

1 AN ACT concerning regulation.

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

4 Section 1. Short title. This Act may be cited as the Vapor
5 Products Regulatory Act.

6 Section 5. Definitions. For purposes of this Act:

7 "Adult-only facility" means a facility or restricted area
8 (whether open-air or enclosed) where the operator ensures or
9 has a reasonable basis to believe (such as by checking
10 identification as required under State law, or by checking the
11 identification of any person appearing to be under the age of
12 27) that no person under legal age is present. A facility or
13 restricted area need not be permanently restricted to persons
14 under legal age to constitute an adult-only facility, provided
15 that the operator ensures or has a reasonable basis to believe
16 that no person under legal age is present during the event or
17 time period in question.

18 "Age restricted area" means a signed designated area in a
19 retail establishment to which minors under 18 years of age are
20 not permitted access unless accompanied by a parent or legal
21 guardian.

22 "Department" means the Department of Revenue.

23 "E-liquid" means a substance that contains nicotine and

1 flavoring, substances, or other additives and is intended for
2 use in a vapor product.

3 "Person" means any natural individual, firm, partnership,
4 association, joint stock company, joint adventure, or public or
5 private corporation, however formed, limited liability
6 company, or a receiver, executor, administrator, trustee,
7 conservator, or other representative appointed by order of any
8 court.

9 "Records" means all data maintained by the retailer of
10 vapor products, including data on paper, microfilm,
11 microfiche, or any type of machine sensible data compilation.

12 "Retailer of vapor products" means any person in this State
13 engaged in the business of selling e-liquids or vapor products
14 to consumers in this State for use or consumption and not for
15 resale in any form, for valuable consideration, regardless of
16 amount, quantity, or number of sales. "Retailer of vapor
17 products" does not include any person or business subject to
18 the Cigarette Tax Act, the Tobacco Products Tax Act of 1995,
19 the Prevention of Tobacco Use By Minors and Sale and
20 Distribution of Tobacco Products Act, the Display of Tobacco
21 Products Act, or the Compassionate Use of Medical Cannabis
22 Pilot Program Act.

23 "Sale" means any transfer, exchange, or barter in any
24 manner or by any means whatsoever for a consideration and
25 includes all sales made by persons.

26 "Vapor pen" means a powered vaporizer, and any component

1 parts thereof intended to be used in the powered vaporizer,
2 that converts e-liquid into vapor which is intended for
3 inhalation.

4 "Vapor product" means an e-liquid or vapor pen as defined
5 under this Act.

6 Section 10. Retailer's license; fee.

7 (a) On or after January 1, 2018, no person may engage in
8 business as a retailer of vapor products in this State without
9 first having obtained a vapor products retail license from the
10 Department. Applications for a license shall be made to the
11 Department, by electronic means, in a form prescribed by the
12 Department. Each applicant for a license under this Section
13 shall furnish to the Department, in an electronic format
14 established by the Department, the following information:

15 (1) the name and address of the applicant;

16 (2) the address of the location at which the applicant
17 proposes to engage in business as a retailer of vapor
18 products in this State;

19 (3) whether the applicant will engage in the sale of
20 e-liquids, vapor pens, or both; and

21 (4) such other additional information as the
22 Department may lawfully require by its rules.

23 (b) The annual license fee payable to the Department for
24 each retailer's license shall be \$75. The fee shall be
25 deposited into the Tax Compliance and Administration Fund and

1 shall be used for the cost of enforcement of this Act.

2 An applicant for a license shall pay such fee to the
3 Department at the time of submitting its application for
4 license to the Department. The Department shall require an
5 applicant for a license under this Section to electronically
6 file and pay the fee.

7 (c) The following are ineligible to receive a retailer's
8 license under this Act:

9 (1) a person who has been convicted of a felony related
10 to the illegal transportation, sale, or distribution of any
11 age-restricted product or item, under any federal or State
12 law, if the Department, after investigation and a hearing
13 if requested by the applicant, determines that the person
14 has not been sufficiently rehabilitated to warrant the
15 public trust; or

16 (2) a corporation, if any officer, manager, or director
17 thereof, or any stockholder or stockholders owning in the
18 aggregate more than 5% of the stock of such corporation,
19 would not be eligible to receive a license under this Act
20 for any reason.

