



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3887

Introduced 10/17/2019, by Rep. Grant Wehrli, Dan Ugaste and Margo McDermed

SYNOPSIS AS INTRODUCED:

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Creates the Flavored Tobacco Ban Act. Provides that a tobacco retailer or his or her agents or employees may not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product, flavored related tobacco product, flavored alternative nicotine product, or flavored solution or substance intended for use with electronic cigarettes. Provides that (1) "tobacco product" includes products containing tetrahydrocannabinol and products containing a mixture of tetrahydrocannabinol and nicotine, and (2) "tobacco retailer" includes dispensing organizations and dispensing organization agents, as those terms are defined in the Cannabis Regulation and Tax Act. Creates a presumption that a tobacco product, related tobacco product, alternative nicotine product, or solution or substance intended for use with electronic cigarettes is a banned product, solution, or substance intended for use with electronic cigarettes if it has or produces a characterizing flavor. Establishes penalties for violations. Provides that all moneys collected as fines and civil penalties for violations of the Act shall be distributed: one-half to the State agency or unit of local government that successfully prosecuted the offender; and one-half to the Department of Revenue to be used for enforcing the Act and the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that the Act does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to specified products, solutions, or substances than the restrictions imposed by the Act. Amends the Tobacco Products Tax Act of 1995. Permits the Department of Revenue to suspend the license of any distributor that violates the Flavored Tobacco Ban Act.

LRB101 14205 CPF 63144 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

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
5 Flavored Tobacco Ban Act.

6 Section 5. Definitions. In this Act:

7 "Alternative nicotine product" means a product or device
8 not consisting of or containing tobacco that provides for the
9 ingestion into the body of nicotine, whether by chewing,
10 smoking, absorbing, dissolving, inhaling, snorting, sniffing,
11 or by any other means. "Alternative nicotine product" does not
12 include: cigarettes as defined in Section 1 of the Cigarette
13 Tax Act and tobacco products as defined in Section 10-5 of the
14 Tobacco Products Tax Act of 1995; tobacco product and
15 electronic cigarette as defined in this Section; or any product
16 approved by the United States Food and Drug Administration for
17 sale as a tobacco cessation product, as a tobacco dependence
18 product, or for other medical purposes, and is being marketed
19 and sold solely for that approved purpose.

20 "Characterizing flavor" means a distinguishable taste or
21 aroma, including, but not limited to, any fruit, chocolate,
22 vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
23 herb or spice flavoring, not including tobacco, menthol, mint,

1 or wintergreen. In no event shall a tobacco product, related
2 tobacco product, alternative nicotine product, or solution or
3 substance intended for use with electronic cigarettes or any
4 component part of a tobacco product, related tobacco product,
5 alternative nicotine product, or solution or substance
6 intended for use with electronic cigarettes be construed to
7 have a characterizing flavor based solely on the use of trace
8 additives or flavorings or the provision of ingredient
9 information.

10 "Constituent" means any ingredient, substance, chemical,
11 or compound, other than tobacco, water, or reconstituted
12 tobacco sheet, that is added by a manufacturer to a tobacco
13 product during the processing, manufacture, or packing of the
14 tobacco product.

15 "Distinguishable" means perceivable by either the sense of
16 smell or taste.

17 "Electronic cigarette" means:

18 (1) any device that employs a battery or other
19 mechanism to heat a solution or substance to produce a
20 vapor or aerosol intended for inhalation;

21 (2) any cartridge or container of a solution or
22 substance intended to be used with or in the device or to
23 refill the device; or

24 (3) any solution or substance, whether or not it
25 contains nicotine intended for use in the device.

