



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0235

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

35 ILCS 130/24	from Ch. 120, par. 453.24
35 ILCS 135/30	from Ch. 120, par. 453.60
720 ILCS 675/2	from Ch. 23, par. 2358

Amends the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act. Provides that a violation of the Act involving the sale or distribution of single or loose cigarettes that are not contained within a sealed container, pack, or package to persons who are 18 years of age or older is a petty offense punishable by a fine of not more than \$50, which may be satisfied without a court appearance by a written plea of guilty and payment of all applicable fines, penalties, and costs. Amends the Cigarette Tax Act and the Cigarette Use Tax Act to provide that those violations shall be subject only to the penalties provided in the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act.

LRB100 04161 HLH 14167 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Cigarette Tax Act is amended by changing
5 Section 24 as follows:

6 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

7 Sec. 24. Punishment for sale or possession of packages of
8 contraband cigarettes.

9 (a) Possession or sale of 100 or less packages of
10 contraband cigarettes. With the exception of licensed
11 distributors, licensed secondary distributors, or licensed
12 transporters, as defined in Section 9c of this Act, any person
13 who has in his or her possession or sells 100 or less original
14 packages of contraband cigarettes is guilty of a Class A
15 misdemeanor and a Class 4 felony for each subsequent offense
16 occurring within 12 months of a prior offense.

17 (b) Possession or sale of more than 100 but less than 251
18 packages of contraband cigarettes. With the exception of
19 licensed distributors, licensed secondary distributors, or
20 licensed transporters, as defined in Section 9c of this Act,
21 any person who has in his or her possession or sells more than
22 100 but less than 251 original packages of contraband
23 cigarettes is guilty of a Class A misdemeanor for a first

1 offense and a Class 4 felony for each subsequent offense.

2 (c) Possession or sale of more than 250 but less than 1,001
3 packages of contraband cigarettes. With the exception of
4 licensed distributors, licensed secondary distributors, or
5 licensed transporters, as defined in Section 9c of this Act,
6 any person who has in his or her possession or sells more than
7 250 but less than 1,001 original packages of contraband
8 cigarettes is guilty of a Class 4 felony.

9 (d) Possession or sale of more than 1,000 packages of
10 contraband cigarettes. With the exception of licensed
11 distributors, licensed secondary distributors, or licensed
12 transporters, as defined in Section 9c of this Act, any person
13 who has in his or her possession or sells more than 1,000
14 original packages of contraband cigarettes is guilty of a Class
15 3 felony.

16 (e) Any person licensed as a distributor, secondary
17 distributor, or transporter, as defined in Section 9c of this
18 Act, who has in his or her possession or sells 100 or less
19 original packages of contraband cigarettes is guilty of a Class
20 A misdemeanor and a Class 4 felony for each subsequent offense
21 occurring within 12 months of a prior offense.

22 (f) Any person licensed as a distributor, secondary
23 distributor, or transporter, as defined in Section 9c of this
24 Act, who has in his or her possession or sells more than 100
25 original packages of contraband cigarettes is guilty of a Class
26 4 felony.

1 (g) Notwithstanding subsections (e) through (f), licensed
2 distributors and transporters, as defined in Section 9c of this
3 Act, may possess unstamped packages of cigarettes.
4 Notwithstanding subsections (e) through (f), licensed
5 distributors may possess cigarettes that bear a tax stamp of
6 another state or taxing jurisdiction. Notwithstanding
7 subsections (e) through (f), a licensed distributor or licensed
8 secondary distributor may possess contraband cigarettes
9 returned to the distributor or licensed secondary distributor
10 by a retailer if the distributor or licensed secondary
11 distributor immediately conducts an inventory of the
12 cigarettes being returned, the distributor or licensed
13 secondary distributor and the retailer returning the
14 contraband cigarettes sign the inventory, the distributor or
15 licensed secondary distributor provides a copy of the signed
16 inventory to the retailer, and the distributor retains the
17 inventory in its books and records and promptly notifies the
18 Department of Revenue.

