTHETIC, IN ANY  
27 MANNER OR IN ANY FORM.

28 (b) INCLUDES USING AN ELECTRONIC SMOKING DEVICE THAT CREATES AN  
29 AEROSOL OR VAPOR, IN ANY MANNER OR IN ANY FORM, OR USING ANY ORAL SMOKING  
30 DEVICE TO CIRCUMVENT THE PROHIBITION OF SMOKING IN THIS SECTION.

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

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

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

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

44 2. Hotel and motel rooms that are rented to guests and are  
45 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~~ 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 AREAS WHERE  
19 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~~ other person or entity in control of an  
26 establishment, facility, ~~or~~ outdoor area may declare that entire  
27 establishment, facility, ~~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~~ 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~~ 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35           L. Smoke-free Arizona fund

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

43           2. All ~~money~~ MONIES in the smoke-free Arizona fund shall be used to  
44 enforce ~~the provisions of~~ this section, ~~provided however~~ EXCEPT that if  
45 ~~there is money remaining~~ MONIES REMAIN after the department has met its



1 enforcement obligations, ~~that~~ THE remaining ~~money~~ MONIES shall be  
2 deposited in the tobacco products tax fund and used for education programs  
3 to reduce and eliminate tobacco use and for no other purpose.

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

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

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

15 Sec. 3. Section 36-798, Arizona Revised Statutes, is amended to  
16 read:

17 36-798. Definitions

18 In this article, unless the context otherwise requires:

19 1. "Bar" means that portion of any premises licensed under section  
20 4-209, subsection B, paragraph 6, 7, 11, 12 or 14 that is primarily used  
21 for the selling, consumption or serving of alcoholic beverages and that is  
22 not primarily used for the consumption of food on the premises.

23 2. "Beedies" or "bidis" means a product containing tobacco that is  
24 wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros*  
25 *exculpra*), or any other product that is offered to, or purchased by,  
26 consumers as beedies or bidis.

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

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

31 5. "ELECTRONIC SMOKING DEVICE":

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

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

38 ~~5.~~ 6. "Minor" means a person who is under eighteen years of age.

39 ~~6.~~ 7. "Retail tobacco vendor" means a person who possesses tobacco  
40 or tobacco products for the purpose of selling them for consumption and  
41 not for resale.

42 ~~7.~~ 8. "Smokeless tobacco" includes shredded tobacco, snuff,  
43 cavendish and plug, twist and other tobacco products that are intended for  
44 oral use but not for smoking.

1           ~~8.~~ 9. "Smoking tobacco" includes any tobacco or tobacco product,  
2 other than cigarettes and cigars, that is intended to be smoked.

3           ~~9.~~ 10. "Tobacco products": ~~includes cigarettes, cigarette papers,~~  
4 ~~cigars, smokeless tobacco and smoking tobacco.~~

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

9           (b) INCLUDES A CIGARETTE, A CIGAR, PIPE TOBACCO, CHEWING TOBACCO,  
10 SHISHA, SNUFF, SNUS OR AN ELECTRONIC SMOKING DEVICE AND ANY COMPONENT,  
11 ACCESSORY, INSTRUMENT OR PARAPHERNALIA THAT IS USED IN THE CONSUMPTION OF  
12 A TOBACCO PRODUCT, WHETHER OR NOT IT CONTAINS NICOTINE, OR THAT IS SOLELY  
13 DESIGNED FOR THE SMOKING OR INGESTING OF TOBACCO OR SHISHA, INCLUDING A  
14 HOOKAH, A WATERPIPE, A FILTER, ROLLING PAPERS, A PIPE OR LIQUIDS USED IN  
15 ELECTRONIC SMOKING DEVICES.

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

19           ~~10.~~ 11. "Vending machine" means any mechanical, electrical or  
20 electronic device that, on insertion of money, tokens or any other form of  
21 payment, automatically dispenses tobacco products.

