

AMENDED**ARIZONA STATE SENATE**
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COMMERCE COMMITTEE

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TO: MEMBERS OF THE SENATE

DATE: March 26, 2021

SUBJECT: Strike everything amendment to H.B. 2682, relating to e-liquids; tobacco products; vapor products

Purpose

Effective January 1, 2022, establishes licensure for retail sales of tobacco, vapor or alternative nicotine products under the Department of Liquor Licenses and Control (DLLC) and establishes the Tobacco Retail Sales Licensing Fund (Tobacco Licensing Fund). Preempts local regulation of sales and marketing, with exceptions, and modifies penalties relating to underage possession and sales. Contains requirements for enactment for initiatives and referendums (Proposition 105).

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 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 ([Further Consolidated Appropriations Act, 2020](#)).

DLLC regulates the production, distribution and sale of alcoholic beverages through the State Liquor Board (Board) and the Office of the Director of DLLC (Director). Statute prescribes duties of the Board and Director 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](#)).

The strike-everything amendment to H.B. 2682 directs 10 percent of tobacco retail license fees to the state General Fund. If the collection of licensure fees results in a change in revenues, there may be a fiscal impact to the state General Fund associated with this legislation.

Provisions

Licensure

1. Prohibits, beginning January 1, 2023, a retail tobacco vendor from distributing tobacco, vapor or alternative nicotine products in Arizona without a valid tobacco retail sales license (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 the business of distributing tobacco, vapor or alternative nicotine products.
3. Requires a retail tobacco vendor, before license issuance or renewal, to sign a form stating the vendor has:
 - a) read tobacco, vapor or alternative nicotine product licensing and sales requirements; and
 - b) provided training to all employees relating to tobacco, vapor or alternative nicotine product sales including the types of acceptable identification and the illegality of selling tobacco, vapor or alternative nicotine products to underage persons.
4. Deems a tobacco retail license to be nontransferable and valid for one year, unless suspended or revoked by DLLC or DLLC's designee.
5. Prohibits a tobacco retail license from being renewed if the vendor has outstanding penalties.
6. Allows DLLC to receive and review tobacco retail license applications electronically.
7. Requires a retail tobacco vendor that discontinues, sells or transfers their business to notify DLLC in writing at the effective time of the vendor's discontinuance, sale or transfer.

Tobacco Retail Sales Licensing Fund

8. Establishes the Tobacco Licensing Fund administered by DLLC and consisting of licensing fees.
9. Requires DLLC to establish initial and renewal tobacco retail license fees and deposit 90 percent of collected fees in the Tobacco Licensing Fund and the remaining 10 percent in the state General Fund.
10. Requires Tobacco Licensing Fund monies to be used to administer and enforce tobacco licensing regulations, subject to legislative appropriation.

DLLC Regulation and Enforcement

11. Subjects a business selling tobacco, vapor or alternative nicotine products without a license to a civil penalty of \$500 to \$1,000 for a first or second violation within 36 months.
12. Requires DLLC to issue to a business that receives a second violation within 36 months a cease and desist order prohibiting the sale of tobacco, vapor or alternative nicotine 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.

13. Allows DLLC to:
 - a) delegate required enforcement and compliance inspections to a county that accepts the delegation; and
 - b) collaborate with and use other entities' findings to carry out DLLC's obligations relating to Licensing and Sale of Alternative Nicotine, Tobacco and Vapor Products and to ensure that complaints are forwarded to DLLC for timely investigation and action.
14. Requires DLLC or its designee to conduct:
 - a) unannounced compliance checks of a retail tobacco vendor at least annually by engaging persons between 18 and 21 years old; and
 - b) unannounced follow-up compliance checks within three months after a violation of tobacco sales regulations.
15. Requires a law enforcement or local entity that conducts compliance checks to assess a retail tobacco vendor's compliance with minimum legal sales age to report the results to DLLC.
16. Deems any compliance check violation to be a violation of the vendor's tobacco license.
17. Requires DLLC to publish the results of all compliance checks at least annually and make the results available to the public on request.
18. Adds to the Director's duties:
 - a) taking steps necessary to liaison with the Department of Public Safety and local law enforcement agencies to enforce laws against the use of tobacco products by underage persons; and
 - b) enforcing statutory tobacco sales regulations relating to beedies or bidis, vending machines, the unlawful manufacture, sale or distribution of cigarettes and roll-your-own tobacco and prohibitions against tobacco products at schools, delivery sales and unsolicited deliveries.
19. Authorizes the Director to:
 - a) remove, from the marketplace, tobacco, vapor or alternative nicotine products that may be contaminated, illegal or adulterated;
 - b) issue and enforce cease and desist orders against a person that sells tobacco, vapor or alternative nicotine products without an appropriate license or permit; and
 - c) accept and expend private grants of monies, gifts and devises for educational programs for parents and students on the use by underage individuals of tobacco, vapor or alternative nicotine products.
20. Requires the DLLC investigations unit to include investigating licensees alleged to have sold tobacco products to an underage person.
21. Directs DLLC to adopt rules to carry out Licensing and Sale of Alternative Nicotine, Tobacco and Vapor Products statutes.