21 (d) The Department, upon receipt of an application and
22 license fee, in proper form, from a person who is eligible to
23 receive a retailer's license under this Act, shall issue to the
24 applicant a license in form as prescribed by the Department,
25 which license shall permit the applicant to which it is issued
26 to engage in business as a retailer of vapor products under

1 this Act at the place shown in his application. All licenses
2 issued by the Department under this Section shall be valid for
3 a period not to exceed one year after issuance unless sooner
4 revoked, canceled, or suspended as provided in this Act. No
5 license issued under this Section is transferable or
6 assignable. The license shall be conspicuously displayed in the
7 place of business conducted by the licensee in Illinois under
8 the license. A person who obtains a license as a retailer of
9 vapor products who ceases to do business as specified in the
10 license, or who never commenced business, or whose license is
11 suspended or revoked, shall immediately surrender the license
12 to the Department. The Department shall not issue a license to
13 a retailer of vapor products unless the retailer of vapor
14 products is also validly registered under the Retailers'
15 Occupation Tax Act. A person who obtains a license as a
16 retailer of vapor products who ceases to do business as
17 specified in the license, or who never commenced business, or
18 whose license is suspended or revoked, shall immediately
19 surrender the license to the Department.

20 (e) Any person aggrieved by any decision of the Department
21 under this Section may, within 30 days after notice of the
22 decision, protest and request a hearing. Upon receiving a
23 request for hearing, the Department shall give written notice
24 to the person requesting the hearing of the time and place
25 fixed for the hearing and shall hold a hearing in conformity
26 with the provisions of this Act and then issue its final

1 administrative decision in the matter to that person. In
2 absence of protest and request for a hearing within 30 days,
3 the Department's decision shall become final without any
4 further determination being made or notice given.

5 Section 20. Acting as a retailer of vapor products without
6 a license; penalty. A person who knowingly acts as a retailer
7 of vapor products in this State without first having obtained a
8 license to do so in compliance with this Act is guilty of a
9 Class A misdemeanor for the first offense and a Class 4 felony
10 for a second or subsequent offense. Each day such person
11 operates as a retailer of vapor products without a license
12 constitutes a separate offense. The Department may, by
13 application to any circuit court, obtain an injunction
14 restraining any person who engages in business as a retailer of
15 vapor products without a license (either because his or her
16 license has been revoked, canceled, or suspended or because of
17 a failure to obtain a license in the first instance) from
18 engaging in that business until that person, as if that person
19 were a new applicant for a license, complies with all of the
20 conditions, restrictions, and requirements of this Act and
21 qualifies for and obtains a license.

22 Section 25. Revocation, cancellation, or suspension of a
23 retail license.

24 (a) The Department may, after notice and hearing, revoke,

1 cancel, or suspend the license of any retailer of vapor
2 products for the violation of any provision of this Act, or for
3 noncompliance with any provision herein contained, or for any
4 noncompliance with any lawful rule adopted by the Department
5 pursuant to this Act, or because the licensee is determined to
6 be ineligible for a license for any one or more of the reasons
7 provided in this Section.

8 (b) A person aggrieved by any decision of the Department
9 under this Section may, within 30 days after notice of the
10 decision, protest and request a hearing. Upon receiving a
11 request for a hearing, the Department shall give notice to the
12 person requesting the hearing of the time and place fixed for
13 the hearing and shall hold a hearing in conformity with the
14 provisions of this Act and then issue its final administrative
15 decision in the matter to that person. In the absence of a
16 protest and request for a hearing within 30 days, the
17 Department's decision shall become final without any further
18 determination being made or notice given. The final decisions
19 of the Department shall be subject to judicial review according
20 to the provisions of the Administrative Review Law.

