



Rep. Kathleen Willis

**Filed: 3/24/2017**

10000HB3877ham001

LRB100 06224 HLH 24177 a

1 AMENDMENT TO HOUSE BILL 3877

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3877 by replacing  
3 everything after the enacting clause with the following:

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

1 time period in question.

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

6 "Department" means the Department of Revenue.

7 "E-liquid" means a substance that contains nicotine and  
8 flavoring, substances, or other additives and is intended for  
9 use in a vapor product.

10 "Person" means any natural individual, firm, partnership,  
11 association, joint stock company, joint adventure, or public or  
12 private corporation, however formed, limited liability  
13 company, or a receiver, executor, administrator, trustee,  
14 conservator, or other representative appointed by order of any  
15 court.

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

19 "Retailer of vapor products" means any person in this State  
20 engaged in the business of selling e-liquids or vapor products  
21 to consumers in this State for use or consumption and not for  
22 resale in any form, for valuable consideration, regardless of  
23 amount, quantity, or number of sales. "Retailer of vapor  
24 products" does not include any person or business subject to  
25 the Cigarette Tax Act, the Tobacco Products Tax Act of 1995,  
26 the Prevention of Tobacco Use By Minors and Sale and

1 Distribution of Tobacco Products Act, the Display of Tobacco  
2 Products Act, or the Compassionate Use of Medical Cannabis  
3 Pilot Program Act.

4 "Sale" means any transfer, exchange, or barter in any  
5 manner or by any means whatsoever for a consideration and  
6 includes all sales made by persons.

7 "Vapor pen" means a powered vaporizer, and any component  
8 parts thereof intended to be used in the powered vaporizer,  
9 that converts e-liquid into vapor which is intended for  
10 inhalation.

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

13 Section 10. Retailer's license; fee.

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

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

23 (2) the address of the location at which the applicant  
24 proposes to engage in business as a retailer of vapor  
25 products in this State;

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

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

5           (b) The annual license fee payable to the Department for  
6 each retailer's license shall be \$75. The fee shall be  
7 deposited into the Tax Compliance and Administration Fund and  
8 shall be used for the cost of enforcement of this Act.

9           An applicant for a license shall pay such fee to the  
10 Department at the time of submitting its application for  
11 license to the Department. The Department shall require an  
12 applicant for a license under this Section to electronically  
13 file and pay the fee.

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

16           (1) a person who has been convicted of a felony related  
17 to the illegal transportation, sale, or distribution of any  
18 age-restricted product or item, under any federal or State  
19 law, if the Department, after investigation and a hearing  
20 if requested by the applicant, determines that the person  
21 has not been sufficiently rehabilitated to warrant the  
22 public trust; or

23           (2) a corporation, if any officer, manager, or director  
24 thereof, or any stockholder or stockholders owning in the  
25 aggregate more than 5% of the stock of such corporation,  
26 would not be eligible to receive a license under this Act

1           for any reason.

2           (d) The Department, upon receipt of an application and  
3 license fee, in proper form, from a person who is eligible to  
4 receive a retailer's license under this Act, shall issue to the  
5 applicant a license in form as prescribed by the Department,  
6 which license shall permit the applicant to which it is issued  
7 to engage in business as a retailer of vapor products under  
8 this Act at the place shown in his application. All licenses  
9 issued by the Department under this Section shall be valid for  
10 a period not to exceed one year after issuance unless sooner  
11 revoked, canceled, or suspended as provided in this Act. No  
12 license issued under this Section is transferable or  
13 assignable. The license shall be conspicuously displayed in the  
14 place of business conducted by the licensee in Illinois under  
15 the license. A person who obtains a license as a retailer of  
16 vapor products who ceases to do business as specified in the  
17 license, or who never commenced business, or whose license is  
18 suspended or revoked, shall immediately surrender the license  
19 to the Department. The Department shall not issue a license to  
20 a retailer of vapor products unless the retailer of vapor  
21 products is also validly registered under the Retailers'  
22 Occupation Tax Act. A person who obtains a license as a  
23 retailer of vapor products who ceases to do business as  
24 specified in the license, or who never commenced business, or  
25 whose license is suspended or revoked, shall immediately  
26 surrender the license to the Department.

1           (e) Any person aggrieved by any decision of the Department  
2 under this Section may, within 30 days after notice of the  
3 decision, protest and request a hearing. Upon receiving a  
4 request for hearing, the Department shall give written notice  
5 to the person requesting the hearing of the time and place  
6 fixed for the hearing and shall hold a hearing in conformity  
7 with the provisions of this Act and then issue its final  
8 administrative decision in the matter to that person. In  
9 absence of protest and request for a hearing within 30 days,  
10 the Department's decision shall become final without any  
11 further determination being made or notice given.

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

1 were a new applicant for a license, complies with all of the  
2 conditions, restrictions, and requirements of this Act and  
3 qualifies for and obtains a license.

