



# ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature  
First Regular Session

House: HHS DP 9-0-0-0 | 3<sup>rd</sup> Read 58-0-2-0  
Senate: APPROP DPA/SE 5-4-1-0 | 3<sup>rd</sup> Read 18-10-2-0

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**HB 2682: ~~board of pharmacy; rulemaking authority~~  
NOW: tobacco; vapor; alternative nicotine; regulation  
Sponsor: Representative Wilmeth, LD 15  
Senate Engrossed**

The House Engrossed version of HB 2682 amended the definition of pharmacy and eliminated the rule making requirements for oral fluoride varnish and tobacco cessation drug therapies.

The Senate adopted a strike-everything amendment that does the following:

### **Overview**

Establishes requirements for the licensing and sale of alternative nicotine, tobacco and vapor products under the Department of Liquor Licenses and Control (DLLC). Establishes penalties for the unlawful sale of tobacco, vapor and alternative nicotine products by a retail tobacco vendor.

### **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.R.S. § 13-3622](#)).

Statute defines a *minor* as a person under 18 years of age ([A.R.S. § 1-215](#)).

*Shisha* is any mixture of tobacco leaf and honey, molasses or dried fruit or any other sweetener. *Vapor product* is 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 ([A.R.S. § 13-3622](#)).

DLLC, which consists of the State Liquor Board and the Office of the Director (Director), regulates the manufacture, distribution and sale of liquor in this state through the issuance of 21 license types or series ([A.R.S. § 4-203](#)).

### **Provisions**

#### ***DLLC Regulation and Enforcement***

1. Adds to the Director's duties:
  - a) To take steps necessary to liaison with the Department of Public Safety and local law enforcement agencies to enforce laws against the use of alternative nicotine, tobacco or vapor products by underage persons; and
  - b) To enforce 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.

2. Directs DLLC's investigation unit to investigate licensees alleged to have sold alternative nicotine, tobacco or vapor products to an underage person.
3. Permits the Director to:
  - a) Remove, from the marketplace, alternative nicotine, tobacco or vapor products that may be contaminated;
  - b) Issue and enforce cease and desist orders against a person that sells alternative nicotine, tobacco or vapor products without an appropriate license; 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 alternative nicotine, tobacco or vapor products.
4. Directs DLLC to adopt rules to carry out Licensing and Sale of Alternative Nicotine, Tobacco and Vapor Products statutes.
5. 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.
6. Requires a law enforcement or local entity that conducts compliance checks to assess a retail tobacco vendor's (Vendor) compliance with minimum legal sales age to report the results to DLLC.
7. Deems any compliance check violation to be a violation of the vendor's tobacco retail sales license (License).

#### ***Licensure***

8. Prohibits, beginning January 1, 2023, a Vendor from distributing alternative nicotine, tobacco or vapor products in Arizona without a valid License.
9. Requires a Vendor to secure and display a DLLC-issued License for each location before engaging or continuing to engage in the business of distributing alternative nicotine, tobacco or vapor products.
10. Specifies the License, unless suspended or revoked, is valid for one year.
  - a) Prohibits the License from being renewed if the Vendor has outstanding penalties.
11. Permits DLLC to receive and review License applications electronically.
12. Requires a Vendor, before license issuance or renewal, to sign a form stating the Vendor has:
  - a) Read alternative nicotine, tobacco or vapor product licensing and sales requirements; and
  - b) Provided training to all employees relating to alternative nicotine, tobacco or vapor product sales including the types of acceptable identification and the illegality of selling alternative nicotine, tobacco or vapor products to underage persons.
13. Specifies the License is nontransferable.
  - a) Requires a 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.
14. Subjects a business selling alternative nicotine, tobacco or vapor products without a License to a civil penalty of \$500 to \$1,000 for a first or second violation within a 36-month period.

- a) Requires DLLC to issue to a business that receives a second violation within the 36-month period a cease and desist order prohibiting the sale of alternative nicotine, tobacco or vapor products and to notify the owner that the business is ineligible to receive a License for three years after the date of the second violation.

#### ***Tobacco Retail Sales Licensing Fund (Fund)***

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

#### ***Unlawful Furnishing of Tobacco, Vapor or Nicotine Products***

18. Increases, from 18 to 21, the minimum legal age for purchasing or possessing alternative nicotine, tobacco or vapor products.
19. 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.
20. 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.
21. Asserts it is unlawful for a Vendor or the Vendor's representative, agent or employee to sell, furnish, give or provide an alternative nicotine, tobacco or vapor product to a person who is under the age of 21.
22. Requires verification, prior to distributing any alternative nicotine, tobacco or vapor product, that the purchaser is at least 21 years old by examining the purchaser's government-issued photo identification.
  - a) Excludes, from the age verification requirement, a purchaser who is at least 30 years old.
  - b) Specifies a purchaser appearing to be at least 30 years old does not constitute a defense to a violation of the underage sales prohibition.
23. Subjects a Vendor, if the Vendor or the Vendor's representative, agent or employee fails a compliance check or is convicted of furnishing alternative nicotine, tobacco or vapor products to an underage person based on an Attorney General citation, to the following penalties:
  - a) For the first violation, the Vendor and the representative, agent or employee must attend 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 alternative nicotine, tobacco or vapor 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 alternative nicotine, tobacco or vapor product distribution for between 15 and 30 days; and
  - d) For a fourth or subsequent violation within 36 months, a civil penalty of \$1,500 to \$3,000 and a prohibition on alternative nicotine, tobacco or vapor product distribution for at least one year.
24. Subjects, to noncriminal, nonmonetary penalties, including education classes or community service, a person who violates underage alternative nicotine, tobacco or vapor product sales prohibitions while acting as a nonmanagement agent or employee.

