

REFERENCE TITLE: tobacco possession; sale; age; signage

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1010

Introduced by
Senator Farnsworth D: Representative Boyer

AN ACT

AMENDING SECTIONS 13-3622, 36-798, 36-798.01, 36-798.02 AND 36-798.05,
ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 14,
ARIZONA REVISED STATUTES, BY ADDING SECTION 36-798.07; RELATING TO
TOBACCO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 13-3622. Furnishing of tobacco product to underage person;
5 underage person accepting or receiving tobacco
6 product; illegally obtaining tobacco product by
7 underage person; classification; definitions

8 A. A person who ~~knowingly~~ sells, gives or furnishes a tobacco
9 product, ~~a vapor product or any instrument or paraphernalia that is solely~~
10 ~~designed for the smoking or ingestion of tobacco or shisha, including a~~
11 ~~hookah or waterpipe,~~ to a ~~minor~~ PERSON WHO IS UNDER TWENTY-ONE YEARS OF
12 AGE is guilty of a petty offense.

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

22 C. A ~~minor~~ PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE AND who
23 misrepresents the ~~minor's~~ PERSON'S age to ~~any~~ ANOTHER 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.

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

32 1. Cigars, cigarettes or cigarette papers, smoking or chewing
33 tobacco or any instrument or paraphernalia that is solely designed for the
34 smoking or ingestion of tobacco or shisha, ~~including a hookah or~~
35 ~~waterpipe,~~ if it is used or intended to be used in connection with a bona
36 fide practice of a religious belief and as an integral part of a religious
37 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,~~ AND that is given to or possessed by a ~~minor~~ PERSON WHO IS
41 UNDER TWENTY-ONE YEARS OF AGE if the instrument or paraphernalia was a
42 gift or souvenir and is not used or intended to be used by the ~~minor~~
43 PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE to smoke or ingest tobacco or
44 shisha.

E. For the purposes of this section:

1. "ELECTRONIC SMOKING DEVICE":

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

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

2. "PERSON" INCLUDES A RETAILER.

~~1.~~ 3. "Shisha" includes any mixture of tobacco leaf and honey, molasses or dried fruit or any other sweetener.

~~2.~~ 4. "Tobacco product":

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

~~(a) Cigars.~~

~~(b) Cigarettes.~~

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

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

~~(e) Chewing tobacco of any kind~~ PRODUCT THAT IS MADE OR DERIVED FROM TOBACCO AND THAT IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED OR INGESTED BY ANY OTHER MEANS.

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

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

~~5. "Vapor product" means a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. Vapor product does not include any product that is regulated by the United States food and drug administration under chapter V of the federal food, drug and cosmetic act.~~

Sec. 2. 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 or serving of alcoholic beverages and that is not primarily used for the consumption of food on the premises.

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

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

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

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

10 5. "ELECTRONIC SMOKING DEVICE":

11 (a) MEANS ANY DEVICE THAT CAN BE USED TO DELIVER AEROSOLIZED OR
12 VAPORIZED NICOTINE TO THE PERSON INHALING FROM THE DEVICE, INCLUDING AN
13 E-CIGARETTE, E-CIGAR, VAPE PEN OR E-HOOKAH, AND ANY COMPONENT, PART OR
14 ACCESSORY OF THE DEVICE, WHETHER OR NOT SOLD SEPARATELY.

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

17 6. "Retail tobacco vendor" means a person who possesses tobacco or
18 tobacco products for the purpose of selling them for consumption and not
19 for resale.

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

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

25 9. "Tobacco products": ~~includes cigarettes, cigarette papers,~~
26 ~~cigars, smokeless tobacco and smoking tobacco.~~

27 (a) MEANS ANY PRODUCT THAT IS MADE OR DERIVED FROM TOBACCO AND THAT
28 IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY TO BE CONSUMED, WHETHER
29 SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED OR INGESTED BY ANY
30 OTHER MEANS.

31 (b) INCLUDES A CIGARETTE, A CIGAR, PIPE TOBACCO, CHEWING TOBACCO,
32 SHISHA, SNUFF, SNUS, AN ELECTRONIC SMOKING DEVICE, WHETHER OR NOT THE
33 DEVICE CONTAINS NICOTINE, AND ANY COMPONENT, ACCESSORY, INSTRUMENT OR
34 PARAPHERNALIA THAT IS USED IN THE CONSUMPTION OF A TOBACCO PRODUCT OR THAT
35 IS SOLELY DESIGNED FOR THE SMOKING OR INGESTING OF TOBACCO OR SHISHA,
36 INCLUDING A HOOKAH, A WATERPIPE, A FILTER, ROLLING PAPERS, A PIPE OR
37 LIQUIDS USED IN ELECTRONIC SMOKING DEVICES.