19 (h) Notwithstanding subsections (a) through (d) of this
20 Section, a retailer unknowingly possessing contraband
21 cigarettes obtained from a licensed distributor or licensed
22 secondary distributor or knowingly possessing contraband
23 cigarettes obtained from a licensed distributor is not subject
24 to penalties under this Section if the retailer, within 48
25 hours after discovering that the cigarettes are contraband
26 cigarettes, excluding Saturdays, Sundays, and holidays: (i)

1 notifies the Department and the licensed distributor or
2 licensed secondary distributor from whom the cigarettes were
3 obtained, orally and in writing, that he or she possesses
4 contraband cigarettes obtained from a licensed distributor or
5 licensed secondary distributor; (ii) places the contraband
6 cigarettes in one or more containers and seals those
7 containers; and (iii) places on the containers the following or
8 similar language: "Contraband Cigarettes. Not For Sale." All
9 contraband cigarettes in the possession of a retailer remain
10 subject to forfeiture under the provisions of this Act.

11 Any retailer who knowingly possesses packages of
12 cigarettes with a counterfeit stamp with intent to sell is
13 guilty of a Class 2 felony. Any retailer who knowingly
14 possesses unstamped packages of cigarettes with intent to sell
15 is guilty of a Class 4 felony. A retailer shall not be liable
16 for unknowingly possessing, selling, or distributing to
17 consumers cigarettes that contain an old stamp if the correct
18 tax was collected at the point of sale and the cigarettes were
19 obtained from a distributor licensed under this Act.

20 (i) Notwithstanding any other provision of law, violations
21 of subsection (d) of Section 1 of the Prevention of Tobacco Use
22 by Minors and Sale and Distribution of Tobacco Products Act,
23 other than violations involving the sale or distribution of a
24 tobacco product to a minor under the age of 18, shall be
25 subject only to the penalties provided in subsection (g-5) of
26 Section 2 of that Act.

1 (Source: P.A. 98-1055, eff. 1-1-16.)

2 Section 10. The Cigarette Use Tax Act is amended by
3 changing Section 30 as follows:

4 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

5 Sec. 30. Punishment for sale or possession of unstamped
6 packages of cigarettes, other than by a licensed distributor or
7 transporter.

8 (a) Possession or sale of more than 9 but less than 101
9 unstamped packages of cigarettes. With the exception of
10 licensed distributors, licensed secondary distributors, or
11 licensed transporters, as defined in Section 9c of the
12 Cigarette Tax Act, any person who has in his or her possession
13 or sells more than 9 but less than 101 original packages of
14 contraband cigarettes is guilty of a Class A misdemeanor and a
15 Class 4 felony for each subsequent offense occurring within 12
16 months of a prior offense.

17 (b) Possession or sale of more than 100 but less than 251
18 unstamped packages of cigarettes. With the exception of
19 licensed distributors, licensed secondary distributors, or
20 licensed transporters, as defined in Section 9c of the
21 Cigarette Tax Act, any person who has in his or her possession
22 or sells more than 100 but less than 251 original packages of
23 contraband cigarettes is guilty of a Class A misdemeanor for
24 the first offense and a Class 4 felony for each subsequent

1 offense.

2 (c) Possession or sale of more than 250 but less than 1,001
3 unstamped packages of cigarettes. With the exception of
4 licensed distributors, licensed secondary distributors, or
5 licensed transporters, as defined in Section 9c of the
6 Cigarette Tax Act, any person who has in his or her possession
7 or sells more than 250 but less than 1,001 original packages of
8 contraband cigarettes is guilty of a Class 4 felony.

9 (d) Possession or sale of more than 1,000 contraband
10 packages of cigarettes. With the exception of licensed
11 distributors, licensed secondary distributors, or licensed
12 transporters, as defined in Section 9c of the Cigarette Tax
13 Act, any person who has in his or her possession or sells, more
14 than 1,000 original packages of contraband cigarettes is guilty
15 of a Class 3 felony.

16 (e) Any person licensed as a distributor, secondary
17 distributor, or transporter, as defined in Section 9c of the
18 Cigarette Tax Act, who has in his or her possession or sells
19 100 or less original packages of contraband cigarettes is
20 guilty of a Class A misdemeanor and a Class 4 felony for each
21 subsequent offense occurring within 12 months of a prior
22 offense.

23 (f) Any person licensed as a distributor, secondary
24 distributor, or transporter, as defined in Section 9c of the
25 Cigarette Tax Act, who has in his or her possession or sells
26 more than 100 original packages of contraband cigarettes is

1 guilty of a Class 4 felony.