21 (c) If the retailer of vapor products has a training
22 program that facilitates compliance with minimum-age vapor
23 products laws, the Department shall suspend for 3 days the
24 license of that retailer of vapor products for a fourth or
25 subsequent violation of subsection (a) or (b) of Section 50.
26 For the purposes of this Section, any violation of Section 50

1 occurring at the licensed location for the retailer of vapor
2 products during a 24-month period shall be counted as a
3 violation against the retailer of vapor products.

4 If the retailer of vapor products does not have a training
5 program that facilitates compliance with minimum-age vapor
6 products laws, the Department shall suspend for 3 days the
7 license of that retailer of vapor products for a second
8 violation subsection (a) or (b) of Section 50.

9 If the retailer of vapor products does not have a training
10 program that facilitates compliance with minimum-age vapor
11 products laws, the Department shall suspend for 7 days the
12 license of that retailer of vapor products for a third
13 violation of subsection (a) or (b) of Section 50.

14 If the retailer of vapor products does not have a training
15 program that facilitates compliance with minimum-age vapor
16 products laws, the Department shall suspend for 30 days the
17 license of a retailer of vapor products for a fourth or
18 subsequent violation of subsection (a) or (b) of Section 50.

19 Section 30. Arrest; search and seizure without warrant.

20 (a) Any duly authorized employee of the Department may:

21 (1) arrest without warrant any person committing in his
22 or her presence a violation of any of the provisions of
23 this Act; and

24 (2) may seize any vapor products in accordance with the
25 provisions of this Act.

1 The vapor products so seized are subject to confiscation
2 and forfeiture.

3 (b) After seizing any vapor products or vending devices,
4 the Department must hold a hearing and determine whether the
5 retailer of vapor products was properly licensed to sell the
6 vapor products at the time of their seizure by the Department.
7 The Department shall give not less than 20 days' notice of the
8 time and place of the hearing to the owner of the property, if
9 the owner is known, and also to the person in whose possession
10 the property was found, if that person is known and if the
11 person in possession is not the owner of the property. If
12 neither the owner nor the person in possession of the property
13 is known, the Department must cause publication of the time and
14 place of the hearing to be made at least once in each week for 3
15 weeks successively in a newspaper of general circulation in the
16 county where the hearing is to be held.

17 If, as the result of the hearing, the Department determines
18 that the retailer of vapor products was not properly licensed
19 at the time the vapor products were seized, the Department must
20 enter an order declaring the vapor products or vending devices
21 confiscated and forfeited to the State, to be held by the
22 Department for disposal by it as provided in Section 40. The
23 Department must give notice of the order to the owner of the
24 property, if the owner is known, and also to the person in
25 whose possession the property was found, if that person is
26 known and if the person in possession is not the owner of the

1 property. If neither the owner nor the person in possession of
2 the property is known, the Department must cause publication of
3 the order to be made at least once in each week for 3 weeks
4 successively in a newspaper of general circulation in the
5 county where the hearing was held.

6 Section 35. Peace officer investigation.

7 (a) Whenever any peace officer of the State or any duly
8 authorized officer or employee of the Department shall have
9 reason to believe that any violation of this Act has occurred
10 and that the person so violating the Act has in his, hers, or
11 its possession any vapor product, or any vending device
12 containing such vapor products, he may file or cause to be
13 filed his complaint in writing, verified by affidavit, with any
14 court within whose jurisdiction the premises to be searched are
15 situated, stating the facts upon which such belief is founded,
16 the premises to be searched, and the property to be seized, and
17 procure a search warrant and execute the same.

