

REFERENCE TITLE: **electronic smoking devices; tobacco sales**

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

SB 1501

Introduced by
Senators Carter: Bowie, Boyer, Brophy McGee, Dalessandro, Farnsworth D,
Pace, Quezada; Representatives Kavanagh, Udall

AN ACT

AMENDING SECTIONS 13-3622, 36-601.01, 36-798, 36-798.01, 36-798.02 AND 36-798.06, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-798.07, 36-798.08, 36-798.09 AND 36-798.10; AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 27; RELATING TO TOBACCO PRODUCTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

13-3622. Tobacco products: persons under the federal minimum age; classification; exceptions; definitions

A. A person who ~~knowingly~~ sells, gives or furnishes a tobacco product, ~~a vapor product or any instrument or paraphernalia that is solely designed for the smoking or ingestion of tobacco or shisha, including a hookah or waterpipe,~~ to a minor is guilty of a petty offense PERSON WHO IS UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT IS SUBJECT TO THE PENALTIES PRESCRIBED IN SECTION 36-798.01.

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

~~C. B. A minor~~ PERSON WHO IS UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND who misrepresents the ~~minor's~~ PERSON'S age to any OTHER person by means of a written instrument of identification with the intent to induce the OTHER person to sell, give or furnish a tobacco product, ~~a vapor product or any instrument or paraphernalia that is solely designed for the smoking or ingestion of tobacco or shisha, including a hookah or waterpipe, in violation of subsection A or B of this section~~ is guilty of a petty offense and, notwithstanding section 13-802, shall pay a fine of not more than ~~five hundred dollars~~ \$100.

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

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

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

~~E. D. For the purposes of this section:~~

~~1. "ELECTRONIC SMOKING DEVICE":~~

1 (a) MEANS ANY DEVICE THAT MAY BE USED TO DELIVER ANY AEROSOLIZED OR
2 VAPORIZED SUBSTANCE TO THE PERSON WHO INHALES FROM THE DEVICE, INCLUDING
3 AN E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH.

4 (b) INCLUDES:

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

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

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

13 ~~1.~~ 2. "Shisha" includes any mixture of tobacco leaf and honey,
14 molasses or dried fruit or any other sweetener.

15 ~~2.~~ 3. "Tobacco product":

16 (a) Means any of the following:

17 ~~(a) Cigars.~~

18 ~~(b) Cigarettes.~~

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

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

21 ~~(e) Chewing tobacco of any kind.~~

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

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

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

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

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

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

4 36-601.01. Smoke-free Arizona act

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

7 1. "ELECTRONIC SMOKING DEVICE":

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

11 (b) INCLUDES:

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

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

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

20 ~~1.~~ 2. "Employee" means any person who performs any service on a
21 full-time, part-time or contracted basis whether or not the person is
22 denominated an employee, ~~OR~~ independent contractor or otherwise and
23 whether or not the person is compensated or is a volunteer.

24 ~~2.~~ 3. "Employer" means a person, A business, A partnership, AN
25 association, ~~the THIS~~ state ~~of Arizona~~ and its political subdivisions,
26 ~~corporations~~ A CORPORATION, including a municipal ~~corporations~~
27 CORPORATION, A trust, ~~or non-profit~~ A NONPROFIT entity that employs the
28 services of one or more individual persons.

29 ~~3.~~ 4. "Enclosed area":

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

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

42 ~~4.~~ 5. "Health care facility" means any enclosed area ~~utilized~~ USED
43 by any health care institution licensed ~~according~~ PURSUANT to ~~title 36~~
44 ~~chapter 4, chapter 6~~ article 7, ~~OF THIS CHAPTER~~ or chapter 4 OR 17 OF
45 THIS TITLE, or any health care professional licensed ~~according~~ PURSUANT to

1 title 32 ~~chapters~~ CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,
2 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, ~~or~~ 42.

3 ~~5.~~ 6. "Person" means an individual, partnership, corporation,
4 limited liability company, entity, association, governmental subdivision
5 or unit of a governmental subdivision, or a public or private organization
6 of any character.

7 ~~6.~~ 7. "Physically separated" means all space between a floor and
8 ceiling ~~which~~ THAT is enclosed on all sides by solid walls or windows
9 (exclusive of door or passageway) and independently ventilated from
10 smoke-free areas, so that air within permitted smoking areas does not
11 drift or get vented into smoke-free areas.

