

House Engrossed

electronic smoking devices; retail licensing

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2125

AN ACT

AMENDING SECTIONS 13-3622, 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; RELATING TO TOBACCO PRODUCTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 13-3622. Tobacco products; persons under the federal minimum
5 age; classification; exceptions; definitions

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

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

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

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

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

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

1 ~~E.~~ D. For the purposes of this section:
2 1. "ELECTRONIC SMOKING DEVICE":
3 (a) MEANS ANY DEVICE THAT MAY BE USED TO DELIVER ANY AEROSOLIZED OR
4 VAPORIZED SUBSTANCE TO THE PERSON WHO INHALES FROM THE DEVICE, INCLUDING
5 AN E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH.
6 (b) INCLUDES:
7 (i) ANY COMPONENT, PART OR ACCESSORY OF THE DEVICE.
8 (ii) ANY SUBSTANCE THAT IS INTENDED TO BE AEROSOLIZED OR VAPORIZED
9 DURING THE USE OF THE DEVICE, WHETHER OR NOT THE SUBSTANCE CONTAINS
10 NICOTINE.
11 (c) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS
12 AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION, AS
13 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG, AND COSMETIC ACT OR THE
14 REGULATIONS ADOPTED PURSUANT TO THAT ACT.
15 ~~1.~~ 2. "Shisha" includes any mixture of tobacco leaf and honey,
16 molasses or dried fruit or any other sweetener.
17 ~~2.~~ 3. "Tobacco product":
18 (a) Means any of the following:
19 ~~(a) Cigars.~~
20 ~~(b) Cigarettes.~~
21 ~~(c) Cigarette papers of any kind.~~
22 ~~(d) Smoking tobacco of any kind.~~
23 ~~(e) Chewing tobacco of any kind.~~
24 ~~3. "Vapor product" means a noncombustible tobacco-derived product~~
25 ~~containing nicotine that employs a mechanical heating element, battery or~~
26 ~~circuit, regardless of shape or size, that can be used to heat a liquid~~
27 ~~nicotine solution contained in cartridges. Vapor product does not include~~
28 ~~any product that is regulated by the United States food and drug~~
29 ~~administration under chapter V of the federal food, drug and cosmetic act.~~
30 (i) A PRODUCT CONTAINING, MADE OF OR DERIVED FROM TOBACCO OR
31 NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY TO BE
32 CONSUMED, WHETHER INHALED, ABSORBED OR INGESTED BY ANY OTHER MEANS,
33 INCLUDING A CIGARETTE, A CIGAR, PIPE TOBACCO, SHISHA, BEEDIES, BIDIS,
34 CHEWING TOBACCO, SNUFF OR SNUS.
35 (ii) AN ELECTRONIC SMOKING DEVICE AND ANY SUBSTANCE THAT MAY BE
36 AEROSOLIZED OR VAPORIZED BY THE DEVICE, WHETHER OR NOT THE SUBSTANCE
37 CONTAINS NICOTINE.
38 (iii) A COMPONENT, PART OR ACCESSORY OF ANY PRODUCT, ELECTRONIC
39 SMOKING DEVICE OR SUBSTANCE THAT IS LISTED IN ITEM (i) OR (ii) OF THIS
40 SUBDIVISION, WHETHER OR NOT ANY OF THESE CONTAIN TOBACCO OR NICOTINE,
41 INCLUDING FILTERS, ROLLING PAPERS, BLUNT OR HEMP WRAPS AND PIPES.
42 (b) DOES NOT INCLUDE DRUGS, DEVICES OR COMBINATION PRODUCTS
43 AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION, AS
44 THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG, AND COSMETIC ACT OR THE
45 REGULATIONS ADOPTED PURSUANT TO THAT ACT.

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

3 36-798. Definitions

4 In this article, unless the context otherwise requires:

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

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

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

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

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

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

20 6. "ELECTRONIC SMOKING DEVICE":

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

24 (b) INCLUDES:

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

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

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

33 ~~6.~~ 7. "Retail tobacco vendor":

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

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

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

1 THE RETAIL TOBACCO VENDOR OR RETAIL TOBACCO VENDOR'S REPRESENTATIVE, AGENT
2 OR EMPLOYEE, INCLUDING A VENDING MACHINE.

3 ~~7.~~ 9. "Smokeless tobacco" includes shredded tobacco, snuff,
4 cavendish and plug, twist and other tobacco products that are intended for
5 oral use but not for smoking.

6 ~~8.~~ 10. "Smoking tobacco" includes any tobacco or tobacco product,
7 other than cigarettes and cigars, that is intended to be smoked.