26 "Electronic cigarette" includes, but is not limited to, any

1 electronic nicotine delivery system, electronic cigar,
2 electronic cigarillo, electronic pipe, electronic hookah, vape
3 pen, or similar product or device, and any components or parts
4 that can be used to build the product or device. "Electronic
5 cigarette" does not include: cigarettes as defined in Section 1
6 of the Cigarette Tax Act and tobacco products as defined in
7 Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco
8 product, related tobacco product, and alternative nicotine
9 product as defined in this Section; any product approved by the
10 United States Food and Drug Administration for sale as a
11 tobacco cessation product, as a tobacco dependence product, or
12 for other medical purposes, and is being marketed and sold
13 solely for that approved purpose; any asthma inhaler prescribed
14 by a physician for that condition and is being marketed and
15 sold solely for that approved purpose; or any therapeutic
16 product approved for use under the Compassionate Use of Medical
17 Cannabis Pilot Program Act.

18 "Flavored alternative nicotine product" means any
19 alternative nicotine product that contains a natural or
20 artificial constituent or additive that imparts a
21 characterizing flavor.

22 "Flavored related tobacco product" means any related
23 tobacco product that contains a natural or artificial
24 constituent or additive that imparts a characterizing flavor.

25 "Flavored solution or substance intended for use with
26 electronic cigarettes" means any solution or substance

1 intended for use with electronic cigarettes that contains a
2 natural or artificial constituent or additive that imparts a
3 characterizing flavor.

4 "Flavored tobacco product" means any tobacco product that
5 contains a natural or artificial constituent or additive that
6 imparts a characterizing flavor.

7 "Labeling" means written, printed, pictorial, or graphic
8 matter upon a tobacco product, related tobacco product,
9 alternative nicotine product, or solution or substance
10 intended for use with electronic cigarettes or any of its
11 packaging.

12 "Packaging" or "package" means a pack, box, carton, or
13 container of any kind, or, if no other container, any wrapping,
14 including cellophane, in which a tobacco product, related
15 tobacco product, alternative nicotine product, or solution or
16 substance intended for use with electronic cigarettes is sold
17 or offered for sale to a consumer.

18 "Related tobacco product" means any product intended for or
19 traditionally used with tobacco, including, but not limited to,
20 papers, wraps, tubes, or filters. A product of a type that has
21 in the past been used in conjunction with tobacco or nicotine
22 use will be deemed a "related tobacco product" regardless of
23 any labeling or descriptive language on such product stating
24 that the product is not intended for use with tobacco or for
25 non-tobacco use only or other similar language.

26 "Retail location" means: (1) a building from which tobacco

1 products, related tobacco products, alternative nicotine
2 products, or solutions or substances intended for use with
3 electronic cigarettes are sold at retail; or (2) a vending
4 machine.

5 "Tobacco product" means any product containing or made from
6 tobacco that is intended for human consumption, whether smoked,
7 heated, chewed, absorbed, dissolved, inhaled, snorted,
8 sniffed, or ingested by any other means, including, but not
9 limited to, cigarettes, cigars, little cigars, chewing
10 tobacco, pipe tobacco, snuff, snus, and any other smokeless
11 tobacco product that contains tobacco that is finely cut,
12 ground, powdered, or leaf and intended to be placed in the oral
13 cavity. "Tobacco product" includes: any component, part, or
14 accessory of a tobacco product, whether or not sold separately,
15 and; products containing tetrahydrocannabinol or a mixture of
16 tetrahydrocannabinol and nicotine. "Tobacco product" does not
17 include: an electronic cigarette and alternative nicotine
18 product as defined in this Section; or any product that has
19 been approved by the United States Food and Drug Administration
20 for sale as a tobacco cessation product, as a tobacco
21 dependence product, or for other medical purposes, and is being
22 marketed and sold solely for that approved purpose.

23 "Tobacco retailer" means a person who engages in this State
24 in the sale of tobacco products, related tobacco products,
25 alternative nicotine products, or solutions or substances
26 intended for use with electronic cigarettes directly to the

1 public from a retail location, including a person who operates
2 vending machines from which tobacco products, related tobacco
3 products, alternative nicotine products, or solutions or
4 substances intended for use with electronic cigarettes are sold
5 in this State. "Tobacco retailer" includes dispensing
6 organizations and dispensing organization agents, as those
7 terms are defined in Section 1-10 of the Cannabis Regulation
8 and Tax Act.