4 Section 25. Revocation, cancellation, or suspension of a  
5 retail license.

6 (a) The Department may, after notice and hearing, revoke,  
7 cancel, or suspend the license of any retailer of vapor  
8 products for the violation of any provision of this Act, or for  
9 noncompliance with any provision herein contained, or for any  
10 noncompliance with any lawful rule adopted by the Department  
11 pursuant to this Act, or because the licensee is determined to  
12 be ineligible for a license for any one or more of the reasons  
13 provided in this Section.

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

1 to the provisions of the Administrative Review Law.

2 (c) If the retailer of vapor products has a training  
3 program that facilitates compliance with minimum-age vapor  
4 products laws, the Department shall suspend for 3 days the  
5 license of that retailer of vapor products for a fourth or  
6 subsequent violation of subsection (a) or (b) of Section 50.  
7 For the purposes of this Section, any violation of Section 50  
8 occurring at the licensed location for the retailer of vapor  
9 products during a 24-month period shall be counted as a  
10 violation against the retailer of vapor products.

11 If the retailer of vapor products does not have a training  
12 program that facilitates compliance with minimum-age vapor  
13 products laws, the Department shall suspend for 3 days the  
14 license of that retailer of vapor products for a second  
15 violation subsection (a) or (b) of Section 50.

16 If the retailer of vapor products does not have a training  
17 program that facilitates compliance with minimum-age vapor  
18 products laws, the Department shall suspend for 7 days the  
19 license of that retailer of vapor products for a third  
20 violation of subsection (a) or (b) of Section 50.

21 If the retailer of vapor products does not have a training  
22 program that facilitates compliance with minimum-age vapor  
23 products laws, the Department shall suspend for 30 days the  
24 license of a retailer of vapor products for a fourth or  
25 subsequent violation of subsection (a) or (b) of Section 50.



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

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

3 (1) arrest without warrant any person committing in his  
4 or her presence a violation of any of the provisions of  
5 this Act; and

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

8 The vapor products so seized are subject to confiscation  
9 and forfeiture.

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

24 If, as the result of the hearing, the Department determines  
25 that the retailer of vapor products was not properly licensed  
26 at the time the vapor products were seized, the Department must

1 enter an order declaring the vapor products or vending devices  
2 confiscated and forfeited to the State, to be held by the  
3 Department for disposal by it as provided in Section 40. The  
4 Department must give notice of the order to the owner of the  
5 property, if the owner is known, and also to the person in  
6 whose possession the property was found, if that person is  
7 known and if the person in possession is not the owner of the  
8 property. If neither the owner nor the person in possession of  
9 the property is known, the Department must cause publication of  
10 the order to be made at least once in each week for 3 weeks  
11 successively in a newspaper of general circulation in the  
12 county where the hearing was held.

13 Section 35. Peace officer investigation.

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

25 (b) Upon the execution of such search warrant, the peace

1 officer, or officer or employee of the Department, executing  
2 such search warrant shall make due return thereof to the court  
3 issuing the same, together with an inventory of the property  
4 taken thereunder. The court shall thereupon issue process  
5 against the owner of such property if he is known; otherwise,  
6 such process shall be issued against the person in whose  
7 possession the property so taken is found, if such person is  
8 known. In case of inability to serve such process upon the  
9 owner or the person in possession of the property at the time  
10 of its seizure, as hereinbefore provided, notice of the  
11 proceedings before the court shall be given as required by the  
12 statutes of the State governing cases of Attachment. Upon the  
13 return of the process duly served or upon the posting or  
14 publishing of notice made, as hereinabove provided, the court  
15 or jury, if a jury shall be demanded, shall proceed to  
16 determine whether or not such property so seized was held or  
17 possessed in violation of this Act, or whether, if a vending  
18 device has been so seized, it contained at the time of its  
19 seizure any vapor products held or possessed in violation of  
20 this Act.

21 Section 40. Destruction or use of forfeited property. When  
22 any vapor product or any vending device shall have been  
23 declared forfeited to the State and all proceedings for the  
24 judicial review of the Department's decision have terminated,  
25 the Department shall, to the extent that its decision is

1 sustained on review, destroy or maintain and use such property  
2 in an undercover capacity.

3 Section 45. Retailers; records.

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

1 (b) Records shall be preserved for a period of at least 3  
2 years after the later of the date of the records or the date of  
3 the entries appearing in the records, unless the Department, in  
4 writing, authorizes their destruction or disposal at an earlier  
5 date. At all times during the usual business hours of the day,  
6 any duly authorized agent or employee of the Department may  
7 enter any place of business of the retailer of vapor products  
8 without a search warrant and may inspect the premises to  
9 determine whether any of the provisions of this Act are being  
10 violated. If such agent or employee is denied free access or is  
11 hindered or interfered with in making such examination as  
12 herein provided, the license of the retailer of vapor products  
13 shall be subject to suspension or revocation by the Department.