8 ~~9.~~ 11. "Tobacco products PRODUCT": ~~includes cigarettes, cigarette~~
9 ~~papers, cigars, smokeless tobacco and smoking tobacco.~~

10 (a) MEANS ANY OF THE FOLLOWING:

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

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

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

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

27 ~~10.~~ 12. "Vending machine" means any mechanical, electrical or
28 electronic device that, on insertion of money, tokens or any other form of
29 payment, automatically dispenses tobacco products.

30 Sec. 3. Section 36-798.01, Arizona Revised Statutes, is amended to
31 read:

32 36-798.01. Retail tobacco vendors; selling, furnishing,
33 giving or providing tobacco products; persons
34 under the federal minimum age; prohibitions;
35 penalties; compliance checks

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

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

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

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

15 1. FOR A FIRST VIOLATION, THE RETAIL TOBACCO VENDOR OR THE RETAIL
16 TOBACCO VENDOR'S REPRESENTATIVE, AGENT OR EMPLOYEE WHO IS CITED FOR THE
17 VIOLATION SHALL ATTEND AN EDUCATION CLASS, IF AVAILABLE. IF AN EDUCATION
18 CLASS IS NOT AVAILABLE, THE RETAIL TOBACCO VENDOR IS SUBJECT TO A CIVIL
19 PENALTY OF AT LEAST \$500 BUT NOT MORE THAN \$750.

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

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

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

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

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

1 ARTICLE. THE DEPARTMENT SHALL PUBLISH THE RESULTS OF ALL COMPLIANCE
2 CHECKS AT LEAST ANNUALLY.

3 F. IN ADDITION TO ANY OTHER PENALTY, A RETAIL TOBACCO VENDOR THAT
4 VIOLATES ANY PROVISION OF THIS ARTICLE, THE RULES ADOPTED PURSUANT TO THIS
5 ARTICLE OR ANY FEDERAL LAW, STATE LAW OR LOCAL ORDINANCE RELATING TO
6 TOBACCO PRODUCT SALES OR MARKETING IS SUBJECT TO THE PENALTIES PRESCRIBED
7 IN THIS SECTION, INCLUDING CIVIL PENALTIES AND THE PROHIBITION FROM
8 DISTRIBUTING TOBACCO PRODUCTS AS PRESCRIBED IN SUBSECTION C OF THIS
9 SECTION.

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

12 Sec. 4. Section 36-798.02, Arizona Revised Statutes, is amended to
13 read:

14 36-798.02. Self-service display sales of tobacco products:
15 civil penalties

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

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

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

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

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

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

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

1 Sec. 5. 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 \$5,000 for each
21 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 any 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 sections 81a through 81u and
45 title 44, chapter 18 and that is located in this state if the tobacco

1 product is from outside of this country, was ordered by a distributor in
2 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 3. The shipment of a tobacco product to a university that is
6 acquiring the tobacco product to use to conduct basic and applied
7 research, if the tobacco product is exempt from federal excise tax under
8 26 United States Code section 5704(a).

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

11 I. For the purposes of this section:

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

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

15 (a) By mail or delivery service.

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

17 (c) By telephone.

18 (d) Through any other electronic method.

19 3. "Person" means an individual, partnership, firm, association,
20 corporation, limited liability company or partnership, joint venture or
21 other entity.

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

23 5. "Tobacco product" means all luxuries included in section
24 42-3052, paragraphs 5, 6 and 7. Tobacco product does not include pipe
25 tobacco or cigars.

26 Sec. 6. Title 36, chapter 6, article 14, Arizona Revised Statutes,
27 is amended by adding sections 36-798.07, 36-798.08, 36-798.09 and
28 36-798.10, to read:

29 36-798.07. Tobacco retail sales licenses; requirements; fees;
30 penalties

31 A. BEGINNING JANUARY 1, 2024, A RETAIL TOBACCO VENDOR MAY NOT
32 DISTRIBUTE TOBACCO PRODUCTS IN THIS STATE WITHOUT A VALID TOBACCO RETAIL
33 SALES LICENSE. A RETAIL TOBACCO VENDOR THAT DISTRIBUTES TOBACCO PRODUCTS
34 IN THIS STATE SHALL SECURE FOR EACH LOCATION, AND DISPLAY AT ALL TIMES, A
35 TOBACCO RETAIL SALES LICENSE ISSUED BY THE DEPARTMENT BEFORE ENGAGING OR
36 CONTINUING TO ENGAGE IN SUCH BUSINESS.