18 (b) Upon the execution of such search warrant, the peace
19 officer, or officer or employee of the Department, executing
20 such search warrant shall make due return thereof to the court
21 issuing the same, together with an inventory of the property
22 taken thereunder. The court shall thereupon issue process
23 against the owner of such property if he is known; otherwise,
24 such process shall be issued against the person in whose
25 possession the property so taken is found, if such person is

1 known. In case of inability to serve such process upon the
2 owner or the person in possession of the property at the time
3 of its seizure, as hereinbefore provided, notice of the
4 proceedings before the court shall be given as required by the
5 statutes of the State governing cases of Attachment. Upon the
6 return of the process duly served or upon the posting or
7 publishing of notice made, as hereinabove provided, the court
8 or jury, if a jury shall be demanded, shall proceed to
9 determine whether or not such property so seized was held or
10 possessed in violation of this Act, or whether, if a vending
11 device has been so seized, it contained at the time of its
12 seizure any vapor products held or possessed in violation of
13 this Act.

14 Section 40. Destruction or use of forfeited property. When
15 any vapor product or any vending device shall have been
16 declared forfeited to the State and all proceedings for the
17 judicial review of the Department's decision have terminated,
18 the Department shall, to the extent that its decision is
19 sustained on review, destroy or maintain and use such property
20 in an undercover capacity.

21 Section 45. Retailers; records.

22 (a) A retailer of vapor products who is required to procure
23 a license under this Act shall keep within Illinois complete
24 and accurate records of vapor products purchased, sold, or

1 otherwise disposed of and shall preserve and keep all invoices,
2 bills of lading, sales records, and copies of bills of sale,
3 returns, and other pertinent papers and documents relating to
4 the purchase, sale, or disposition of vapor products. The
5 records need not be maintained on the licensed premises, but
6 must be maintained in the State of Illinois; however, if access
7 is available electronically, the records may be maintained
8 out-of-State. However, all original invoices or copies thereof
9 covering purchases of vapor products must be retained on the
10 licensed premises for a period of 90 days after such purchase,
11 unless the Department has granted a waiver in response to a
12 written request in cases where records are kept at a central
13 business location within the State of Illinois or in cases
14 where records that are available electronically are maintained
15 out of State. The Department shall adopt rules regarding the
16 eligibility for a waiver, revocation of a waiver, and
17 requirements and standards for maintenance and accessibility
18 of records located at a central location out-of-State pursuant
19 to a waiver provided under this Section.

20 (b) Records shall be preserved for a period of at least 3
21 years after the later of the date of the records or the date of
22 the entries appearing in the records, unless the Department, in
23 writing, authorizes their destruction or disposal at an earlier
24 date. At all times during the usual business hours of the day,
25 any duly authorized agent or employee of the Department may
26 enter any place of business of the retailer of vapor products

1 without a search warrant and may inspect the premises to
2 determine whether any of the provisions of this Act are being
3 violated. If such agent or employee is denied free access or is
4 hindered or interfered with in making such examination as
5 herein provided, the license of the retailer of vapor products
6 shall be subject to suspension or revocation by the Department.

7 Section 50. Distribution of vapor products to, and
8 possession by, persons under 18 years of age prohibited.

9 (a) A person, either directly or indirectly by an agent or
10 employee, or by a vending machine owned by the person or
11 located in the person's establishment, may not sell, offer for
12 sale, give, or furnish any vapor product to a person under 18
13 years of age.

14 (b) Before selling, offering for sale, giving, or
15 furnishing a vapor product to another person, the person
16 selling, offering for sale, giving, or furnishing the vapor
17 product shall verify that the person is at least 18 years of
18 age by:

19 (1) examining from any person that appears to be under
20 27 years of age a government-issued photographic
21 identification that establishes the person is at least 18
22 years of age; or

23 (2) for sales made through the Internet or other remote
24 sales methods, performing an age verification through an
25 independent, third-party age verification service that

1 compares information available from public records to the
2 personal information entered by the person during the
3 ordering process that establishes the person is 18 years of
4 age or older.

5 (c) A person under 18 years of age shall not possess a
6 vapor product.

