

REFERENCE TITLE: **smoking regulation; electronic smoking devices**

State of Arizona  
Senate  
Fifty-fourth Legislature  
Second Regular Session  
2020

# **SB 1391**

Introduced by  
Senator Carter

AN ACT

AMENDING SECTION 36-601.01, ARIZONA REVISED STATUTES; RELATING TO THE SMOKE-FREE ARIZONA ACT.

(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 MAY BE USED TO DELIVER ANY AEROSOLIZED OR  
10 VAPORIZED SUBSTANCE TO THE PERSON WHO INHALES FROM THE DEVICE, INCLUDING  
11 AN E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH.

12 (b) INCLUDES:

13 (i) ANY COMPONENT, PART OR ACCESSORY OF THE DEVICE.

14 (ii) ANY SUBSTANCE THAT IS INTENDED TO BE AEROSOLIZED OR VAPORIZED  
15 DURING THE USE OF THE DEVICE, WHETHER OR NOT THE SUBSTANCE CONTAINS  
16 NICOTINE.

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

21 ~~1.~~ 2. "Employee" means any person who performs any service on a  
22 full-time, part-time or contracted basis whether or not the person is  
23 denominated an employee, ~~OR~~ independent contractor or otherwise and  
24 whether or not the person is compensated or is a volunteer.

25 ~~2.~~ 3. "Employer" means a person, A business, A partnership, AN  
26 association, ~~the THIS state of Arizona~~ and its political subdivisions,  
27 ~~corporations~~ A CORPORATION, including a municipal ~~corporations~~  
28 CORPORATION, A trust, ~~or non-profit~~ A NONPROFIT entity that employs the  
29 services of one or more individual persons.

30 ~~3.~~ 4. "Enclosed area":

31 (a) Means all space between a floor and ceiling that is ~~enclosed on~~  
32 ~~all sides by permanent or temporary walls or windows (exclusive of~~  
33 ~~doorways), which extend from the floor to the ceiling. Enclosed area~~  
34 ~~BOUND ON AT LEAST TWO SIDES BY WALLS, DOORWAYS OR WINDOWS, WHETHER OPEN OR~~  
35 ~~CLOSED. FOR THE PURPOSES OF THIS SUBDIVISION, "WALL" INCLUDES ANY~~  
36 ~~RETRACTABLE DIVIDER, GARAGE DOOR OR OTHER PHYSICAL BARRIER, WHETHER~~  
37 ~~TEMPORARY OR PERMANENT AND WHETHER OR NOT CONTAINING OPENINGS OF ANY KIND.~~

38 (b) Includes a reasonable distance from any entrances, windows and  
39 ventilation systems so that persons entering or leaving the building or  
40 facility ~~shall not be~~ ARE NOT subjected to breathing tobacco smoke and so  
41 that tobacco smoke does not enter the building or facility through  
42 entrances, windows, ventilation systems or any other means.

43 ~~4.~~ 5. "Health care facility" means any enclosed area ~~utilized USED~~  
44 by any health care institution licensed ~~according PURSUANT to title 36~~  
45 ~~chapter 4, chapter 6~~ article 7, ~~OF THIS CHAPTER~~ or chapter 4 OR 17 OF

1     THIS TITLE, or any health care professional licensed ~~according~~ PURSUANT to  
2     title 32 ~~chapters~~ CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,  
3     19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, or 42.

4       5. 6. "Person" means an individual, partnership, corporation,  
5     limited liability company, entity, association, governmental subdivision  
6     or unit of a governmental subdivision, or a public or private organization  
7     of any character.

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

13       7. "Places of employment":

14       (a) Means an enclosed area under the control of a public or private  
15     employer that employees normally frequent during the course of employment,  
16     including office buildings, work areas, auditoriums, employee lounges,  
17     restrooms, conference rooms, meeting rooms, classrooms, cafeterias,  
18     hallways, stairs, elevators, health care facilities, private offices and  
19     vehicles owned and operated by the employer during working hours when the  
20     vehicle is occupied by more than one person.

21       (b) DOES NOT INCLUDE a private residence ~~is not a "place of~~  
22     ~~employment~~ unless it is used as a child care, adult day care, or health  
23     care facility.

24       9. "Public place":

25       (a) Means any enclosed area to which the public is invited or in  
26     which the public is permitted, including airports, banks, bars, common  
27     areas of apartment buildings, condominiums or other multifamily housing  
28     facilities, educational facilities, entertainment facilities or venues,  
29     health care facilities, hotel and motel common areas, laundromats, public  
30     transportation facilities, reception areas, restaurants, retail food  
31     production and marketing establishments, retail service establishments,  
32     retail stores, shopping malls, sports facilities, theaters, and waiting  
33     rooms.

34       (b) DOES NOT INCLUDE a private residence ~~is not a "public place"~~  
35     unless it is used as a child care, adult day care, or health care  
36     facility.

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

39       11. "Smoking":

40       (a) Means inhaling, exhaling, burning, or carrying ~~or possessing~~  
41     any lighted OR HEATED tobacco product, including cigars, cigarettes, ~~pipe~~  
42     ~~tobacco and any other lighted tobacco product~~ PIPES, HOOKAHS OR OTHER  
43     LIGHTED OR HEATED TOBACCO OR PLANT PRODUCTS INTENDED FOR INHALATION,  
44     INCLUDING MARIJUANA, WHETHER NATURAL OR SYNTHETIC, IN ANY MANNER OR IN ANY  
45     FORM.

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

4       12. "Sports facilities" means enclosed areas of sports pavilions,  
5 stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller  
6 and ice rinks, billiard halls, bowling alleys, ~~—~~ and other similar places  
7 where members of the general public assemble to engage in physical  
8 exercise, participate in athletic competition, ~~—~~ or witness sporting  
9 events.