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

41 C. A TOBACCO RETAIL SALES LICENSE IS VALID FOR TWO YEARS, UNLESS
42 THE LICENSE IS SUSPENDED OR REVOKED BY THE DEPARTMENT OR THE DEPARTMENT'S
43 DESIGNEE. A TOBACCO RETAIL SALES LICENSE MAY NOT BE RENEWED IF THE RETAIL
44 TOBACCO VENDOR HAS ANY OUTSTANDING PENALTIES PURSUANT TO THIS ARTICLE.

1 THE DEPARTMENT MAY RECEIVE AND REVIEW TOBACCO RETAIL SALES LICENSE
2 APPLICATIONS ELECTRONICALLY.

3 D. IF A RETAIL TOBACCO VENDOR APPLIES FOR A TOBACCO RETAIL SALES
4 LICENSE FROM THE DEPARTMENT FOR A LOCATION THAT IS WITHIN THE JURISDICTION
5 OF A LOCAL LICENSING AUTHORITY, THE DEPARTMENT MAY NOT ISSUE A TOBACCO
6 RETAIL SALES LICENSE TO THE RETAIL TOBACCO VENDOR UNTIL THE RETAIL TOBACCO
7 VENDOR OBTAINS THE REQUIRED LOCAL LICENSE AND PROVIDES A COPY OF THE LOCAL
8 LICENSE TO THE DEPARTMENT.

9 E. A TOBACCO RETAIL SALES LICENSE MAY NOT BE ISSUED OR RENEWED TO A
10 RETAIL TOBACCO VENDOR UNTIL THE RETAIL TOBACCO VENDOR SIGNS A FORM STATING
11 THAT THE RETAIL TOBACCO VENDOR HAS READ THIS ARTICLE AND HAS PROVIDED
12 TRAINING TO ALL EMPLOYEES ON THE SALE OF TOBACCO PRODUCTS. THE TRAINING
13 SHALL INCLUDE THE FOLLOWING INFORMATION:

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

17 2. THE TYPES OF IDENTIFICATION THAT ARE LEGALLY ACCEPTABLE FOR THE
18 PROOF OF AGE.

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

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

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

37 36-798.08. Rulemaking; _____ delegation _____ of _____ authority;
38 collaboration; reporting requirements

39 A. THE DEPARTMENT SHALL ADOPT RULES TO ESTABLISH A STATEWIDE
40 TOBACCO RETAIL LICENSE AND TO CARRY OUT THIS ARTICLE.

41 B. THE DEPARTMENT MAY DELEGATE THE ENFORCEMENT AND COMPLIANCE
42 INSPECTIONS REQUIRED UNDER THIS ARTICLE TO ANY COUNTY THAT ACCEPTS THIS
43 DELEGATION.

1 C. THE DEPARTMENT MAY COLLABORATE WITH AND USE THE FINDINGS OF
2 OTHER AGENCIES, INCLUDING THE ATTORNEY GENERAL'S OFFICE, LOCAL LICENSING
3 AUTHORITIES AND LAW ENFORCEMENT, TO CARRY OUT THE OBLIGATIONS OF THIS
4 ARTICLE AND TO ENSURE THAT THE COMPLAINTS RECEIVED BY OTHER AGENCIES OR
5 LOCAL LICENSING AUTHORITIES ARE FORWARDED TO THE DEPARTMENT FOR TIMELY
6 INVESTIGATION AND ACTION.

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

13 36-798.09. Tobacco retail sales licensing fund

14 THE TOBACCO RETAIL SALES LICENSING FUND IS ESTABLISHED CONSISTING OF
15 LICENSING FEES COLLECTED PURSUANT TO THIS ARTICLE. THE DEPARTMENT SHALL
16 ADMINISTER THE FUND. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS
17 35-146 AND 35-147, NINETY PERCENT OF ALL LICENSING FEES COLLECTED UNDER
18 THIS ARTICLE IN THE TOBACCO RETAIL SALES LICENSING FUND AND THE REMAINING
19 TEN PERCENT IN THE STATE GENERAL FUND. MONIES IN THE FUND ARE SUBJECT TO
20 LEGISLATIVE APPROPRIATION AND SHALL BE USED TO ADMINISTER AND ENFORCE THIS
21 ARTICLE.

22 36-798.10. Local jurisdictions; regulation of tobacco
23 products

24 THIS ARTICLE DOES NOT LIMIT A LOCAL GOVERNMENT FROM REGULATING
25 TOBACCO PRODUCTS.

26 Sec. 7. Rulemaking exemption

27 Notwithstanding any other law, for the purposes of this act, the
28 department of health services is exempt from the rulemaking requirements
29 of title 41, chapters 6 and 6.1, Arizona Revised Statutes, for twenty-four
30 months after the effective date of this act.