22           Sec. 4. Section 36-798.06, Arizona Revised Statutes, is amended to  
23 read:

24           36-798.06. Delivery sales prohibited; common carriers; civil  
25 penalty; forfeiture; unlawful practice;  
26 exceptions; violation; classification;  
27 definitions

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

29           1. Cause a tobacco product to be ordered or purchased by anyone  
30 other than a licensed person or a retailer who orders or purchases from a  
31 licensed person, including by ordering or purchasing a tobacco product.

32           2. Knowingly provide substantial assistance to a person who  
33 violates this section.

34           B. A common carrier shall not knowingly transport a tobacco product  
35 for a person who is in violation of this section.

36           C. Each order or purchase of a tobacco product in violation of  
37 subsection A, paragraph 1 of this section constitutes a separate violation  
38 under this section.

39           D. In addition to any other penalty, a person who violates this  
40 section is subject to all of the following:

41           1. A civil penalty in an amount not to exceed ~~five thousand dollars~~  
42 \$5,000 for each violation.

43           2. An injunction to restrain a threatened or actual violation of  
44 this section.

- 1           3. Recovery by this state for:
- 2           (a) The costs of any investigation related to a violation of this
- 3 section.
- 4           (b) The cost of expert witness fees in any action related to a
- 5 violation of this section.
- 6           (c) The cost of the action related to a violation of this section.
- 7           (d) Reasonable attorney fees.
- 8           4. All state tobacco taxes due under title 42, chapter 3, except as
- 9 prohibited under section 42-3402, and all transaction privilege or use
- 10 taxes due under title 42, chapter 5, including any penalties and interest.
- 11           E. All tobacco products that are seized for a violation of this
- 12 section shall be forfeited to the state and destroyed pursuant to section
- 13 42-1124.
- 14           F. A violation of this section is an unlawful practice under
- 15 section 44-1522 and is in addition to all other causes of action, remedies
- 16 and penalties that are available to this state. The attorney general may
- 17 investigate and take appropriate action pursuant to title 44, chapter 10,
- 18 article 7.
- 19           G. This section does not apply to either of the following:
- 20           1. The shipment of a tobacco product to a foreign trade zone that
- 21 is established under 19 United States Code ~~section 81~~ SECTIONS 81a THROUGH
- 22 81u and title 44, chapter 18 and that is located in this state if the
- 23 tobacco product is from outside of this country, was ordered by a
- 24 distributor in another state and is not distributed in this state.
- 25           2. A government employee who is acting in the course of the
- 26 employee's official duties.
- 27           H. A person who violates this section is guilty of a class 6
- 28 felony.
- 29           I. For the purposes of this section:
- 30           1. "ELECTRONIC SMOKING DEVICE":
- 31           (a) MEANS A DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR
- 32 VAPORIZED NICOTINE TO A PERSON WHO INHALES FROM THE DEVICE, INCLUDING AN
- 33 E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH, AND ANY COMPONENT,
- 34 PART OR ACCESSORY OF THE DEVICE, WHETHER OR NOT SOLD SEPARATELY.
- 35           (b) INCLUDES ANY SUBSTANCE THAT IS INTENDED TO BE AEROSOLIZED OR
- 36 VAPORIZED DURING THE USE OF THE DEVICE.
- 37           (c) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS, AS
- 38 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT, THAT
- 39 ARE AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.
- 40           ~~1.~~ 2. "Licensed person" means a person who is required to be
- 41 licensed under section 42-3401.
- 42           ~~2.~~ 3. "Order or purchase" means any of the following:
- 43           (a) By mail or delivery service.
- 44           (b) Through the internet or a computer network.
- 45           (c) By telephone.

