



Rep. Kathleen Willis

Filed: 4/13/2018

10000HB3877ham002

LRB100 06224 HLH 37922 a

1 AMENDMENT TO HOUSE BILL 3877

2 AMENDMENT NO. _____. Amend House Bill 3877, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

7 Section 5. Definitions. As used in this Act:

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

1 that no person under legal age is present during the event or
2 time period in question.

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

6 "Department" means the Department of Financial and
7 Professional Regulation.

8 "Electronic nicotine delivery system" means a powered
9 vaporizer, and any component parts of a powered vaporizer
10 intended to be used in the powered vaporizer, that converts
11 e-liquid into vapor which is intended for inhalation.

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

15 "Minor" means a person under 18 years of age.

16 "Person" means any natural individual, firm, partnership,
17 association, joint stock company, joint adventure, or public or
18 private corporation, however formed, limited liability
19 company, or a receiver, executor, administrator, trustee,
20 conservator, or other representative appointed by order of any
21 court.

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

25 "Retailer of vapor products" means any person engaged in
26 the business of selling e-liquids or vapor products to

1 consumers in this State for use or consumption and not for
2 resale in any form, for valuable consideration, regardless of
3 amount, quantity, or number of sales. "Retailer of vapor
4 products" does not include any person or business subject to
5 the Cigarette Tax Act, the Tobacco Products Tax Act of 1995,
6 the Prevention of Tobacco Use By Minors and Sale and
7 Distribution of Tobacco Products Act, the Display of Tobacco
8 Products Act, or the Compassionate Use of Medical Cannabis
9 Pilot Program Act.

10 "Sale" means any transfer, exchange, or barter in any
11 manner or by any means whatsoever for a consideration and
12 includes all sales made by persons.

13 "Vapor product" means an e-liquid or electronic nicotine
14 delivery system as defined under this Act.

15 Section 10. Retailer's license; fee.

16 (a) On or after January 1, 2019, no person may engage in
17 business as a retailer of vapor products in this State without
18 first having obtained a vapor products retail license from the
19 Department. Applications for a license shall be made to the
20 Department, by electronic means, in a form prescribed by the
21 Department. Each applicant for a license under this Section
22 shall furnish to the Department, in an electronic format
23 established by the Department, the following information:

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

25 (2) the address of the location at which the applicant

1 proposes to engage in business as a retailer of vapor
2 products in this State;

3 (3) whether the applicant will engage in the sale of
4 e-liquids, electronic nicotine delivery systems, or both;
5 and

6 (4) any other additional information as the Department
7 may lawfully require by its rules.

8 (b) The annual license fee payable to the Department for
9 each retailer's license shall be \$75. The fee shall be
10 deposited into the Vapor Products Compliance Fund and shall be
11 used for the cost of enforcement of this Act.

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

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

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

26 (2) a corporation, if any officer, manager, or director

1 of the corporation, or any stockholder or stockholders
2 owning in the aggregate more than 5% of the stock of the
3 corporation, would not be eligible to receive a license
4 under this Act for any reason; or

5 (3) a person who has been convicted of a violation of
6 the federal Trademark Act of 1946 related to the sale of
7 vapor products in the United States.

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

1 products is also validly registered under the Retailers'
2 Occupation Tax Act. A person who obtains a license as a
3 retailer of vapor products who ceases to do business as
4 specified in the license, or who never commenced business, or
5 whose license is suspended or revoked, shall immediately
6 surrender the license to the Department.

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

18 Section 20. Acting as a retailer of vapor products without
19 a license; penalty. A person who knowingly acts as a retailer
20 of vapor products in this State without first having obtained a
21 license to do so in compliance with this Act is guilty of a
22 Class A misdemeanor for the first offense and a Class 4 felony
23 for a second or subsequent offense. Each day the person
24 operates as a retailer of vapor products without a license
25 constitutes a separate offense. The Department may, by

1 application to any circuit court, obtain an injunction
2 restraining any person who engages in business as a retailer of
3 vapor products without a license (either because his or her
4 license has been revoked, canceled, or suspended or because of
5 a failure to obtain a license in the first instance) from
6 engaging in that business until that person, as if that person
7 were a new applicant for a license, complies with all of the
8 conditions, restrictions, and requirements of this Act and
9 qualifies for and obtains a license.

10 Section 25. Revocation, cancellation, or suspension of a
11 retail license.

12 (a) The Department may, after notice and hearing, revoke,
13 cancel, or suspend the license of any retailer of vapor
14 products for the violation of any provision of this Act, or for
15 noncompliance with any provision of this Act, or for any
16 noncompliance with any lawful rule adopted by the Department
17 under this Act, or because the licensee is determined to be
18 ineligible for a license for any one or more of the reasons
19 provided in this Section.

