



ARIZONA HOUSE OF REPRESENTATIVES

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House: HHS DP 9-0-0-0

HB 2125: electronic smoking devices; retail licensing

Sponsor: Representative Udall, LD 25

Caucus & COW

Overview

Prescribes age requirements, penalties, restrictions and licensing requirements relating to the purchase and sale of tobacco products.

History

A person who knowingly sells, gives or furnishes cigars, cigarettes or cigarette papers or smoking and chewing tobacco (tobacco products), a vapor product or any instrument or paraphernalia that is specifically designed for the smoking or ingestion of tobacco or shisha, including hookah or waterpipe, to a minor is guilty of a petty offense.

A minor who buys or possesses or knowingly accepts or receives tobacco product, vapor product or any instrument or paraphernalia that is specifically designed for the smoking or ingestion of tobacco or shisha, including hookah or waterpipe, is guilty of a petty offense.

A minor who misrepresents their 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 such products or instruments is guilty of a petty offense and is required to pay a fine of no more than \$500 ([A.R.S. § 13-3622](#)).

In 2019, [The Federal Food, Drug, and Cosmetic Act \(FDCA\)](#) was amended by [legislation](#) which established that it is unlawful for any retailer to sell tobacco products to any person younger than 21 years of age.

Provisions

Arizona Criminal Code

1. Conforms the minimum legal age for the sale of tobacco products or electronic smoking devices to the federal minimum age of sale for tobacco products. (Sec. 1, 2)
2. Makes, to a petty offence and a maximum fine of \$100 an underage person who uses an ID to misrepresent the person's age with the intent to induce the other person to sell, give or furnish a tobacco product or electronic smoking device. (Sec. 1)
3. Eliminates the criteria, for classification as a petty offense, that a person sells, gives or furnishes a tobacco product to an underage person knowingly and lowers the maximum fine from \$500 to \$100. (Sec. 1)
4. Deletes the classification, as guilty of a petty offense, of a minor who buys, possesses or knowingly accepts or receives a tobacco product, vapor product or instrument designed for tobacco or shisha ingestion and the related minimum fine of \$100 or 30 hours of community restitution for an offense involving an instrument of paraphernalia. (Sec. 1)

☐ Prop 105 (45 votes)

☐ Prop 108 (40 votes)

☐ Emergency (40 votes)

☐ Fiscal Note

5. Removes the stipulation that cigars, cigarettes, cigarette papers, smoking or chewing used for religious use does not apply to the specified criminal penalties. (Sec.1)
6. Eliminates the stipulation that a tobacco product, shisha instrument or paraphernalia that is possessed by a minor as a gift or souvenir for the minor and does not use or intend to use the instrument or paraphernalia for tobacco or shisha does not apply to the specified criminal penalties. (Sec. 1)

Furnishing of Tobacco Products

7. Specifies that before distributing any tobacco product, the retail tobacco vendor or their representative, agent or employee must verify that the purchaser is at least the minimum age of sale for tobacco products as set by the FDCA. (Sec. 3)
8. Requires each tobacco vendor or their representative, agent or employee to examine the purchaser's government-issued photographic identification. (Sec. 3)
9. Stipulates that this verification is not required for a person who is 30 years old or older or the fact that a purchaser appeared to be 30 years old or older does not constitute a defense to a violation. (Sec. 3)
10. Subjects a retail tobacco vendor or their representative, employee or agent to the following civil penalties:
 - a) For a first violation, at least \$500 but not more than \$750;
 - b) For a second violation within a 36-month period, at least \$750 but not more than \$1,000 and the retail tobacco vendor is prohibited from distributing tobacco products for at least seven days;
 - c) For a third violation within a 36-month period, at least \$1,000 but not more than \$1,500 and the retail tobacco vendor is prohibited from distributing tobacco products for a period of 30 days; and
 - d) For a fourth or any subsequent violation within a 36-month period, at least \$1,000 but not more than \$3,000 and the retail tobacco vendor is prohibited from distributing tobacco for a period of three years. (Sec. 3)
11. States that in addition to the penalties imposed on the retail tobacco vendor for a violation pursuant to statute, any person acting as a nonmanagement agent or employee of a retail tobacco vendor is subject to noncriminal, nonmonetary penalties, including education classes or community service. (Sec. 3)
12. Specifies that a person who sells, gives or furnishes a tobacco product to a person who is under the minimum age of sale for tobacco products as set by the FDCA is subject to the aforementioned penalties. (Sec. 1)
13. Subjects the retail tobacco vendor to at least two annual unannounced compliance checks. (Sec. 3)
14. Requires the Department of Health Services (DHS) or its authorized designee to conduct compliance checks by engaging individuals who are at least 18 and under the minimum age of sale for tobacco products as set by the FDCA to enter the tobacco retail establishment to purchase tobacco products. (Sec. 3)
15. Specifies that unannounced follow-up compliance checks of all noncompliant retail tobacco vendors are required within three months after any violation. (Sec. 3)
16. Directs DHS to publish the results of all compliance checks at least annually and make the results available to the public on request. (Sec. 3)

17. States that in addition to any other penalty, a tobacco retailer that violates any provisions, federal or state laws relating to tobacco product sales is subject to the prescribed penalties, including civil penalties and the prohibition from distributing tobacco products as prescribed in statute. (Sec. 3)
18. Requires DHS to deposit all collected civil penalties in the state General Fund. (Sec. 3)

