Purpose

Adds electronic smoking device to the definition of smoking as it relates to the Smoke-Free Arizona Act (Act). Includes electronic smoking devices in the definition of tobacco product as it relates to the sale and use of tobacco products by minors. Prescribes requirements for delivery sales of electronic smoking devices. Contains requirements for enactment for initiatives and referendums (Proposition 105).

Background

In 2006, the Legislature enacted the Act to establish smoking restrictions and the Smoke-Free Arizona Fund. The Act prohibits smoking in all public places and places of employment, except for: 1) private residences that are not used as a licensed childcare, adult daycare or healthcare facility; 2) hotel and motel rooms designated as smoking rooms; 3) retail tobacco stores that are physically separated and independently ventilated; 4) veteran and fraternal clubs when they are not open to the public; 5) any place an American Indian religious ceremony is held; 6) outdoor patios; and 7) a theatrical performance or film production if smoking is part of the performance or production. A person who smokes where smoking is prohibited is guilty of a petty offense (A.R.S. § 36-601.01).

A person who knowingly sells, gives or furnishes a tobacco product, vapor product or any instrument or paraphernalia that is designed for smoking or ingesting tobacco to a minor and a minor who accepts any tobacco product, vapor product or any instrument or paraphernalia that is designed for smoking or ingesting tobacco are guilty of a petty offense. A minor who misrepresents their age to induce any person to sell, give or furnish a tobacco product, vapor product or any instrument or paraphernalia that is designed for smoking or ingesting tobacco is guilty of a petty offense and is required to pay a fine up to $500.

Currently, tobacco product includes cigars, cigarettes, cigarette papers, smoking tobacco and chewing tobacco of any kind. A vapor product is a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery or circuit that can be used to heat a liquid-nicotine solution contained in cartridges (A.R.S. § 13-3622).

It is unlawful for any person, other than a licensed person or a retailer ordering from a licensed person, to order or purchase tobacco products by mail or delivery service, through the telephone or through an online transaction, except for pipe tobacco and cigars. A person in violation of delivery sale restrictions is guilty of a class 6 felony (A.R.S. § 36-798.06).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.
Provisions

1. Expands the definition of *smoking*, as it pertains to the Act, to include:
   a) inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, hookah
      or other lighted or heated tobacco or plant product intended for inhalation, including
      marijuana, whether natural or synthetic; and
   b) using an electronic smoking device that creates an aerosol or vapor or using any oral
      smoking device to circumvent the prohibition of smoking.

2. Allows smoking in retail stores that sell electronic smoking devices exclusively and have an
   independent ventilation system.

3. Expands the definition of *tobacco product*, as it relates to the sale and use of tobacco products
   by minors, to include:
   a) any product made or derived from tobacco or containing nicotine that is intended for human
      consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested
      by any other means;
   b) shisha, snuff, snus or an electronic smoking device; and
   c) any component, accessory, instrument or paraphernalia that is used in the consumption of
      a tobacco product, whether or not it includes nicotine, or that is solely designed for smoking
      or ingesting tobacco or shisha.

4. Exempts, from the definition of *tobacco product*, any product that is authorized for sale by the
   U.S. Food and Drug Administration.

5. Exempts electronic smoking devices from the definition of *tobacco product* as it relates to the
   prohibition on delivery sales.

6. Requires retailers that engage in delivery sales of electronic smoking devices to implement age
   verification through an independent, third-party verification service to verify that purchasers
   are at least 21 years of age.

7. Requires retailers that engage in delivery sales of electronic smoking devices to register with
   the Attorney General's Office and provide:
   a) the individual's full name;
   b) the retailer's trade name, if any;
   c) the address of the retailer's principal place of business and of any other place of business;
   d) the telephone number for each place of business;
   e) the retailer's e-mail address;
   f) the retailer's website address; and
   g) the name, address and telephone number for any agent in Arizona authorized to accept
      service on behalf of the retailer.

8. Requires retailers that engage in delivery sales of electronic smoking devices to include a
   prescribed warning in a clear and conspicuous manner on the outside of shipping containers
   that contain electronic smoking devices.

9. Defines *electronic smoking device*. 
10. Removes the definition of *vapor product*.

11. Redefines *enclosed area*.

12. Makes technical and conforming changes.

13. Requires for enactment the affirmative vote of at least three-fourths of the members of each house of the Legislature (Proposition 105).

14. Becomes effective on the general effective date.