20 (b) A 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 a hearing, the Department shall give notice to the
24 person requesting the hearing of the time and place fixed for
25 the hearing and shall hold a hearing in conformity with the

1 provisions of this Act and then issue its final administrative
2 decision in the matter to that person. In the absence of a
3 protest and request for a hearing within 30 days, the
4 Department's decision shall become final without any further
5 determination being made or notice given. The final decisions
6 of the Department shall be subject to judicial review according
7 to the provisions of the Administrative Review Law.

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

17 If the retailer of vapor products does not have a training
18 program that facilitates compliance with minimum-age vapor
19 products laws, the Department shall suspend for 3 days the
20 license of that retailer of vapor products for a second
21 violation of subsection (a) or (b) of Section 50.

22 If the retailer of vapor products does not have a training
23 program that facilitates compliance with minimum-age vapor
24 products laws, the Department shall suspend for 7 days the
25 license of that retailer of vapor products for a third
26 violation of subsection (a) or (b) of Section 50.

1 If the retailer of vapor products does not have a training
2 program that facilitates compliance with minimum-age vapor
3 products laws, the Department shall suspend for 30 days the
4 license of a retailer of vapor products for a fourth or
5 subsequent violation of subsection (a) or (b) of Section 50.

6 Section 30. Vapor product labeling and safety. Any e-liquid
7 container sold by a retailer in this State shall:

8 (1) use childproof caps that have the child-resistant
9 effectiveness set forth in the federal prevention
10 packaging standards at 16 C.F.R. 1700.15(b) (1); and

11 (2) contain a label that meets the requirements set
12 forth in 21 C.F.R. 1143.3.

13 Section 35. Peace officer investigation.

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

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

20 Section 40. Destruction or use of forfeited property. When
21 any vapor product or any vending device shall have been
22 declared forfeited to the State and all proceedings for
23 judicial review have terminated, the Department shall destroy
24 or maintain and allow the use of the property in an undercover
25 capacity.

1 Section 45. Retailers; records.

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

24 (b) Records shall be preserved for a period of at least 3
25 years after the later of the date of the records or the date of

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

13 Section 50. Distribution of vapor products to, and
14 possession by, minors prohibited.

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

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

24 (1) examining from any person that appears to be under
25 27 years of age a government-issued photographic

1 identification that establishes the person is at least 18
2 years of age; or

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

10 (c) A minor shall not possess a vapor product.

11 Section 55. Penalties for distribution of vapor products
12 to, and possession by, minors.

13 (a) Any person who violates subsection (a) or (b) of
14 Section 50 is guilty of a petty offense. For the first offense
15 in a 24-month period, the person shall be fined \$200 if his or
16 her employer has a training program that facilitates compliance
17 with minimum-age vapor product laws. For the second offense in
18 a 24-month period, the person shall be fined \$400 if his or her
19 employer has a training program that facilitates compliance
20 with minimum-age vapor products laws. For the third offense in
21 a 24-month period, the person shall be fined \$600 if his or her
22 employer has a training program that facilitates compliance
23 with minimum-age vapor product laws. For the fourth or
24 subsequent offense in a 24-month period, the person shall be
25 fined \$800 if his or her employer has a training program that

1 facilitates compliance with minimum-age vapor products laws.
2 For the purposes of this subsection, the 24-month period shall
3 begin with the person's first violation of the Act. The
4 penalties in this subsection are in addition to any other
5 penalties provided by law.

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

25 (a-10) A training program that facilitates compliance with
26 minimum-age vapor products laws must include at least the

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

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

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

20 (d) A third or subsequent violation by a minor of
21 subsection (c) of Section 50 that occurs within 12 months after
22 the first violation is punishable by a \$200 fine and 50 hours
23 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 (c) of Section 50, the court may, in
3 its discretion, and upon recommendation by the State's Attorney
4 order that minor and his or her parents or legal guardian to
5 attend a youth diversion program if that program is available
6 in the jurisdiction where the offender resides. Attendance at a
7 youth diversion program shall be time-credited against any
8 community service time imposed for any first violation of
9 subsection (c) of Section 50. In addition to any other penalty
10 that the court may impose for a violation of subsection (c) of
11 Section 50, the court, upon request by the State's Attorney,
12 may in its discretion require the offender to remit a fee for
13 his or her attendance at a youth diversion program.

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

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

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

26 (2) one-half shall be remitted to the State to be used

1 for enforcement of this Act.

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

4 Section 60. Display of vapor products.

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

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

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

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

24 Section 900. The Prevention of Tobacco Use by Minors and

1 Sale and Distribution of Tobacco Products Act is amended by
2 changing Section 1.5 as follows:

3 (720 ILCS 675/1.5)

4 Sec. 1.5. Distribution of alternative nicotine products to
5 persons under 18 years of age prohibited.

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

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

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

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

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

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

20 (Source: P.A. 99-496, eff. 6-1-16; 100-201, eff. 8-18-17.)

21 Section 905. The State Finance Act is amended by adding
22 Section 5.886 as follows:

23 (30 ILCS 105/5.886 new)

24 Sec. 5.886. The Vapor Products Compliance Fund.

1 Section 999. Effective date. This Act takes effect January
2 1, 2019.".