

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE SENATE
APPROPRIATIONS COMMITTEE

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SUBJECT: Strike everything amendment to S.B. 1103, relating to tobacco; vapor products; licensing

Purpose

Establishes licensure for retail sales of tobacco products or vapor products (tobacco or vapor products) under the Department of Liquor Licenses and Control (DLLC) and precludes a city, town or county from regulating tobacco or vapor product marketing and sales except as outlined. Modifies penalties relating to underage tobacco or vapor product purchase.

Background

For the purposes of the Arizona Criminal Code, *tobacco product* means cigars, cigarettes, cigarette papers, smoking tobacco and chewing tobacco. *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.

A person is guilty of a petty offense if the person: 1) knowingly sells, gives or furnishes a tobacco product, vapor product or any instrument or paraphernalia designed for smoking or ingesting tobacco to a person who is under 18 years old (minor); or 2) is a minor who buys, possesses, knowingly receives or misrepresents their age by written identification to induce a person to sell, give or furnish a tobacco product, vapor product or any instrument or paraphernalia designed for smoking or ingesting tobacco. A minor who misrepresents their age by written identification a must pay a fine up to \$500 ([A.R.S. § 13-3622](#)). In 2019, the Federal Food, Drug and Cosmetic Act was amended to raise the federal minimum age for the sale of tobacco products from 18 years old to 21 years old (legal age) ([Further Consolidated Appropriations Act, 2020](#)).

The DLLC regulates the production, distribution and sale of alcoholic beverages through the State Liquor Board (Board) and the Office of the Director of the DLLC (Director). Statute prescribes duties of the Board and Director the relating to licensure, regulations, enforcement and disciplinary actions. The Director may suspend, revoke or refuse to renew a liquor license for outlined violations and impose a civil penalty between \$200 and \$3,000 ([A.R.S. Title 4](#)).

Unless otherwise provided, all DLLC-collected fees must be deposited in the Liquor Licenses Fund. Any Liquor Licenses Fund monies that exceed the legislative appropriation to DLLC are deposited in the state General Fund. If the collection of tobacco retail license fees results in a change in revenues, there may be a fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Prohibits, beginning January 1, 2023, a retail tobacco vendor from distributing tobacco or vapor products in Arizona without a valid tobacco retail license.

2. Requires a retail tobacco vendor to secure and display a DLLC-issued tobacco retail license for each location before engaging or continuing to engage in tobacco or vapor product distribution.
3. Requires a retail tobacco vendor, before license issuance or renewal, to sign a form stating the vendor has:
 - a) read tobacco or vapor product licensing and sales requirements; and
 - b) provided training to all employees on tobacco or vapor product sales relating to identification requirements and the illegality of tobacco or vapor product sales to underage persons.
4. Requires the DLLC to establish initial and renewal tobacco retail license fees and deposit the collected fees in _____ Fund.
5. Deems a tobacco retail license to be nontransferable and valid for one year, unless suspended or revoked.
6. Prohibits a tobacco retail license from being renewed if the vendor has outstanding penalties.
7. Allows the DLLC to receive and review tobacco retail license applications electronically.
8. Requires a retail tobacco vendor that discontinues, sells or transfers their business to notify the DLLC in writing at the effective time of the vendor's discontinuance, sale or transfer.

Local Regulation

9. Preempts any city, town or county from:
 - a) adopting or modifying any rule, regulation, code or ordinance regulating the sale or marketing of tobacco or vapor products in conflict with or more restrictive than state law; and
 - b) limiting any right granted by the license and this legislation.
10. Allows a city, town or county to adopt and enforce lawful zoning requirements limiting retail tobacco vendor stores.
11. Allows a city, town or county to regulate the sale of tobacco or vapor products within 300 feet of a:
 - a) public or private primary or secondary school; or
 - b) fenced playground adjacent to a school or public park.
12. Allows a city, town or county to regulate the marketing of tobacco or vapor products within _____ feet of a:
 - a) public or private primary or secondary school; or
 - b) fenced playground adjacent to a school or public park.
13. Specifies that a city, town, county, school district, charter school, community college district, stadium district, or the Arizona Board of Regents may regulate the sale, marketing or use of tobacco or vapor products on property it owns, leases or operates.

Penalties

14. Conforms the minimum legal age for the sale of tobacco or vapor products to the federal minimum age of sale for tobacco products.
15. Removes the criteria that the violation be made knowingly for the petty offense classification of selling, giving or furnishing a tobacco or vapor product to an underage person.
16. Subjects a business selling tobacco or vapor products without a license to a civil penalty of \$500 to \$1,000 for a first or second violation within 36 months.
17. Requires the DLLC to issue to a business that receives a second violation within 36 months a cease and desist order prohibiting the sale of tobacco or vapor products and notifying the owner that the business is ineligible to receive a tobacco retail license for three years after the date of the second violation.

Definitions

18. Applies the Arizona Criminal Code definitions of *tobacco product*, *vapor product* and *shisha* to tobacco retail license requirements.
19. Removes, from the definition of *vapor product*, the qualifications that:
 - a) the product be tobacco-derived; and
 - b) the liquid nicotine solution it is used to heat be contained in cartridges.
20. Defines *retail tobacco vendor* as a person, partnership, joint venture, society, club, trustee, true association, organization or corporation that owns, operates or manages any retail establishment that sells shisha, tobacco products or vapor products.
21. Excludes, from the definition of *retail tobacco vendor*, a tobacco retail establishment's nonmanagement employees.

Miscellaneous

22. Makes technical and conforming changes.
23. Becomes effective on the general effective date.