Unlawful Furnishing of Tobacco, Vapor or Nicotine Products

22. Raises, from 18 years old to 21 years old, the minimum legal age for tobacco, vapor or alternative nicotine products and beedies or bidis.
23. 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.

24. Applies Arizona Criminal Code penalties for the possession or furnishing of tobacco or vapor products to an underage person to the possession or furnishing of alternative nicotine products to an underage person.
25. Deems unlawful a retail tobacco vendor or the vendor's representative, agent or employ selling, furnishing, giving or providing a tobacco, vapor or alternative nicotine product to a person who is under 21 years old.
26. Requires a vendor or vendor's representative, agent or employee to verify that the purchaser of a tobacco, vapor or alternative nicotine product is at least 21 years old by examining the purchaser's government-issued photo identification.
27. Excludes, from the identification check requirement, a purchaser who is at least 30 years old but specifies that a purchaser appearing to be at least 30 years old does not constitute a defense to a violation of the underage sales prohibition.
28. Subjects a vendor, if the vendor or the vendor's representative, agent or employee fails a compliance check or is convicted of furnishing tobacco, vapor or alternative nicotine products to an underage person based on an Attorney General citation, to the following penalties:
 - a) for the first violation, attendance of an education class or, if an education class is not available, a maximum civil penalty of \$500;
 - b) for a second violation within 36 months, a civil penalty of \$750 to \$1,000 and the Director may prohibit tobacco, vapor or alternative nicotine product distribution for up to 14 days;
 - c) for a third violation within 36 months, a civil penalty of \$1,000 to \$1,500 and a prohibition on tobacco, vapor or alternative nicotine product distribution for between 15 and 30 days, at the Director's discretion; and
 - d) for a fourth or subsequent violation within 36 months, a civil penalty of \$1,500 to \$3,000 and a prohibition on tobacco product distribution for at least one year.
29. Subjects, to noncriminal, nonmonetary penalties, including education classes or community service, a person who violates underage tobacco, vapor or alternative nicotine product sales prohibitions while acting as a nonmanagement agent or employee.
30. Deems a person to be guilty of a petty offense, if the person:
 - a) is under 21 years old and solicits another person to purchase, sell, give or furnish tobacco, vapor or alternative nicotine products to the underage person;
 - b) is under 21 years old and uses a fraudulent or false written instrument of identification or another person's valid license or identification to purchase or attempt to purchase tobacco, vapor or alternative nicotine products;
 - c) knowingly influences the purchase of tobacco, vapor or alternative nicotine products to an underage person by misrepresenting the person's age; or
 - d) orders, requests, receives or procures tobacco, vapor or alternative nicotine products with the intent to sell or give the product to a person under the legal age.
31. Subjects, to suspension of their driver license or nonoperating identification license:
 - a) a person under 21 years old who uses a fraudulent or false driver license or nonoperating identification license to purchase or attempt to purchase tobacco, vapor or alternative nicotine products; or
 - b) a person's driver license or nonoperating identification license that is used to misrepresent the age of a person who is under 21 years old.

32. Allows a court to suspend a person's driver license or driving privilege for up to 30 days for a first conviction and up to six months for a second conviction of if the person:
- a) knowingly influences the sale or giving of tobacco, vapor or alternative nicotine products by misrepresenting the person's age; or
 - b) orders, requests, receives or procures tobacco, vapor or alternative nicotine products with the intent to sell or give the product to a person under the legal age.

Local Preemption

33. Declares the regulation of the sale and marketing of tobacco, vapor or alternative nicotine products to be a matter of statewide concern and not subject to further regulation by a city, town or county, except as outlined.
34. Preempts any city, town or county rule, regulation, code or ordinance regarding the sale or marketing of tobacco, vapor or alternative nicotine products that is:
- a) adopted or modified after January 1, 2021; and
 - b) in conflict with, or more restrictive than, state law or rule.
35. Prohibits a city, town or county from limiting any right granted by Tobacco Sales statutes or rules relating to Tobacco Sales statutes or Licensing and Sale of Alternative Nicotine, Tobacco and Vapor Products statutes.
36. Allows a city, town or county to adopt and enforce:
- a) lawful zoning requirements limiting the location of retail tobacco vendors; and
 - b) any rule, regulation, code or ordinance regulating the outdoor advertising of tobacco, vapor or alternative nicotine products, except for advertising on retail tobacco vendor premises.
37. Specifies that zoning requirements may not prohibit the continuation of a retail tobacco vendor if the business:
- a) was already operating as a retail tobacco vendor on January 1, 2022, or on the date a distance provision is adopted; and
 - b) has continued to operate since that date.
38. Allows a city, town or county to adopt any rule, regulation, code or ordinance that regulates the sale of tobacco, vapor or alternative nicotine products within 300 feet of a:
- a) a public or private school providing primary or secondary education; or
 - b) a fenced playground adjacent to a school.
39. Allows a city, town or county to adopt any rule, regulation, code or ordinance that regulates the sale of tobacco, vapor or alternative nicotine products at a tobacco vendor located within 1,000 feet of:
- a) a public or private school providing primary or secondary education; or
 - b) a fenced playground adjacent to a school.
40. Exempts a retail tobacco vendor from city, town or county rules, regulations, codes or ordinances regulating the sale of tobacco, vapor or alternative nicotine products if the business was already operating as a retail tobacco vendor on the date:
- a) the rule, regulation, code or ordinance is adopted; or
 - b) a school providing primary or secondary education or a fenced playground adjacent to a school is established.