12 ~~7.~~ 8. "Places of employment":

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

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

23 9. "Public place":

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

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

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

38 11. "Smoking":

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

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

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

13. "TOBACCO PRODUCT":

(a) MEANS ANY OF THE FOLLOWING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Posting of signs and ashtray removal.

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

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

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

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

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

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

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

3. Any member of the public may report a violation of this law SECTION to the department. The department shall accept oral and written reports of violation and establish an ~~e-mail~~ EMAIL address(es) and 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.

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

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

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

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

J. This ~~law~~ SECTION does not create any new private right of action ~~not~~ AND does ~~it~~ NOT extinguish any existing common law causes of action.

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

L. Smoke-free Arizona fund.

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

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

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

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

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

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

~~36-798.~~ Definitions

In this article, unless the context otherwise requires:

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

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

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

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

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

5. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

6. "ELECTRONIC SMOKING DEVICE":

(a) MEANS ANY DEVICE THAT MAY BE USED TO DELIVER ANY AEROSOLIZED OR VAPORIZED SUBSTANCE TO THE PERSON WHO INHALE FROM THE DEVICE, INCLUDING AN E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH.

(b) INCLUDES:

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

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

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

~~6.~~ 7. "Retail tobacco vendor":

(a) Means a person, ~~who possesses tobacco or tobacco products for the purpose of selling them for consumption and not for resale~~ PARTNERSHIP, JOINT VENTURE, SOCIETY, CLUB, TRUSTEE, TRUE ASSOCIATION, ORGANIZATION OR CORPORATION THAT OWNS, OPERATES OR MANAGES ANY TOBACCO RETAIL ESTABLISHMENT.

(b) DOES NOT INCLUDE THE NONMANAGEMENT EMPLOYEES OF ANY TOBACCO RETAIL ESTABLISHMENT.

8. "SELF-SERVICE DISPLAY" MEANS ANY DISPLAY FROM WHICH CUSTOMERS MAY SELECT A TOBACCO PRODUCT WITHOUT ASSISTANCE FROM THE RETAIL TOBACCO VENDOR OR THE RETAIL TOBACCO VENDOR'S AGENT OR EMPLOYEE AND WITHOUT A DIRECT PERSON-TO-PERSON TRANSFER BETWEEN THE PURCHASER AND THE RETAIL TOBACCO VENDOR OR RETAIL TOBACCO VENDOR'S AGENT OR EMPLOYEE, INCLUDING A VENDING MACHINE.

~~7-~~ 9. "Smokeless tobacco" includes shredded tobacco, snuff, cavendish and plug, twist and other tobacco products that are intended for oral use but not for smoking.

~~8-~~ 10. "Smoking tobacco" includes any tobacco or tobacco product, other than cigarettes and cigars, that is intended to be smoked.

~~9-~~ 11. "Tobacco ~~products~~ PRODUCT": ~~includes cigarettes, cigarette papers, cigars, smokeless tobacco and smoking tobacco.~~

(a) MEANS ANY OF THE FOLLOWING:

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

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

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

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

~~10-~~ 12. "Vending machine" means any mechanical, electrical or electronic device that, on insertion of money, tokens or any other form of payment, automatically dispenses tobacco products.

Sec. 4. Section 36-798.01, Arizona Revised Statutes, is amended to read:

36-798.01. Selling, furnishing, giving or providing tobacco products; prohibitions; penalties; compliance checks

A. It is unlawful for a retail tobacco vendor OR A RETAIL TOBACCO VENDOR'S REPRESENTATIVE, AGENT OR EMPLOYEE to sell, furnish, give or provide ~~beedies or bidis to a minor~~ A TOBACCO PRODUCT TO A PERSON WHO IS UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT in this state.