7 Section 55. Penalties for distribution of vapor products
8 to, and possession by, persons under 18 years of age.

9 (a) Any person who violates subsection (a) or (b) of
10 Section 50 is guilty of a petty offense. For the first offense
11 in a 24-month period, the person shall be fined \$200 if his or
12 her employer has a training program that facilitates compliance
13 with minimum-age vapor product laws. For the second offense in
14 a 24-month period, the person shall be fined \$400 if his or her
15 employer has a training program that facilitates compliance
16 with minimum-age vapor products laws. For the third offense in
17 a 24-month period, the person shall be fined \$600 dollars if
18 his or her employer has a training program that facilitates
19 compliance with minimum-age vapor product laws. For the fourth
20 or subsequent offense in a 24-month period, the person shall be
21 fined \$800 if his or her employer has a training program that
22 facilitates compliance with minimum-age vapor products laws.
23 For the purposes of this subsection, the 24-month period shall
24 begin with the person's first violation of the Act. The
25 penalties in this subsection are in addition to any other

1 penalties provided by law.

2 (a-5) Any retailer of vapor products who violates
3 subsection (a) or (b) of Section 50 is guilty of a petty
4 offense. For the first offense in a 24-month period, the
5 retailer of vapor products shall be fined \$200 if it does not have
6 a training program that facilitates compliance with
7 minimum-age vapor product laws. For the second offense in a
8 24-month period, the retailer of vapor products shall be fined
9 \$400 if it does not have a training program that facilitates
10 compliance with minimum-age vapor products laws. For the third
11 offense in a 24-month period, the retailer of vapor products
12 shall be fined \$600 dollars if it does not have a training
13 program that facilitates compliance with minimum-age vapor
14 product laws. For the fourth or subsequent offense in a
15 24-month period, the retailer of vapor products shall be fined
16 \$800 if it does not have a training program that facilitates
17 compliance with minimum-age vapor products laws. For the
18 purposes of this subsection, the 24-month period shall begin
19 with the person's first violation of the Act. The penalties in
20 this subsection are in addition to any other penalties provided
21 by law.

22 (a-10) A training program that facilitates compliance with
23 minimum-age vapor products laws must include at least the
24 following elements: (i) it must explain that only individuals
25 displaying valid identification demonstrating that they are 18
26 years of age or older shall be eligible to purchase vapor

1 products; and (ii) it must explain where a clerk can check
2 identification for a date of birth. The training may be
3 conducted electronically. Each retailer of vapor products that
4 has a training program shall require each employee who
5 completes the training program to sign a form attesting that
6 the employee has received and completed the vapor products
7 training. The form shall be kept in the employee's file and may
8 be used to provide proof of training.

9 (b) If a minor violates subsection (c) of Section 50, he or
10 she is guilty of a petty offense and the court may impose a
11 sentence of 25 hours of community service and a fine of \$50 for
12 a first violation.

13 (c) A second violation by a minor of subsection (c) of
14 Section 50 that occurs within 12 months after the first
15 violation is punishable by a fine of \$75 and 50 hours of
16 community service.

17 (d) A third or subsequent violation by a minor of
18 subsection (c) of Section 50 that occurs within 12 months after
19 the first violation is punishable by a \$200 fine and 50 hours
20 of community service.

21 (e) Any second or subsequent violation not within the
22 12-month time period after the first violation is punishable as
23 provided for a first violation.

24 (f) If a minor is convicted of or placed on supervision for
25 a violation of subsection (c) of Section 50, the court may, in
26 its discretion, and upon recommendation by the State's Attorney

1 order that minor and his or her parents or legal guardian to
2 attend a youth diversion program if that program is available
3 in the jurisdiction where the offender resides. Attendance at a
4 youth diversion program shall be time-credited against any
5 community service time imposed for any first violation of
6 subsection (c) of Section 50. In addition to any other penalty
7 that the court may impose for a violation of subsection (c) of
8 Section 50, the court, upon request by the State's Attorney,
9 may in its discretion require the offender to remit a fee for
10 his or her attendance at a youth diversion program.