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

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

21 (b) Before selling, offering for sale, giving, or  
22 furnishing an vapor product to another person, the person  
23 selling, offering for sale, giving, or furnishing the vapor  
24 product shall verify that the person is at least 18 years of  
25 age by:

1           (1) examining from any person that appears to be under  
2           27 years of age a government-issued photographic  
3           identification that establishes the person is at least 18  
4           years of age; or

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

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

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

16          (a) Any person who violates subsection (a) or (b) of  
17          Section 50 is guilty of a petty offense. For the first offense  
18          in a 24-month period, the person shall be fined \$200 if his or  
19          her employer has a training program that facilitates compliance  
20          with minimum-age vapor product laws. For the second offense in  
21          a 24-month period, the person shall be fined \$400 if his or her  
22          employer has a training program that facilitates compliance  
23          with minimum-age vapor products laws. For the third offense in  
24          a 24-month period, the person shall be fined \$600 dollars if  
25          his or her employer has a training program that facilitates

1 compliance with minimum-age vapor product laws. For the fourth  
2 or subsequent offense in a 24-month period, the person shall be  
3 fined \$800 if his or her employer has a training program that  
4 facilitates compliance with minimum-age vapor products laws.  
5 For the purposes of this subsection, the 24-month period shall  
6 begin with the person's first violation of the Act. The  
7 penalties in this subsection are in addition to any other  
8 penalties provided by law.

9 (a-5) Any retailer of vapor products who violates  
10 subsection (a) or (b) of Section 50 is guilty of a petty  
11 offense. For the first offense in a 24-month period, the  
12 retailer of vapor products shall be fined \$200 if it does not have  
13 a training program that facilitates compliance with  
14 minimum-age vapor product laws. For the second offense in a  
15 24-month period, the retailer of vapor products shall be fined  
16 \$400 if it does not have a training program that facilitates  
17 compliance with minimum-age vapor products laws. For the third  
18 offense in a 24-month period, the retailer of vapor products  
19 shall be fined \$600 dollars if it does not have a training  
20 program that facilitates compliance with minimum-age vapor  
21 product laws. For the fourth or subsequent offense in a  
22 24-month period, the retailer of vapor products shall be fined  
23 \$800 if it does not have a training program that facilitates  
24 compliance with minimum-wage vapor products laws. For the  
25 purposes of this subsection, the 24-month period shall begin  
26 with the person's first violation of the Act. The penalties in

1 this subsection are in addition to any other penalties provided  
2 by law.

3 (a-10) A training program that facilitates compliance with  
4 minimum-age vapor products laws must include at least the  
5 following elements: (i) it must explain that only individuals  
6 displaying valid identification demonstrating that they are 18  
7 years of age or older shall be eligible to purchase vapor  
8 products; and (ii) it must explain where a clerk can check  
9 identification for a date of birth. The training may be  
10 conducted electronically. Each retailer of vapor products that  
11 has a training program shall require each employee who  
12 completes the training program to sign a form attesting that  
13 the employee has received and completed the vapor products  
14 training. The form shall be kept in the employee's file and may  
15 be used to provide proof of training.

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

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

24 (d) A third or subsequent violation by a minor of  
25 subsection (c) of Section 50 that occurs within 12 months after  
26 the first violation is punishable by a \$200 fine and 50 hours



1 of community service.

2 (e) Any second or subsequent violation not within the  
3 12-month time period after the first violation is punishable as  
4 provided for a first violation.

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

18 For the purposes of this Section, a "youth diversion  
19 program" includes, but is not limited to, a seminar designed to  
20 educate a person on the physical and psychological effects of  
21 using nicotine products and the health consequences of using  
22 nicotine products that can be conducted with a locality's youth  
23 diversion program.

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

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

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

6           Any violation of subsection (a) or (b) of Section 50 shall  
7           be reported to the Department of Revenue within 7 business  
8           days.

9           Section 60. Display of vapor products.

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

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

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

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

4 Section 65. The Prevention of Tobacco Use by Minors and  
5 Sale and Distribution of Tobacco Products Act is amended by  
6 changing Section 1.5 as follows:

7 (720 ILCS 675/1.5)

8 Sec. 1.5. Distribution of alternative nicotine products to  
9 persons under 18 years of age prohibited.

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

24 (b) A person, either directly or indirectly by an agent or

1 employee, or by a vending machine owned by the person or  
2 located in the person's establishment, may not sell, offer for  
3 sale, give, or furnish any alternative nicotine product, or any  
4 cartridge or component of an alternative nicotine product, to a  
5 person under 18 years of age.

6 (c) Before selling, offering for sale, giving, or  
7 furnishing an alternative nicotine product, or any cartridge or  
8 component of an alternative nicotine product, to another  
9 person, the person selling, offering for sale, giving, or  
10 furnishing the alternative nicotine product shall verify that  
11 the person is at least 18 years of age by:

12 (1) examining from any person that appears to be under  
13 27 years of age a government-issued photographic  
14 identification that establishes the person is at least 18  
15 years of age or

16 (2) for sales made through ~~though~~ the Internet or other  
17 remote sales methods, performing an age verification  
18 through an independent, third-party age verification  
19 service that compares information available from public  
20 records to the personal information entered by the person  
21 during the ordering process that establishes the person is  
22 18 years of age or older.

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

25 (Source: P.A. 98-350, eff. 1-1-14; 99-496, eff. 6-1-16; revised  
26 10-25-16.)

1           Section 99. Effective date. This Act takes effect January  
2    1, 2018.".