1 ~~B. Any person who violates this section is guilty of a class 3~~
2 ~~misdemeanor.~~

3 B. BEFORE DISTRIBUTING ANY TOBACCO PRODUCT, THE RETAIL TOBACCO
4 VENDOR OR THE RETAIL TOBACCO VENDOR'S REPRESENTATIVE, AGENT OR EMPLOYEE
5 SHALL VERIFY THAT THE PURCHASER IS AT LEAST THE MINIMUM AGE OF SALE FOR
6 TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT. EACH
7 RETAIL TOBACCO VENDOR OR RETAIL TOBACCO VENDOR'S REPRESENTATIVE, AGENT OR
8 EMPLOYEE SHALL EXAMINE THE PURCHASER'S GOVERNMENT-ISSUED PHOTOGRAPHIC
9 IDENTIFICATION. THIS VERIFICATION IS NOT REQUIRED FOR A PERSON WHO IS
10 THIRTY YEARS OF AGE OR OLDER. THE FACT THAT A PURCHASER APPEARED TO BE
11 THIRTY YEARS OF AGE OR OLDER DOES NOT CONSTITUTE A DEFENSE TO A VIOLATION
12 OF THIS SECTION.

13 C. IF A RETAIL TOBACCO VENDOR OR THE RETAIL TOBACCO VENDOR'S
14 REPRESENTATIVE, AGENT OR EMPLOYEE VIOLATES THIS SECTION OR SECTION 13-3622
15 OR 36-798.02, THE RETAIL TOBACCO VENDOR IS SUBJECT TO THE FOLLOWING
16 PENALTIES:

17 1. FOR A FIRST VIOLATION, A CIVIL PENALTY OF AT LEAST \$500 BUT NOT
18 MORE THAN \$750.

19 2. FOR A SECOND VIOLATION WITHIN A THIRTY-SIX-MONTH PERIOD, A CIVIL
20 PENALTY OF AT LEAST \$750 BUT NOT MORE THAN \$1,000, AND THE RETAIL TOBACCO
21 VENDOR IS PROHIBITED FROM DISTRIBUTING TOBACCO PRODUCTS FOR A MINIMUM OF
22 SEVEN DAYS.

23 3. FOR A THIRD VIOLATION WITHIN A THIRTY-SIX-MONTH PERIOD, A CIVIL
24 PENALTY OF AT LEAST \$1,000 BUT NOT MORE THAN \$1,500, AND THE RETAIL
25 TOBACCO VENDOR IS PROHIBITED FROM DISTRIBUTING TOBACCO PRODUCTS FOR A
26 MINIMUM OF THIRTY DAYS.

27 4. FOR A FOURTH OR ANY SUBSEQUENT VIOLATION WITHIN A
28 THIRTY-SIX-MONTH PERIOD, A CIVIL PENALTY OF AT LEAST \$1,000 BUT NOT MORE
29 THAN \$3,000, AND THE RETAIL TOBACCO VENDOR IS PROHIBITED FROM DISTRIBUTING
30 TOBACCO PRODUCTS FOR A PERIOD OF THREE YEARS.

31 D. IN ADDITION TO THE PENALTIES IMPOSED ON THE RETAIL TOBACCO
32 VENDOR FOR A VIOLATION OF THIS SECTION OR SECTION 13-3622 OR 36-798.02,
33 ANY PERSON FOUND TO HAVE VIOLATED THIS SECTION OR SECTION 13-3622 OR
34 36-798.02 WHILE ACTING AS A NONMANAGEMENT AGENT OR EMPLOYEE OF A RETAIL
35 TOBACCO VENDOR IS SUBJECT TO NONCRIMINAL, NONMONETARY PENALTIES, INCLUDING
36 EDUCATION CLASSES OR COMMUNITY SERVICE.

37 E. THE RETAIL TOBACCO VENDOR IS SUBJECT TO AT LEAST TWO UNANNOUNCED
38 COMPLIANCE CHECKS ANNUALLY. THE DEPARTMENT OR ITS AUTHORIZED DESIGNEE
39 SHALL CONDUCT COMPLIANCE CHECKS BY ENGAGING PERSONS WHO ARE AT LEAST
40 EIGHTEEN AND UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY
41 THE FEDERAL FOOD, DRUG, AND COSMETIC ACT TO ENTER THE TOBACCO RETAIL
42 ESTABLISHMENT TO ATTEMPT TO PURCHASE TOBACCO PRODUCTS. UNANNOUNCED
43 FOLLOW-UP COMPLIANCE CHECKS OF ALL NONCOMPLIANT RETAIL TOBACCO VENDORS ARE
44 REQUIRED WITHIN THREE MONTHS AFTER ANY VIOLATION OF ANY PROVISION OF THIS

ARTICLE. THE RESULTS OF ALL COMPLIANCE CHECKS SHALL BE PUBLISHED BY THE DEPARTMENT AT LEAST ANNUALLY AND MADE AVAILABLE TO THE PUBLIC ON REQUEST.