41. Allows a city, town or county to prospectively enforce a rule, regulation, code or ordinance that regulates the sale of tobacco, vapor or alternative nicotine products if the retail tobacco vendor is convicted of a fourth violation of a compliance check within 36 months.
42. Specifies that, if a retail tobacco vendor sells the business, compliance check violations that occur at a location within the 36 months immediately before the sale are attributable to the new owner.
43. Specifies that the preemption does not prohibit a city, town, county, school district, charter school, community college district, stadium district or the Arizona Board of Regents from regulating the sale, marketing or use of tobacco, vapor or nicotine products on property the entity owns, leases or operates.

Regulation of Sales

44. Applies the prohibition on selling tobacco products through a vending machine to vapor products and alternative nicotine products.
45. Prohibits a person from selling or distributing tobacco, vapor or alternative nicotine products:
 - a) at a retail establishment by any means other than vendor-assisted sales in which the customer has no direct access to the product; or
 - b) from self-service displays.
46. Exempts, from the prohibition on sales other than vendor-assisted sales, retail establishments in which underage persons are not allowed if the prohibition is clearly posted on all entrances.
47. Requires the sign that must be affixed to the front of a vending machine to include in the required statement that it is illegal for a person under 21 years of age to purchase alternative nicotine products or vapor products.
48. Expands, to apply to alternative nicotine products and vapor products, the prohibition on the unsolicited delivery of tobacco products.

Definitions

49. Applies the Arizona Criminal Code definitions of *tobacco product*, *vapor product* and *shisha* to:
 - a) tobacco retail license requirements; and
 - b) tobacco sales regulations relating to beedies or bidis, vending machines, the unlawful manufacture, sale or distribution of cigarettes and roll-your-own tobacco and prohibitions against tobacco products at schools, delivery sales and unsolicited deliveries.
50. Removes, from the definition of *vapor product*, the qualifications that:
 - a) the product be tobacco-derived; and
 - b) the liquid nicotine solution the *vapor product* is used to heat be contained in cartridges.
51. Defines *alternative nicotine product*:
 - a) as a noncombustible product that contains nicotine and is intended for human consumption, whether chewed, absorbed, dissolved, ingested or consumed by any other means; and
 - b) to exclude an e-liquid, vapor or tobacco product, shisha or a product regulated as a drug or device by the Food and Drug Administration under subchapter V of the Federal Food, Drug and Cosmetic Act.

52. 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:
- a) sells shisha, tobacco, vapor or alternative nicotine products; and
 - b) is in the business of selling, distributing or conveying the products to the public or a user of the product.
53. Excludes, from the definition of *retail tobacco vendor*:
- a) a tobacco retail establishment's nonmanagement employees; and
 - b) a wholesaler of tobacco, vapor or alternative nicotine products or shisha with respect to selling, distributing or conveying the products in business-to-business transactions.

Miscellaneous

54. Includes vapor products and alternative nicotine products in the prohibition on tobacco products at schools and school-related areas.
55. Allows a school district governing board, charter school governing body or private school to adopt policies prohibiting, restricting and regulating tobacco, vapor or nicotine products at school sanctioned activities.
56. Allows common and high school courses of study to include instruction on the nature and harmful effects of e-liquids, alternative nicotine products and vapor products.
57. Contains a severability clause.
58. Conforms a statutory reference relating to the Smoke-Free Arizona Act (Proposition 105).
59. Makes technical and conforming changes.
60. Becomes effective on January 1, 2022.

Amendments Adopted by Committee

1. Adopted the strike-everything amendment.
2. Excludes, from the definition of *retail tobacco vendor*, a wholesaler of tobacco, vapor or alternative nicotine products.
3. Narrows, to outdoor advertising, the authorization for local governments to regulate advertising and marketing.
4. Specifies that zoning requirements may not prohibit the continuation of a tobacco retail vendor that is operating and has continued to operate since January 1, 2021, or the date a distance provision is adopted.
5. Removes, from the exemption on sales other than vendor-assisted sales, sales authorized under delivery statutes and single state standard statutes.
6. Makes technical and conforming changes.

Senate Action

HHS	3/17/21	W/D	
APPROP	3/23/21	DPA/SE	5-4-1