25. Subjects a Vendor to at least one unannounced compliance check annually by DLLC and outlines the requirements for conducting a compliance check including publishing the results of all compliance checks.
26. Deems a person to be guilty of a petty offense, if the person:
  - a) Is under 21 years old and misrepresents their age to any other person with the intent to induce the other person to sell, give or furnish alternative nicotine, tobacco or vapor products to the underage person;
  - b) Is under 21 years old and solicits another person to purchase, sell, give or furnish alternative nicotine, tobacco or vapor products to the underage person;
  - c) 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 alternative nicotine, tobacco or vapor products;
  - d) Knowingly influences the purchase of alternative nicotine, tobacco or vapor products to an underage person by misrepresenting the person's age; or
  - e) Orders, requests, receives or procures alternative nicotine, tobacco or vapor products with the intent to sell or give the product to a person under the legal age.

#### ***Local Preemption***

27. Declares the regulation of the sale and marketing of alternative nicotine, tobacco or vapor products to be a matter of statewide concern and not subject to further regulation by a city, town or county (local government), except as outlined.
28. Preempts any local government rule, regulation, code or ordinance regarding the sale or marketing of alternative nicotine, tobacco or vapor products that is:
  - a) Adopted or modified after January 1, 2021; and
  - b) In conflict with, or more restrictive than, state law or rule.
29. Prohibits a local government 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.
30. Allows a local government to adopt and enforce lawful zoning requirements that limit the location of Vendors.
31. Specifies the zoning requirements may not prohibit the continuation of the Vendor provided the business, on January 1, 2022 or the date a distance provision is adopted:
  - a) Was already operating as a Vendor; and
  - b) Has continued to operate since that date.
32. Permits a local government to adopt any rule, regulation, code or ordinance that regulates the sale of alternative nicotine, tobacco or vapor products within 300 feet of:
  - a) A public or private school providing primary or secondary education; or
  - b) A fenced playground adjacent to a school.
33. Permits a local government to adopt any rule, regulation, code or ordinance that regulates the sale of alternative nicotine, tobacco or vapor 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.
34. Exempts Vendors, located between 301 feet and 1,000 feet from a school providing primary or secondary education or from a fenced playground adjacent to a school, from local government rules, regulations, codes or ordinances regulating the sale of alternative nicotine,

tobacco or vapor products provided the business was already operating as a Vendor on the date:

- a) The rule, regulation, code or ordinance is adopted; or
- b) Such school or fenced playground is established.

- 35. Provides a circumstance in which a local government may prospectively enforce any rule, regulation, code or ordinance regulating the sale of alternative nicotine, tobacco or vapor products to a Vendor.
- 36. Specifies, 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.
- 37. Allows a local government to adopt any rule, regulation, code or ordinance that regulates the outdoor advertising of alternative nicotine, tobacco or vapor products, except for advertising on the premises of a Vendor.
- 38. Specifies the preemption does not prohibit a local government, school district, charter school, community college district, stadium district or the Arizona Board of Regents from regulating the sale, marketing or use of alternative nicotine, tobacco or vapor products on property the entity owns, leases or operates.

#### ***Miscellaneous***

- 39. Increases the minimum age, from 18 to 21, to whom a Vendor may sell, furnish, give or provide beedies or bidis.
- 40. Clarifies the prohibition on selling or distributing tobacco products to include alternative nicotine or vapor products either:
  - a) At a retail establishment by any means other than vendor-assisted sales in which the customer has no direct access to the product except through the assistance of the seller; or
  - b) From self-service displays or vending machines.
- 41. Clarifies the prohibition on selling or distributing tobacco products does not apply to:
  - a) Retail establishments if person who are under the age of 21 are not allowed and the prohibition is posted clearly on all entrance;
  - b) Bars; and
  - c) Employee lounge areas that are not open to the public, if the business in which the lounge area is located does not employ persons under the age of 21.
- 42. 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.
- 43. Expands the prohibition on tobacco products at schools and school-related areas to include alternative nicotine and vapor products.
  - a) Clarifies the prohibition does not apply to persons who are 21 or older, rather than 18.
- 44. 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.
- 45. Expands the prohibition on unsolicited delivery of tobacco products to alternative nicotine and vapor products.
- 46. Defines *alternative nicotine product* as

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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- a) Any noncombustible product that contains nicotine and that is intended for human consumption, whether chewed, absorbed, ingested or consumed by any other means;
- b) Does not include any e-liquid, vapor product, tobacco product or shisha or any product regulated as a drug or device by the United States Food and Drug Administration under Subchapter V of the federal Food, Drug, and Cosmetic Act.

47. Defines *retail tobacco vendor* as

- a) A person, partnership, joint venture, society, club, trustee, true association, organization or corporation that owns, operates or manages any retail establishment physically located in this state that sells alternative nicotine products, shisha, tobacco products or vapor products, that is in the business of selling, distributing or conveying these products to the public or a user of any such product and is not an otherwise lawful business located outside of this state.
- b) Does not include either of the following:
  - i. The nonmanagement employees of any tobacco retail establishment;
  - ii. A wholesaler of any alternative nicotine product, shisha, tobacco product or vapor product with respect to selling, distributing or conveying these products in business-to-business transactions

48. Modifies the definition of *vapor product*.

49. Contains a delayed effective date of January 1, 2022.

50. Contains a severability clause.