F. IN ADDITION TO ANY OTHER PENALTY, A TOBACCO RETAILER WHO VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY FEDERAL OR STATE LAW RELATING TO TOBACCO PRODUCT SALES IS SUBJECT TO THE PENALTIES PRESCRIBED IN THIS SECTION, INCLUDING CIVIL PENALTIES AND THE PROHIBITION FROM DISTRIBUTING TOBACCO PRODUCTS AS PRESCRIBED IN SUBSECTION C OF THIS SECTION.

G. THE DEPARTMENT SHALL DEPOSIT ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION IN THE STATE GENERAL FUND.

Sec. 5. Section 36-798.02, Arizona Revised Statutes, is amended to read:

36-798.02. Self-service display sales of tobacco products; civil penalties

A. A person ~~shall~~ MAY not sell tobacco products through a ~~vending machine~~ SELF-SERVICE DISPLAY unless the ~~vending machine~~ SELF-SERVICE DISPLAY is located in either:

1. A bar THAT DOES NOT ALLOW PERSONS TO ENTER WHO ARE UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

2. An employee lounge area that is not open to the public and the business in which the lounge area is located does not employ ~~minors~~ PERSONS WHO ARE UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

~~B. A sign measuring at least eighty square inches shall be obviously affixed to the front of each vending machine. The sign shall state in block letters, it is illegal for a minor to purchase cigarettes or tobacco products and, upon conviction, a fine of up to three hundred dollars may be imposed.~~

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO CIGARS OR PIPE TOBACCO THAT IS SOLD OR DISPLAYED BY A PERSON WHO PRIMARILY ENGAGES IN THE BUSINESS OF EITHER SELLING CIGARS, PIPE TOBACCO, CIGAR-RELATED ACCESSORIES OR PIPE TOBACCO-RELATED ACCESSORIES OR RENTING ON-PREMISES HUMIDORS OR OTHER STORAGE UNITS.

C. This article does not invalidate an ordinance of or prohibit the adoption of an ordinance by a county, city or town to further restrict SELF-SERVICE DISPLAYS OR the location of ~~vending machines or specify different wording for the vending machines signs as required by subsection B of this section~~ SELF-SERVICE DISPLAYS.

D. A person who violates this section is ~~guilty of a petty offense~~ SUBJECT TO THE PENALTIES PRESCRIBED IN SECTION 36-798.01.

1 Sec. 6. Section 36-798.06, Arizona Revised Statutes, is amended to
2 read:

3 36-798.06. Delivery sales prohibited; common carriers;
4 penalties; forfeiture; unlawful practice;
5 exceptions; violation; classification;
6 definitions

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

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

11 2. Knowingly provide substantial assistance to a person who
12 violates this section.

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

15 C. Each order or purchase of a tobacco product in violation of
16 subsection A, paragraph 1 of this section constitutes a separate violation
17 under this section.

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

20 1. A civil penalty in an amount not to exceed ~~five thousand dollars~~
21 **\$5,000** for each violation.

22 2. An injunction to restrain a threatened or actual violation of
23 this section.

24 3. Recovery by this state for:

25 (a) The costs of any investigation related to a violation of this
26 section.

27 (b) The cost of expert witness fees in any action related to a
28 violation of this section.

29 (c) The cost of the action related to a violation of this section.

30 (d) Reasonable attorney fees.

31 4. All state tobacco taxes due under title 42, chapter 3, except as
32 prohibited under section 42-3402, and all transaction privilege or use
33 taxes due under title 42, chapter 5, including any penalties and interest.

34 E. All tobacco products that are seized for a violation of this
35 section shall be forfeited to the state and destroyed pursuant to section
36 42-1124.

37 F. A violation of this section is an unlawful practice under
38 section 44-1522 and is in addition to all other causes of action, remedies
39 and penalties that are available to this state. The attorney general may
40 investigate and take appropriate action pursuant to title 44, chapter 10,
41 article 7.