2 (g) Notwithstanding subsections (e) through (f), licensed
3 distributors and transporters, as defined in Section 9c of the
4 Cigarette Tax Act, may possess unstamped packages of
5 cigarettes. Notwithstanding subsections (e) through (f),
6 licensed distributors may possess cigarettes that bear a tax
7 stamp of another state or taxing jurisdiction. Notwithstanding
8 subsections (e) through (f), a licensed distributor or licensed
9 secondary distributor may possess contraband cigarettes
10 returned to the distributor or licensed secondary distributor
11 by a retailer if the distributor or licensed secondary
12 distributor immediately conducts an inventory of the
13 cigarettes being returned, the distributor or licensed
14 secondary distributor and the retailer returning the
15 contraband cigarettes sign the inventory, the distributor or
16 licensed secondary distributor provides a copy of the signed
17 inventory to the retailer, and the distributor or licensed
18 secondary distributor retains the inventory in its books and
19 records and promptly notifies the Department of Revenue.

20 (h) Notwithstanding subsections (a) through (d) of this
21 Section, a retailer unknowingly possessing contraband
22 cigarettes obtained from a licensed distributor or licensed
23 secondary distributor or knowingly possessing contraband
24 cigarettes obtained from a licensed distributor or licensed
25 secondary distributor is not subject to penalties under this
26 Section if the retailer, within 48 hours after discovering that

1 the cigarettes are contraband cigarettes, excluding Saturdays,
2 Sundays, and holidays: (i) notifies the Department and the
3 licensed distributor or licensed secondary distributor from
4 whom the cigarettes were obtained, orally and in writing, that
5 he or she possesses contraband cigarettes obtained from a
6 licensed distributor or licensed secondary distributor; (ii)
7 places the contraband cigarettes in one or more containers and
8 seals those containers; and (iii) places on the containers the
9 following or similar language: "Contraband Cigarettes. Not For
10 Sale." All contraband cigarettes in the possession of a
11 retailer remain subject to forfeiture under the provisions of
12 this Act.

13 Any retailer who knowingly possesses packages of
14 cigarettes with a counterfeit stamp with intent to sell is
15 guilty of a Class 2 felony. Any retailer who knowingly
16 possesses unstamped packages of cigarettes with intent to sell
17 is guilty of a Class 4 felony. A retailer shall not be liable
18 for unknowingly possessing, selling, or distributing to
19 consumers cigarettes that contain an old stamp if the correct
20 tax was collected at the point of sale and the cigarettes were
21 obtained from a distributor licensed under this Act.

22 (i) Notwithstanding any other provision of law, violations
23 of subsection (d) of Section 1 of the Prevention of Tobacco Use
24 by Minors and Sale and Distribution of Tobacco Products Act,
25 other than violations involving the sale or distribution of a
26 tobacco product to a minor under the age of 18, shall be

1 subject only to the penalties provided in subsection (g-5) of
2 Section 2 of that Act.

3 (Source: P.A. 98-1055, eff. 1-1-16.)

4 Section 15. The Prevention of Tobacco Use by Minors and
5 Sale and Distribution of Tobacco Products Act is amended by
6 changing Section 2 as follows:

7 (720 ILCS 675/2) (from Ch. 23, par. 2358)

8 Sec. 2. Penalties.

9 (a) Any person who violates subsection (a) or (a-5) of
10 Section 1 or subsection (b) or (c) of Section 1.5 of this Act
11 is guilty of a petty offense. For the first offense in a
12 24-month period, the person shall be fined \$200 if his or her
13 employer has a training program that facilitates compliance
14 with minimum-age tobacco laws. For the second offense in a
15 24-month period, the person shall be fined \$400 if his or her
16 employer has a training program that facilitates compliance
17 with minimum-age tobacco laws. For the third offense in a
18 24-month period, the person shall be fined \$600 if his or her
19 employer has a training program that facilitates compliance
20 with minimum-age tobacco laws. For the fourth or subsequent
21 offense in a 24-month period, the person shall be fined \$800 if
22 his or her employer has a training program that facilitates
23 compliance with minimum-age tobacco laws. For the purposes of
24 this subsection, the 24-month period shall begin with the

1 person's first violation of the Act. The penalties in this
2 subsection are in addition to any other penalties prescribed
3 under the Cigarette Tax Act and the Tobacco Products Tax Act of
4 1995.

5 (a-5) Any retailer who violates subsection (a) or (a-5) of
6 Section 1 or subsection (b) or (c) of Section 1.5 of this Act
7 is guilty of a petty offense. For the first offense, the
8 retailer shall be fined \$200 if it does not have a training
9 program that facilitates compliance with minimum-age tobacco
10 laws. For the second offense, the retailer shall be fined \$400
11 if it does not have a training program that facilitates
12 compliance with minimum-age tobacco laws. For the third
13 offense, the retailer shall be fined \$600 if it does not have a
14 training program that facilitates compliance with minimum-age
15 tobacco laws. For the fourth or subsequent offense in a
16 24-month period, the retailer shall be fined \$800 if it does
17 not have a training program that facilitates compliance with
18 minimum-age tobacco laws. For the purposes of this subsection,
19 the 24-month period shall begin with the person's first
20 violation of the Act. The penalties in this subsection are in
21 addition to any other penalties prescribed under the Cigarette
22 Tax Act and the Tobacco Products Tax Act of 1995.