1 (d) Through any other electronic method.  
2 ~~3.~~ 4. "Person" means an individual, partnership, firm,  
3 association, corporation, limited liability company or partnership, joint  
4 venture or other entity.  
5 ~~4.~~ 5. "Retailer" has the same meaning prescribed in section  
6 42-5001.  
7 ~~5.~~ 6. "Tobacco product" means all luxuries included in section  
8 42-3052, paragraphs 5, 6 and 7. Tobacco product does not include pipe  
9 tobacco, ~~or~~ cigars OR ELECTRONIC SMOKING DEVICES.  
10 Sec. 5. Title 36, chapter 6, article 14, Arizona Revised Statutes,  
11 is amended by adding section 36-798.07, to read:  
12 36-798.07. Delivery sales; electronic smoking devices; age  
13 verification service; registration; warning  
14 A. A RETAILER THAT SELLS, OFFERS FOR SALE, GIVES OR FURNISHES AN  
15 ELECTRONIC SMOKING DEVICE TO ANOTHER PERSON BY MAIL OR DELIVERY SERVICE,  
16 THROUGH AN INTERNET OR A COMPUTER NETWORK, BY TELEPHONE OR THROUGH ANY  
17 OTHER ELECTRONIC METHOD MUST USE AN INDEPENDENT, THIRD-PARTY AGE  
18 VERIFICATION SERVICE THAT COMPARES INFORMATION THAT IS AVAILABLE FROM  
19 PUBLIC RECORDS TO THE PERSONAL INFORMATION THAT IS ENTERED BY THE PERSON  
20 DURING THE ORDERING PROCESS AND THAT ESTABLISHES THAT THE PERSON IS  
21 EIGHTEEN YEARS OF AGE OR OLDER.  
22 B. A RETAILER THAT ENGAGES IN THE DELIVERY SALES OF AN ELECTRONIC  
23 SMOKING DEVICE AS PRESCRIBED BY SUBSECTION A OF THIS SECTION MUST DO THE  
24 FOLLOWING:  
25 1. REGISTER WITH THE ATTORNEY GENERAL'S OFFICE. THE RETAILER MUST  
26 PROVIDE THE FOLLOWING INFORMATION TO THE ATTORNEY GENERAL'S OFFICE:  
27 (a) THE INDIVIDUAL'S FULL NAME.  
28 (b) THE RETAILER'S TRADE NAME, IF ANY.  
29 (c) THE ADDRESS OF THE RETAILER'S PRINCIPAL PLACE OF BUSINESS AND  
30 OF ANY OTHER PLACE OF BUSINESS.  
31 (d) THE TELEPHONE NUMBER FOR EACH PLACE OF BUSINESS THAT IS LISTED  
32 IN SUBDIVISION (c) OF THIS PARAGRAPH.  
33 (e) THE RETAILER'S E-MAIL ADDRESS.  
34 (f) THE RETAILER'S WEBSITE ADDRESS.  
35 (g) THE NAME, ADDRESS AND TELEPHONE NUMBER FOR ANY AGENT IN THIS  
36 STATE THAT IS AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF THE RETAILER THAT  
37 IS REGISTERING.  
38 2. INCLUDE ON THE OUTSIDE OF EACH SHIPPING CONTAINER THAT CONTAINS  
39 AN ELECTRONIC SMOKING DEVICE THE FOLLOWING WARNING IN A CLEAR AND  
40 CONSPICUOUS MANNER:  
41 ARIZONA LAW PROHIBITS THE SALE OF ELECTRONIC SMOKING  
42 DEVICES TO A PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE AND  
43 REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES. YOU ARE LEGALLY  
44 RESPONSIBLE FOR ALL APPLICABLE UNPAID TAXES ON THESE PRODUCTS.

1           Sec. 6. Requirements for enactment; three-fourths vote  
2           Pursuant to article IV, part 1, section 1, Constitution of Arizona,  
3 section 36-601.01, Arizona Revised Statutes, as amended by section 2 of  
4 this act, is effective only on the affirmative vote of at least  
5 three-fourths of the members of each house of the legislature.