42 G. This section does not apply to either of the following:

43 1. The shipment of a tobacco product to a foreign trade zone that
44 is established under 19 United States Code ~~section 81~~ **SECTIONS 81a THROUGH**
45 **81u** and title 44, chapter 18 and that is located in this state if the

1 tobacco product is from outside of this country, was ordered by a
2 distributor in another state and is not distributed in this state.

3 2. A government employee who is acting in the course of the
4 employee's official duties.

5 H. A person who violates this section is guilty of a class 6
6 felony.

7 I. For the purposes of this section:

8 1. "Licensed person" means a person who is required to be licensed
9 under section 42-3401.

10 2. "Order or purchase" means any of the following:

11 (a) By mail or delivery service.

12 (b) Through the internet or a computer network.

13 (c) By telephone.

14 (d) Through any other electronic method.

15 3. "Person" means an individual, partnership, firm, association,
16 corporation, limited liability company or partnership, joint venture or
17 other entity.

18 4. "Retailer" has the same meaning prescribed in section 42-5001.

19 ~~5. "Tobacco product" means all luxuries included in section~~
20 ~~42-3052, paragraphs 5, 6 and 7. Tobacco product does not include pipe~~
21 ~~tobacco or cigars.~~

22 Sec. 7. Title 36, chapter 6, article 14, Arizona Revised Statutes,
23 is amended by adding sections 36-798.07, 36-798.08, 36-798.09 and
24 36-798.10, to read:

25 36-798.07. Tobacco retail sales licenses; requirements; fees;
26 penalties

27 A. BEGINNING JANUARY 1, 2022, A RETAIL TOBACCO VENDOR MAY NOT
28 DISTRIBUTE TOBACCO PRODUCTS IN THIS STATE WITHOUT A VALID TOBACCO RETAIL
29 SALES LICENSE. A RETAIL TOBACCO VENDOR THAT DISTRIBUTES TOBACCO PRODUCTS
30 IN THIS STATE SHALL SECURE FOR EACH LOCATION, AND DISPLAY AT ALL TIMES, A
31 TOBACCO RETAIL SALES LICENSE ISSUED BY THE DEPARTMENT BEFORE ENGAGING OR
32 CONTINUING TO ENGAGE IN SUCH BUSINESS.

33 B. THE DEPARTMENT SHALL ESTABLISH FEES FOR AN INITIAL TOBACCO
34 RETAIL SALES LICENSE AND THE RENEWAL OF THAT LICENSE. THE DEPARTMENT
35 SHALL DEPOSIT THE FEES COLLECTED PURSUANT TO THIS SECTION IN THE TOBACCO
36 RETAIL SALES LICENSING FUND ESTABLISHED BY SECTION 36-798.09.

37 C. A TOBACCO RETAIL SALES LICENSE IS VALID FOR TWO YEARS, UNLESS
38 THE LICENSE IS SUSPENDED OR REVOKED BY THE DEPARTMENT OR THE DEPARTMENT'S
39 DESIGNEE. A TOBACCO RETAIL SALES LICENSE MAY NOT BE RENEWED IF THE RETAIL
40 TOBACCO VENDOR HAS ANY OUTSTANDING PENALTIES PURSUANT TO THIS ARTICLE.
41 THE DEPARTMENT MAY RECEIVE AND REVIEW TOBACCO RETAIL SALES LICENSE
42 APPLICATIONS ELECTRONICALLY.

43 D. IF A RETAIL TOBACCO VENDOR APPLIES FOR A TOBACCO RETAIL SALES
44 LICENSE FROM THE DEPARTMENT FOR A LOCATION THAT IS WITHIN THE JURISDICTION
45 OF A LOCAL LICENSING AUTHORITY, THE DEPARTMENT MAY NOT ISSUE A TOBACCO

1 RETAIL SALES LICENSE TO THE RETAIL TOBACCO VENDOR UNTIL THE RETAIL TOBACCO
2 VENDOR HAS OBTAINED THE REQUIRED LOCAL LICENSE AND HAS PROVIDED A COPY OF
3 THE LOCAL LICENSE TO THE DEPARTMENT.