11 For the purposes of this Section, a "youth diversion
12 program" includes, but is not limited to, a seminar designed to
13 educate a person on the physical and psychological effects of
14 using nicotine products and the health consequences of using
15 nicotine products that can be conducted with a locality's youth
16 diversion program.

17 (g) All moneys collected as fines for violations of Section
18 (a), (b), or (c) of Section 50 of this Act shall be distributed
19 in the following manner:

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

23 (2) one-half shall be remitted to the State to be used
24 for enforcement of this Act.

25 Any violation of subsection (a) or (b) of Section 50 shall
26 be reported to the Department of Revenue within 7 business

1 days.

2 Section 60. Display of vapor products.

3 (a) Vapor product displays. All vapor products must be sold
4 from behind the counter or in an age restricted area or in a
5 sealed display case.

6 (b) The restrictions in this Section do not apply to an
7 adult-only facility.

8 (c) The restrictions in this Section do not apply to a
9 retail store that (i) derives at least 90% of its revenue from
10 tobacco, tobacco related products, or vapor products; (ii) does
11 not permit persons under the age of 18 to enter the premises
12 unless accompanied by a parent or legal guardian; (iii) posts a
13 sign on the main entrance way stating that persons under the
14 age of 18 are prohibited from entering unless accompanied by a
15 parent or legal guardian; or (iv) is subject to the Cigarette
16 Tax Act, the Tobacco Products Tax Act of 1995, the Prevention
17 of Tobacco Use By Minors and Sale and Distribution of Tobacco
18 Products Act, or the Display of Tobacco Products Act.

19 (d) A violation of this Section is a petty offense for
20 which the court shall impose a fine of not less than \$100 nor
21 more than \$1,000.

22 Section 65. The Prevention of Tobacco Use by Minors and
23 Sale and Distribution of Tobacco Products Act is amended by
24 changing Section 1.5 as follows:

1 (720 ILCS 675/1.5)

2 Sec. 1.5. Distribution of alternative nicotine products to
3 persons under 18 years of age prohibited.

4 (a) For the purposes of this Section, "alternative nicotine
5 product" means a product or device not consisting of or
6 containing tobacco that provides for the ingestion into the
7 body of nicotine, whether by chewing, smoking, absorbing,
8 dissolving, inhaling, snorting, sniffing, or by any other
9 means. "Alternative nicotine product" excludes cigarettes,
10 smokeless tobacco, or other tobacco products as these terms are
11 defined in Section 1 of this Act, vapor products as defined
12 under Section 5 of the Vapor Products Regulatory Act, and any
13 product approved by the United States Food and Drug
14 Administration as a non-tobacco product for sale as a tobacco
15 cessation product, as a tobacco dependence product, or for
16 other medical purposes, and is being marketed and sold solely
17 for that approved purpose.

18 (b) A person, either directly or indirectly by an agent or
19 employee, or by a vending machine owned by the person or
20 located in the person's establishment, may not sell, offer for
21 sale, give, or furnish any alternative nicotine product, or any
22 cartridge or component of an alternative nicotine product, to a
23 person under 18 years of age.

24 (c) Before selling, offering for sale, giving, or
25 furnishing an alternative nicotine product, or any cartridge or

1 component of an alternative nicotine product, to another
2 person, the person selling, offering for sale, giving, or
3 furnishing the alternative nicotine product shall verify that
4 the person is at least 18 years of age by:

5 (1) examining from any person that appears to be under
6 27 years of age a government-issued photographic
7 identification that establishes the person is at least 18
8 years of age or

9 (2) for sales made through ~~through~~ the Internet or other
10 remote sales methods, performing an age verification
11 through an independent, third-party age verification
12 service that compares information available from public
13 records to the personal information entered by the person
14 during the ordering process that establishes the person is
15 18 years of age or older.

16 (d) A person under 18 years of age shall not possess an
17 alternative nicotine product.

18 (Source: P.A. 98-350, eff. 1-1-14; 99-496, eff. 6-1-16; revised
19 10-25-16.)

20 Section 99. Effective date. This Act takes effect January
21 1, 2018.