23 (a-6) For the purpose of this Act, a training program that
24 facilitates compliance with minimum-age tobacco laws must
25 include at least the following elements: (i) it must explain
26 that only individuals displaying valid identification

1 demonstrating that they are 18 years of age or older shall be
2 eligible to purchase cigarettes or tobacco products and (ii) it
3 must explain where a clerk can check identification for a date
4 of birth. The training may be conducted electronically. Each
5 retailer that has a training program shall require each
6 employee who completes the training program to sign a form
7 attesting that the employee has received and completed tobacco
8 training. The form shall be kept in the employee's file and may
9 be used to provide proof of training.

10 (b) If a minor violates subsection (a-7) of Section 1 or
11 subsection (d) of Section 1.5, he or she is guilty of a petty
12 offense and the court may impose a sentence of 25 hours of
13 community service and a fine of \$50 for a first violation. If a
14 minor violates subsection (a-6) of Section 1, he or she is
15 guilty of a Class A misdemeanor.

16 (c) A second violation by a minor of subsection (a-7) of
17 Section 1 or subsection (d) of Section 1.5 that occurs within
18 12 months after the first violation is punishable by a fine of
19 \$75 and 50 hours of community service.

20 (d) A third or subsequent violation by a minor of
21 subsection (a-7) of Section 1 or subsection (d) of Section 1.5
22 that occurs within 12 months after the first violation is
23 punishable by a \$200 fine and 50 hours of community service.

24 (e) Any second or subsequent violation not within the
25 12-month time period after the first violation is punishable as
26 provided for a first violation.

1 (f) If a minor is convicted of or placed on supervision for
2 a violation of subsection (a-6) or (a-7) of Section 1 or
3 subsection (d) of Section 1.5, the court may, in its
4 discretion, and upon recommendation by the State's Attorney,
5 order that minor and his or her parents or legal guardian to
6 attend a smoker's education or youth diversion program if that
7 program is available in the jurisdiction where the offender
8 resides. Attendance at a smoker's education or youth diversion
9 program shall be time-credited against any community service
10 time imposed for any first violation of subsection (a-7) of
11 Section 1. In addition to any other penalty that the court may
12 impose for a violation of subsection (a-7) of Section 1 or
13 subsection (d) of Section 1.5, the court, upon request by the
14 State's Attorney, may in its discretion require the offender to
15 remit a fee for his or her attendance at a smoker's education
16 or youth diversion program.

17 (g) For purposes of this Section, "smoker's education
18 program" or "youth diversion program" includes, but is not
19 limited to, a seminar designed to educate a person on the
20 physical and psychological effects of smoking tobacco products
21 and alternative nicotine products and the health consequences
22 of smoking tobacco products and alternative nicotine products
23 that can be conducted with a locality's youth diversion
24 program.

25 (g-5) A violation of subsection (d) of Section 1 of this
26 Act, other than a violation involving the sale or distribution

1 of a tobacco product to a minor under the age of 18, is a petty
2 offense punishable by a fine of not more than \$50 for each
3 violation. Such a violation may be satisfied without a court
4 appearance by a written plea of guilty and payment of all
5 applicable fines, penalties, and costs.

6 (h) All moneys collected as fines for violations of
7 subsection (a), (a-5), (a-6), or (a-7) of Section 1 and
8 subsection (b), (c), or (d) of Section 1.5 shall be distributed
9 in the following manner:

10 (1) one-half of each fine shall be distributed to the
11 unit of local government or other entity that successfully
12 prosecuted the offender; and

13 (2) one-half shall be remitted to the State to be used
14 for enforcing this Act.

15 Any violation of subsection (a) or (a-5) of Section 1 or
16 subsection (b) or (c) of Section 1.5 shall be reported to the
17 Department of Revenue within 7 business days.

18 (Source: P.A. 98-350, eff. 1-1-14; 98-1055, eff. 1-1-16;
19 99-192, eff. 1-1-16; 99-496, eff. 6-1-16; revised 9-14-16.)