4 E. A TOBACCO RETAIL SALES LICENSE MAY NOT BE ISSUED OR RENEWED TO A
5 RETAIL TOBACCO VENDOR LICENSEE UNTIL THE RETAIL TOBACCO VENDOR SIGNS A
6 FORM STATING THAT THE RETAIL TOBACCO VENDOR HAS READ THIS ARTICLE AND HAS
7 PROVIDED TRAINING TO ALL EMPLOYEES ON THE SALE OF TOBACCO PRODUCTS. THE
8 TRAINING SHALL INCLUDE THE FOLLOWING INFORMATION:

9 1. THAT IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO PERSONS WHO ARE
10 UNDER THE MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS AS SET BY THE FEDERAL
11 FOOD, DRUG, AND COSMETIC ACT.

12 2. THE TYPES OF IDENTIFICATION THAT ARE LEGALLY ACCEPTABLE FOR THE
13 PROOF OF AGE.

14 3. THAT SALES TO PERSONS WHO ARE UNDER THE MINIMUM AGE OF SALE FOR
15 TOBACCO PRODUCTS AS SET BY THE FEDERAL FOOD, DRUG, AND COSMETIC ACT
16 SUBJECTS THE RETAIL TOBACCO VENDOR TO PENALTIES.

17 F. THE TOBACCO RETAIL SALES LICENSE IS NONTRANSFERABLE. IF A
18 RETAIL TOBACCO VENDOR CEASES TO BE A RETAILER AT THE LICENSED RETAIL
19 LOCATION BY REASON OF DISCONTINUATION, SALE OR TRANSFER OF THE RETAIL
20 TOBACCO VENDOR'S BUSINESS, THE RETAIL TOBACCO VENDOR SHALL NOTIFY THE
21 DEPARTMENT IN WRITING AT THE TIME THE DISCONTINUANCE, SALE OR TRANSFER
22 TAKES EFFECT.

23 G. ANY BUSINESS FOUND TO BE SELLING TOBACCO PRODUCTS WITHOUT A
24 LICENSE IS SUBJECT TO A CIVIL PENALTY OF AT LEAST \$500 BUT NOT MORE THAN
25 \$1,000 FOR A FIRST OR SECOND VIOLATION WITHIN A THIRTY-SIX-MONTH PERIOD.
26 THE DEPARTMENT SHALL ISSUE A BUSINESS THAT RECEIVES A SECOND VIOLATION
27 WITHIN A THIRTY-SIX-MONTH PERIOD A CEASE AND DESIST ORDER PROHIBITING THE
28 BUSINESS FROM SELLING TOBACCO PRODUCTS AND NOTIFYING THE BUSINESS OWNER
29 THAT THE BUSINESS IS INELIGIBLE TO RECEIVE A TOBACCO RETAIL SALES LICENSE
30 FOR A PERIOD OF THREE YEARS AFTER THE DATE OF THE SECOND VIOLATION.

31 H. THIS SECTION DOES NOT AFFECT A LOCAL GOVERNMENT'S ABILITY TO
32 REQUIRE RETAIL LICENSURE FOR THE SALE OF TOBACCO PRODUCTS.

33 36-798.08. Rulemaking; delegation of authority;
34 collaboration; reporting requirements

35 A. THE DEPARTMENT SHALL ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6
36 TO CARRY OUT THIS ARTICLE.

37 B. THE DEPARTMENT MAY DELEGATE THE ENFORCEMENT AND COMPLIANCE
38 INSPECTIONS REQUIRED UNDER THIS ARTICLE TO ANY COUNTY THAT ACCEPTS THIS
39 DELEGATION.

40 C. THE DEPARTMENT MAY COLLABORATE WITH AND USE THE FINDINGS OF
41 OTHER AGENCIES, INCLUDING THE ATTORNEY GENERAL'S OFFICE, LOCAL LICENSING
42 AUTHORITIES AND LAW ENFORCEMENT, TO CARRY OUT THE OBLIGATIONS OF THIS
43 ARTICLE AND TO ENSURE THAT THE COMPLAINTS RECEIVED BY OTHER AGENCIES OR
44 LOCAL LICENSING AUTHORITIES ARE FORWARDED TO THE DEPARTMENT FOR TIMELY
45 INVESTIGATION AND ACTION.