Self-Service Display Sales of Tobacco Products

19. Specifies that a person may not sell tobacco products through a self-service display unless the self-service display is located in either:
 - a) A bar that does not allow persons to enter who are under the minimum age of sale for tobacco products as set by the FDCA; or
 - b) An employee lounge area that is not open to the public and the business in which the lounge area is located does not employ persons who are under the minimum age of sale for tobacco products as set by the FDCA. (Sec. 4)
20. Removes the following requirements:
 - a) A sign measuring at least 80 square inches must be obviously affixed to the front of each vending machine;
 - b) The sign must state in block letters it is illegal for a minor to purchase cigarettes or tobacco products and upon conviction a fine of up to \$300 may be imposed. (Sec. 4)
21. Excludes 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 unit from the aforementioned provisions. (Sec. 4)
22. Specifies that these provisions do 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 self-service displays. (Sec. 4)
23. States that a person who violates these provisions are subject to the aforementioned penalties. (Sec. 4)

DHS Regulations

24. Prohibits, beginning January 1, 2024 a retail tobacco vendor from distributing tobacco products in Arizona without a valid tobacco retail sales license (license). (Sec. 6)
25. Requires a retail tobacco vendor that distributes tobacco products in Arizona to secure for each location a license issued by DHS to be displayed at all times before engaging in business. (Sec. 6)
26. Directs DHS to establish fees for an initial license and renewal of that license. (Sec. 6)
27. Requires DHS to deposit the collected fees into the Tobacco Retail Licensing Fund. (Sec. 6)
28. Stipulates that a license is valid for two years unless the license is suspended or revoked by DHS or their designee and is nontransferable. (Sec. 6)
29. Prohibits a license from being renewed if the retail tobacco vendor has any outstanding penalties. (Sec. 6)
30. Allows DHS to receive and review license applications electronically. (Sec. 6)
31. Specifies that if a retail tobacco vendor applies for a license for a location that is within the jurisdiction of a local licensing authority, DHS may not issue a license to the retail tobacco vendor until they obtain the required local license and provide a copy of the local license to DHS. (Sec. 6)

32. Prohibits a license from being issued or renewed to a retail tobacco vendor until they sign a form stating that they have read these provisions and have provided training to all employees on the sale of tobacco products. (Sec. 6)
33. Outlines the type of information that should be included in the training to employees on the sale of tobacco products. (Sec. 6)
34. Specifies that if a retail tobacco vendor ceases to be a retailer at the licensed retail location by reason of discontinuation, sale or transfer of the retail tobacco vendors business, they must notify DHS in writing at the time the discontinuance, sale or transfer takes effect. (Sec. 6)
35. Subjects any business found to be selling tobacco products without a license to a civil penalty of at least \$500 but not more than \$1,000 for a first or second violation within a 36-month period. (Sec. 6)
36. Requires DHS to issue a cease-and-desist order to a business that received a second violation within a 36-month period prohibiting the business from selling tobacco products and notify the business owner that their business is ineligible to receive a license for a period of three years after the date of the second violation. (Sec. 6)
37. Stipulates that these provisions do not limit a local government's ability to require retail licensure for the sale of tobacco products. (Sec. 6)
38. Requires DHS to adopt rules and delegate the enforcement and compliance inspections to any county that accepts this delegation. (Sec. 6)
39. Allows DHS to collaborate with and use findings of other agencies, including the Attorney General's office, local licensing authorities and law enforcement to carry out its obligations and ensure that complaints received by other agencies or authorities are forwarded to them for timely investigation and action. (Sec. 6)
40. Directs a local licensing authority, law enforcement or other local entity conducting compliance checks to assess retail tobacco vendor compliance of the minimum legal sales age for tobacco products to report the compliance check results to DHS. (Sec. 6)
41. Specifies that any violation must be counted as a violation of the retail tobacco vendor's license. (Sec. 6)

Tobacco Retail Sales Licensing Fund (Fund)

42. Establishes the Fund to consist of collected licensing fees and be administered by DHS. (Sec. 6)
43. Directs DHS to deposit 90 percent of all collected licensing fees into the Fund and the remaining monies into state General Fund. (Sec. 6)
44. Specifies that monies in the fund are subject to appropriation and to be used to administer and enforce these provisions. (Sec. 6)

Miscellaneous

45. Defines an *electronic smoking device* as:
 - a) 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) Any component, part or accessory of the device; or
 - c) Any substance that is intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. (Sec. 1, 2)
46. Modifies the definition of *tobacco product* to:

- a) Mean 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, cigar, pipe tobacco, shisha, beedies, bidis, chewing tobacco, snuff or snus;
 - b) Mean an electronic smoking device and any substance that may be aerosolized or vaporized by the device, whether or not the substance contains nicotine; and
 - c) A component, part or accessory of any product, electronic smoking device or specified substance, whether or not any of these contain tobacco or nicotine, including filters, rolling papers, blunts, hemp wraps and pipes. (Sec. 1)
47. Excludes, from the definition of *tobacco products* or *electronic smoking device*, drugs, devices or combination products for sale by the U.S. Food and Drug Administration, as defined by the FDCA or related regulations. (Sec. 1)
48. Deletes the definition of *vapor product*. (Sec. 1)
49. Defines the following terms:
- a) *Department*; and
 - b) *Self-service display*
50. Modifies *retail tobacco vendor*. (Sec. 2)
51. Removes *minor*. (Sec. 2)
52. Removes the definition of *tobacco product* as it relates to penalties, exceptions and unlawful practices of tobacco products. (Sec. 5)
53. States that these provisions do not limit a local government from regulating tobacco products. (Sec. 6)
54. Makes technical and conforming changes. (Sec. 1, 2)