

CHAPTER 36 – SMOKING

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Sec. 36-5. - Distribution, display, ~~and sale~~, purchase and possession of tobacco products; and cigarette machines.

- (a) Definition. For purposes of this section only, the term Tobacco Products means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device or liquids used in electronic smoking devices. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- (b) Distribution, display, and sale of ~~smoking~~-tobacco products, or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.
- (c) Sale of tobacco products to persons under 21 years of age prohibited.
 - (1) A person commits an offense if the person, with criminal negligence:
 - a. sells, gives, or causes to be sold or given a tobacco product to someone who is younger than 21 years of age; or
 - b. sells, gives, or causes to be sold or given a tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.
 - (2) It is a defense to prosecution under this subsection that the person to whom the tobacco product was sold or given presented to the defendant apparently valid proof of identification.
 - (3) A proof of identification satisfies the requirements for this subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.
- (d) An individual who is younger than 21 years of age commits an offense if the individual:

- (1) possesses, purchases, consumes, or accepts a tobacco product; or
- (2) falsely represents himself or herself to be 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a tobacco product.
- (3) It is an exception to the application of this section that the individual younger than 21 years of age possessed the tobacco product in the presence of:
 - a. an adult parent, a guardian, or a spouse of the individual; or
 - b. an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

(e) Warning Notice.

- (1) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.
- (2) The sign must include the statement:

THE SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE, AND PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE ARE PROHIBITED BY LAW WITHIN THE CITY OF SAN ANTONIO.

- (3) The Director shall determine the size and design of the sign.
- (4) The Department, on request, shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products.

(f) Notification of Employees and Agents.

- (1) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that the city code:

a. prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 21 years of age; and

b. requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 36-5 (e), requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties;

(2) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of e-cigarettes or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(3) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(4) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or another person authorized to enforce the city code, to provide the forms prescribed by this section.

(5) It is a defense to prosecution under Section 36-5 (f)(4) to show proof that the employee did complete, sign, and date the forms required by Subsections 36-5 (f)(2) and (3).

(g) Cigarette vending machines.

(1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.

(2) It is a defense to prosecution under the provisions of subsection (b) that:

a. The cigarette vending machine is situated in a premise where entry by any person under ~~eighteen~~ twenty-one (~~18~~21) years of age is prohibited by law; or

- b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of ~~eighteen~~ twenty-one (~~18~~21) years employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

(h) Penalty. A violation of ~~this~~ any subsection of Section 36-5 is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable as set out below:

- (1) A violation of subsections 36-5 (b) or (g) shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).
- (2) A violation of subsections 36-5 (c), (e) or (f) shall be punishable by a fine of not more than five hundred dollars (\$500.00).
- (3) A violation of subsection 36-5 (d) shall be punishable by a fine of not more than two hundred fifty dollars (\$250.00). As an alternative to the fine, or in addition to the fine, the court shall have the discretion to review all facts and evidence presented to determine if a person subject to a violation of 36-5 (d) should be required to attend an approved e-cigarette and tobacco awareness/cessation program, and upon proof of completion of the program the case against that person shall be dismissed.

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