D. A LOCAL LICENSING AUTHORITY OR ANY LAW ENFORCEMENT OR OTHER LOCAL ENTITY CONDUCTING COMPLIANCE CHECKS TO ASSESS RETAILER COMPLIANCE OF THE MINIMUM LEGAL SALES AGE FOR TOBACCO PRODUCTS SHALL REPORT THE COMPLIANCE CHECK RESULTS TO THE DEPARTMENT. ANY VIOLATION SHALL BE COUNTED AS A VIOLATION OF THE VENDOR'S TOBACCO RETAIL SALES LICENSE.

36-798.09. Tobacco retail sales licensing fund

THE TOBACCO RETAIL SALES LICENSING FUND IS ESTABLISHED CONSISTING OF LICENSING FEES COLLECTED PURSUANT TO THIS ARTICLE. THE DEPARTMENT SHALL ADMINISTER THE FUND. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, NINETY PERCENT OF ALL LICENSING FEES COLLECTED UNDER THIS ARTICLE IN THE TOBACCO RETAIL SALES LICENSING FUND AND THE REMAINING TEN PERCENT IN THE STATE GENERAL FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL BE USED TO ADMINISTER AND ENFORCE THIS ARTICLE.

36-798.10. Local jurisdictions: regulation of tobacco products

THIS ARTICLE DOES NOT LIMIT A LOCAL JURISDICTION FROM REGULATING TOBACCO PRODUCTS.

Sec. 8. Title 44, chapter 9, Arizona Revised Statutes, is amended by adding article 27, to read:

ARTICLE 27. ADVERTISING TOBACCO PRODUCTS

44-1383. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ELECTRONIC SMOKING DEVICE":

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

(b) INCLUDES:

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

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

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

2. "SCHOOL" MEANS A PUBLIC OR PRIVATE ELEMENTARY SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL OR HIGH SCHOOL.

3. "TOBACCO PRODUCT":

(a) MEANS ANY OF THE FOLLOWING:

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

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

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

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

12 44-1383.01. Tobacco product advertising; prohibition near
13 schools and playgrounds; local standards

14 A. A PERSON MAY NOT ADVERTISE OR CAUSE TO BE ADVERTISED A TOBACCO
15 PRODUCT, INCLUDING AN ELECTRONIC SMOKING DEVICE, ON AN OUTDOOR BILLBOARD
16 THAT IS LOCATED WITHIN ONE THOUSAND FEET OF A SCHOOL OR PUBLIC PLAYGROUND.

17 B. THIS SECTION SETS FORTH MINIMUM STATE RESTRICTIONS ON THE
18 ADVERTISEMENT OF TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES,
19 ON OUTDOOR BILLBOARDS NEAR SCHOOLS AND PUBLIC PLAYGROUNDS AND DOES NOT
20 PREEMPT OR OTHERWISE PROHIBIT THE ADOPTION OF A LOCAL STANDARD THAT
21 IMPOSES A MORE RESTRICTIVE OR COMPLETE BAN ON BILLBOARD ADVERTISING OR ON
22 BILLBOARD ADVERTISING RELATING TO TOBACCO PRODUCTS, INCLUDING ELECTRONIC
23 SMOKING DEVICES. A LOCAL STANDARD THAT IMPOSES A MORE RESTRICTIVE OR
24 COMPLETE BAN ON BILLBOARD ADVERTISING OR ON BILLBOARD ADVERTISING RELATING
25 TO TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES, CONTROLS IF
26 THERE IS AN INCONSISTENCY BETWEEN THIS SECTION AND THE LOCAL STANDARD.

27 C. THIS SECTION DOES NOT DO EITHER OF THE FOLLOWING:

28 1. PROHIBIT THE DISPLAY WITHIN ONE THOUSAND FEET OF A SCHOOL OR
29 PUBLIC PLAYGROUND OF A MESSAGE OR ADVERTISEMENT OPPOSING THE USE OF
30 TOBACCO PRODUCTS.

31 2. ALLOW AN ADVERTISEMENT WITHIN ONE THOUSAND FEET OF A SCHOOL OR
32 PLAYGROUND THAT PROMOTES THE USE OF TOBACCO PRODUCTS EVEN IF THE
33 ADVERTISEMENT INCLUDES A MESSAGE OPPOSING THE USE OF TOBACCO PRODUCTS
34 WITHIN THE ADVERTISEMENT.

35 Sec. 9. Requirements for enactment; three-fourths vote

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