10      13. "TOBACCO PRODUCT":

11      (a) MEANS ANY OF THE FOLLOWING:

12       (i) A PRODUCT CONTAINING, MADE OF OR DERIVED FROM TOBACCO OR  
13 NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY TO BE  
14 CONSUMED, WHETHER INHALED, ABSORBED OR INGESTED BY ANY OTHER MEANS,  
15 INCLUDING A CIGARETTE, A CIGAR, PIPE TOBACCO, SHISHA, BEEDIES, BIDIS,  
16 CHEWING TOBACCO, SNUFF OR SNUS.

17       (ii) AN ELECTRONIC SMOKING DEVICE AND ANY SUBSTANCE THAT MAY BE  
18 AEROSOLIZED OR VAPORIZED BY THE DEVICE, WHETHER OR NOT THE SUBSTANCE  
19 CONTAINS NICOTINE.

20       (iii) A COMPONENT, PART OR ACCESSORY OF ANY PRODUCT, ELECTRONIC  
21 SMOKING DEVICE OR SUBSTANCE THAT IS LISTED IN ITEM (i) OR (ii) OF THIS  
22 SUBDIVISION, WHETHER OR NOT ANY OF THESE CONTAIN TOBACCO OR NICOTINE,  
23 INCLUDING FILTERS, ROLLING PAPERS, BLUNT OR HEMP WRAPS AND PIPES.

24      (b) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS  
25 AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION, AS  
26 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG, AND COSMETIC ACT OR THE  
27 REGULATIONS ADOPTED PURSUANT TO THAT ACT.

28       ~~8.~~ 14. "Veteran and fraternal clubs" means a club as defined in  
29 ~~A.R.S. 4-101(7)(a)(b) or (c)~~ SECTION 4-101, PARAGRAPH 8, SUBDIVISION (a),  
30 (b) OR (c).

31       B. Smoking is prohibited in all public places and places of  
32 employment within ~~the~~ THIS state ~~of Arizona~~, except the following:

33       1. Private residences, except when used as a licensed child care,  
34 adult day care, ~~—~~ or health care facility.

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

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

42       ~~4. Veterans and fraternal clubs when they are not open to the~~  
43 ~~general public.~~

44       ~~5.~~ 4. Smoking when associated with a religious ceremony practiced  
45 pursuant to the American Indian religious freedom act of 1978.

1       6. 5. Outdoor patios so long as tobacco smoke does not enter areas  
2 where smoking is prohibited through entrances, windows, ventilation  
3 systems, or other means.

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

7       C. The prohibition on smoking in places of employment shall be  
8 communicated to all existing employees ~~by the effective date of this~~  
9 ~~section~~ and to all prospective employees ~~upon~~ ON their application for  
10 employment.

11       D. Notwithstanding any other provision of this section, an owner,  
12 operator, manager, or other person or entity in control of an  
13 establishment, facility, or outdoor area may declare that entire  
14 establishment, facility, or outdoor area as a nonsmoking place.

15       E. Posting of signs and ashtray removal.

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

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

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

28       F. ~~AN~~ employer may NOT discharge or retaliate against an  
29 employee because that employee exercises any rights afforded by this  
30 section or reports or attempts to prosecute a violation of this section.

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

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

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

41       3. Any member of the public may report a violation of this ~~law~~  
42 SECTION to the department. The department shall accept oral and written  
43 reports of violation and establish an ~~e-mail~~ EMAIL address(es) and  
44 toll-free telephone number(s) to be used exclusively for the purpose of

1 reporting violations. A person ~~shall~~ IS not ~~be~~ required to disclose the  
2 person's identity when reporting a violation.

3 4. If the department has reason to believe a violation of this ~~law~~  
4 **SECTION** exists, the department may enter ~~upon~~ ON and into any public place  
5 or place of employment for purposes of determining compliance with this  
6 ~~law~~ **SECTION**. However, the department may inspect public places where food  
7 or alcohol is served at any time to determine compliance with this ~~law~~  
8 **SECTION**.

9 5. If the department determines that a violation of this ~~law~~  
10 **SECTION** exists at a public place or place of employment, the department  
11 shall issue a notice of violation to the person who owns, manages,  
12 operates or otherwise controls the public place or place of employment.  
13 The notice shall include the nature of each violation, **THE** date and time  
14 each violation occurred, and **THE NAME OF THE** department contact person.

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

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

34 8. The department may apply for injunctive relief to enforce these  
35 provisions in the superior court in the county in which the violation  
36 occurred. The court may impose appropriate injunctive relief and impose a  
37 penalty of ~~not less than~~ AT LEAST \$100 but not more than \$500 for each  
38 violation. Each day that a violation occurs constitutes a separate  
39 violation. If the superior court finds the violations are ~~willful~~ WILFUL  
40 or evidence OF a pattern of noncompliance, the court may impose a fine OF  
41 up to ~~\$5000~~ \$5,000 per violation.

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

1       10. The department may delegate to a state agency or political  
2 subdivision of this state any functions, powers or duties under this ~~law~~  
3 **SECTION.**

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

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

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

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

23       K. A person who smokes where smoking is prohibited is guilty of a  
24 petty offense with a fine of ~~not less than fifty dollars~~ **AT LEAST \$50** and  
25 not more than ~~three hundred dollars~~ **\$300.**

26       L. **Smoke-free Arizona fund.**

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

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

40       3. Monies in this fund are continuously appropriated, are not  
41 subject to further approval, do not revert to the **STATE** general fund and  
42 are exempt from the provisions of ~~§36-190~~ **SECTION 35-190** relating to the  
43 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 **DOES NOT** repeal any  
4 existing ordinance or regulation that is more restrictive than this  
5 section.

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

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

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