

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES
TOBACCO-RELATED PROGRAMS
ARTICLE 1. SMOKE-FREE ARIZONA

R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. "Adult day care" means "adult day health care facility" as defined in A.R.S. § 36-401.
2. "Ashtray" means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. "Calendar quarter" means a period from:
 - a. January 1 through March 31,
 - b. April 1 through June 30,
 - c. July 1 through September 30, or
 - d. October 1 through December 31.
4. "Child care facility" has the meaning in A.R.S. § 36-881.
5. "Child care group home" has the meaning in A.R.S. § 36-897.
6. "Complaint" means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. "Contiguous area" means a place that:
 - a. Is physically attached to a public place or non-vehicle place of employment; or
 - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. "Controlled" means under the authority and responsibility of a proprietor.
9. "Department" means the Arizona Department of Health Services.
10. "Department's designee" means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:

- a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
 - b. Excludes:
 - i. An emergency exit, and
 - ii. A doorway for outdoor patio patrons.
15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
- a. A podiatrist;
 - b. A doctor of chiropractic or chiropractic assistant;
 - c. A dentist, dental consultant, dental hygienist, or denturist;
 - d. A doctor of medicine;
 - e. A doctor of naturopathic medicine or naturopathic medical assistant;
 - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1668, or nursing assistant;
 - g. A dispensing optician;
 - h. An optometrist;
 - i. A doctor of osteopathic medicine;
 - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
 - k. A physical therapist or physical therapist assistant;
 - l. A psychologist;
 - m. A veterinarian or veterinary technician;
 - n. A physician assistant;
 - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
 - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
 - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor,

marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;

- r. An occupational therapist or occupational therapy assistant;
 - s. A respiratory therapist or respiratory therapy technician;
 - t. An acupuncturist;
 - u. An athletic trainer;
 - v. A massage therapist;
 - w. A midwife;
 - x. A hearing aid dispenser;
 - y. An audiologist; or
 - z. A speech-language pathologist or speech-language pathology assistant.
17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).
19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
20. "Permeable" means permitting tobacco smoke to pass through.
21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
24. "Tobacco products and accessories" means:
- a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
 - b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

R9-2-102. Reasonable Distance

- A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.

- B.** A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

R9-2-103. Individual Responsibilities

- A.** An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A).
- B.** An individual in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

R9-2-104. Proprietor Responsibilities

- A.** A proprietor shall:
 - 1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
 - 2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
 - 3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
 - 4. Remove all ashtrays from all areas where smoking is prohibited; and
 - 5. Communicate that smoking is prohibited in places of employment to:
 - a. All existing employees by the effective date of this Article, and
 - b. An applicant for employment at the time of the application for employment.
- B.** If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:
 - 1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
 - 2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.
- C.** If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:
 - 1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
 - 2. Request that the individual stop smoking immediately.
- D.** A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.

- E.** A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107.
- F.** A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.
- G.** A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.
- H.** In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:
 - 1. Not permit smoking in the vehicle when:
 - a. More than one individual occupies the vehicle, and
 - b. The vehicle is used for business purposes; and
 - 2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

R9-2-105. Sign Requirements

- A.** To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:
 - 1. Are no smaller than four inches by six inches; and
 - 2. Contain:
 - a. The international no smoking symbol or the words "No Smoking";
 - b. The telephone number designated by the Department for making complaints;
 - c. The website address designated by the Department for making complaints; and
 - d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
 - 3. Include a citation to A.R.S. § 36-601.01.
- B.** A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):
 - 1. At every entrance,
 - 2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
 - 3. So that the sign is not obscured in any way.
- C.** A proprietor of a vehicle described in A.R.S. § 36-601.01(A)(7) shall:
 - 1. Post at least one sign that:
 - a. Is no smaller than two inches by three inches;
 - b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and
 - c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
 - 2. Include a citation to A.R.S. § 36-601.01 on the sign; and

3. Firmly affix the sign to:
 - a. A vehicle door window,
 - b. The vehicle dashboard, or
 - c. Another area in the vehicle that is visible to each occupant in the vehicle.

R9-2-106. Private Residence

- A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
 1. An adult day care,
 2. A child care facility,
 3. A child care group home, or
 4. A health care institution other than an adult day care.
- B. Smoking is prohibited in a health care professional's private residence:
 1. In an area where the health care professional provides services to an individual, and
 2. When the health care professional is providing services to an individual.
- C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

R9-2-107. Retail Tobacco Store

- A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
 1. The name of the proprietor of the retail tobacco store,
 2. The name and address of the retail tobacco store,
 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
 6. The signature of the proprietor of the retail tobacco store,

7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 8. The date of the Arizona notary's signature.
- C.** The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
1. The name of the proprietor of the retail tobacco store,
 2. The name and address of the retail tobacco store,
 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
 6. The signature of the proprietor of the retail tobacco store,
 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 8. The date of the Arizona notary's signature.
- D.** If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
 - a. For the calendar quarter immediately preceding the date of the complaint; or
 - b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E.** The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and

2. The documents:
 - a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
 - b. Required under subsection (D)(2).

R9-2-108. Outdoor Patio

- A. A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
 1. Is a contiguous area of a place of employment or public place;
 2. Is controlled by the proprietor of the place of employment or public place; and
 3. Has:
 - a. At least one side that consists of:
 - i. Open space;
 - ii. Permeable material;
 - iii. A combination of open space and permeable material; or
 - iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
 - b. No overhead covering or an overhead covering that consists of:
 - i. Permeable material, or
 - ii. A combination of open space and permeable material.
- B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
 1. Inform individuals that the doorway:
 - a. Is not an entrance, and
 - b. Is a doorway for outdoor patio patrons; and
 2. Direct individuals who are not outdoor patio patrons to an entrance.
- C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.

- E.** If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and
 2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through entrances, open windows, ventilation systems, or other means.
- F.** A proprietor may designate an outdoor patio as an area where smoking is prohibited.

R9-2-109. Complaint; Observation; Notification; Inspection

- A.** When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
1. The name and address of the public place or place of employment that is the subject of the complaint;
 2. The date and approximate time of the occurrence that gave rise to the complaint;
 3. A description of the occurrence that gave rise to the complaint; and
 4. Any other information relevant to the occurrence that gave rise to the complaint.
- B.** An individual shall make a complaint according to subsection (A) if the individual:
1. Conducted an inspection pursuant to:
 - a. A.R.S. Title 36, Chapter 4 or Chapter 7.1; or
 - b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
 2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.
- C.** Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
1. Notify the proprietor at the public place or place of employment about the complaint; or
 2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.
- D.** If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:

1. The presence of an ashtray in an area where smoking is prohibited;

2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
3. The presence of smoking;
4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

R9-2-111. Notice of Violation; Notice of Assessment

A. After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may send to the proprietor at the place of employment or public place a written notice of violation that includes:

1. The nature of the violation;
2. The date and time that the violation occurred;
3. The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
4. If a civil penalty is being assessed, a notice of assessment.

B. If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:

1. According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
2. According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:

1. The seriousness of the violation;
2. Any economic benefit that results from the violation;
3. The duration of the violation;

4. The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
 - a. The type and severity of any previous violation,
 - b. The number of individuals affected by the previous violations,
 - c. The total number of previous violations, and
 - d. The length of time from the first violation to the current violation;
5. Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
 - a. Reporting violations to the Department or the Department's designee; and
 - b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
 - i. Informing an individual who is smoking that smoking is illegal, and
 - ii. Requesting that the individual immediately stop the illegal smoking; and
6. Other factors affecting the public health and safety the Department or the Department's designee deems relevant.