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

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

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

3 36-798.01. Selling or giving beedies or bidis; violation;
4 classification

5 A. It is unlawful for a retail tobacco vendor to sell, furnish,
6 give or provide beedies or bidis to ~~a minor~~ AN INDIVIDUAL WHO IS UNDER
7 TWENTY-ONE YEARS OF AGE in this state.

8 B. Any person who violates this section is guilty of a class 3
9 misdemeanor.

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

12 36-798.02. Vending machine sales of tobacco and tobacco
13 products; signage; violation; classification

14 A. A person shall not sell tobacco products through a vending
15 machine unless the vending machine is located in either:

16 1. A bar.

17 2. An employee lounge area that is not open to the public and the
18 business in which the lounge area is located does not employ ~~minors~~ ANY
19 INDIVIDUAL WHO IS UNDER TWENTY-ONE YEARS OF AGE.

20 B. A sign measuring at least eighty square inches shall be
21 obviously affixed to the front of each vending machine. The sign shall
22 state in block letters, ~~THAT~~ it is illegal for ~~a minor~~ AN INDIVIDUAL WHO
23 IS UNDER TWENTY-ONE YEARS OF AGE to purchase cigarettes or tobacco
24 products and, upon conviction, a fine of up to three hundred dollars may
25 be imposed.

26 C. This article does not invalidate an ordinance of or prohibit the
27 adoption of an ordinance by a county, city or town to further restrict the
28 location of vending machines or specify different wording for the vending
29 ~~machines~~ MACHINE signs as required by subsection B of this section.

30 D. A person who violates this section is guilty of a petty offense.

31 Sec. 5. Section 36-798.05, Arizona Revised Statutes, is amended to
32 read:

33 36-798.05. Unsolicited delivery of tobacco products;
34 violation; classification; civil penalties;
35 definitions

36 A. It is unlawful for a person to deliver or cause to be delivered
37 to any residence in this state any tobacco products unsolicited by at
38 least one ~~adult~~ INDIVIDUAL WHO IS AT LEAST TWENTY-ONE YEARS OF AGE AND who
39 resides at that address.

40 B. A person who knowingly violates subsection A of this section is
41 guilty of a class 2 misdemeanor.

42 C. A person who violates subsection A of this section is subject to
43 a civil penalty in an amount of not to exceed five thousand dollars for
44 each violation. Each delivery of a tobacco product shall constitute a
45 separate violation.

D. The attorney general may bring an action to recover civil penalties and as determined by the court, taxable costs, such other fees and expenses reasonably incurred and reasonable attorney fees, in the name of the state for a violation of this section. All civil penalties recovered shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund and all other monies recovered shall be deposited, pursuant to sections 35-146 and 35-147, in the antitrust enforcement revolving fund established by section 41-191.02.

E. ~~in~~ FOR THE PURPOSES OF this section, ~~unless the context otherwise requires:~~

1. "Knowingly" has the same meaning prescribed in section 13-105.

2. "Person" means an individual, partnership, firm, association, corporation, limited liability company, limited liability partnership, joint venture, or other entity, other than an individual or entity engaged in the delivery of items for hire.

Sec. 6. Title 36, chapter 6, article 14, Arizona Revised Statutes, is amended by adding section 36-798.07, to read:

36-798.07. Retail tobacco vendor; signage; unlawful practice; violation; classification

A. A RETAIL TOBACCO VENDOR MAY NOT SELL OR PERMIT THE SALE OF TOBACCO PRODUCTS UNLESS A SIGN IS POSTED AT THE LOCATION WHERE THE TOBACCO PRODUCTS ARE AVAILABLE FOR PURCHASE. THE SIGN MUST MEASURE AT LEAST EIGHTY SQUARE INCHES AND STATE IN BLOCK LETTERS THAT ARE AT LEAST ONE-HALF INCH IN HEIGHT THAT A PERSON WHO IS UNDER TWENTY-ONE YEARS OF AGE MAY NOT PURCHASE TOBACCO PRODUCTS.

B. THIS SECTION DOES NOT INVALIDATE AN ORDINANCE OF OR PROHIBIT THE ADOPTION OF AN ORDINANCE BY A COUNTY, CITY OR TOWN THAT HAS STRICTER SIGNAGE REQUIREMENTS AT THE LOCATION WHERE TOBACCO PRODUCTS ARE SOLD OR THAT SPECIFIES DIFFERENT WORDING FOR THE SIGN THAN THE WORDING THAT IS REQUIRED BY THIS SECTION.

C. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522 AND IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES AND PENALTIES THAT ARE AVAILABLE TO THIS STATE. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10, ARTICLE 7.

D. A VIOLATION OF THIS SECTION IS A PETTY OFFENSE.