9 Section 10. Prohibition; penalties.

10 (a) A tobacco retailer or any of the tobacco retailer's
11 agents or employees may not sell, offer for sale, or possess
12 with the intent to sell or offer for sale, a flavored tobacco
13 product, flavored related tobacco product, flavored
14 alternative nicotine product, or flavored solution or
15 substance intended for use with electronic cigarettes. There is
16 a presumption that a tobacco product, related tobacco product,
17 alternative nicotine product, or solution or substance
18 intended for use with electronic cigarettes is a flavored
19 tobacco product, flavored related tobacco product, flavored
20 alternative nicotine product, or flavored solution or
21 substance intended for use with electronic cigarettes if the
22 tobacco product, related tobacco product, alternative nicotine
23 product, or solution or substance intended for use with
24 electronic cigarettes has or produces a characterizing flavor,
25 including, but not limited to, text, color, or images on the

1 product's labeling or packaging that are used to explicitly or
2 implicitly communicate or suggest that the tobacco product,
3 related tobacco product, alternative nicotine product, or
4 solution or substance intended for use with electronic
5 cigarettes has a characterizing flavor. A product with labeling
6 or packaging that suggests the presence of a characterizing
7 flavor or uses a concept flavor is presumed to be a flavored
8 tobacco product, flavored related tobacco product, flavored
9 alternative nicotine product, or flavored solution or
10 substance intended for use with electronic cigarettes.

11 (b) Any person, other than a manufacturer or distributor,
12 who violates subsection (a) is guilty of a petty offense and
13 shall be fined an amount as follows:

14 (1) For the first offense, the offender shall be fined
15 an amount of \$100 for each individual package of tobacco
16 product, related tobacco product, alternative nicotine
17 product, or solution or substance intended for use with
18 electronic cigarettes sold or offered for sale.

19 (2) For a second offense within a 2-year period, the
20 offender shall be fined \$250 for each individual package of
21 tobacco product, related tobacco product, alternative
22 nicotine product, or solution or substance intended for use
23 with electronic cigarettes sold or offered for sale.

24 (3) For a third or subsequent offense within a 2-year
25 period, the offender shall be fined \$500 for each
26 individual package of tobacco product, related tobacco

1 product, alternative nicotine product, or solution or
2 substance intended for use with electronic cigarettes sold
3 or offered for sale.

4 (c) A manufacturer or distributor shall be subject to a
5 civil penalty not to exceed \$50,000 for each brand or style of
6 the manufacturer's or distributor's tobacco products, related
7 tobacco products, alternative nicotine products, or solutions
8 or substances intended for use with electronic cigarettes that
9 is found to have been sold or offered for sale in violation of
10 this Act on more than one occasion during any 30-day period.
11 With respect to a manufacturer or distributor, it is an
12 affirmative defense to a finding of a violation under this Act
13 that the sale or offer for sale, occurred without the
14 knowledge, consent, authorization or involvement, direct or
15 indirect, of the manufacturer or distributor.

16 (d) Moneys received as fines and civil penalties under this
17 Act shall be remitted to the State Treasurer to be used as
18 provided in paragraphs (1) and (2) of this subsection. All
19 moneys collected as fines and civil penalties for violations of
20 this Act shall be distributed in the following manner:

21 (1) one-half of each fine and civil penalty shall be
22 distributed to the State agency or unit of local government
23 that successfully prosecuted the offender; and

24 (2) one-half of each fine and civil penalty shall be
25 remitted to the Department of Revenue to be used for
26 enforcing this Act and the Prevention of Tobacco Use by

1 Persons under 21 Years of Age and Sale and Distribution of
2 Tobacco Products Act.

3 Section 15. Local preemption. This Act does not preempt or
4 otherwise prohibit the adoption of a local standard that
5 imposes greater restrictions on the access to tobacco products,
6 related tobacco products, alternative nicotine products, or
7 solutions or substances intended for use with electronic
8 cigarettes than the restrictions imposed by this Act. To the
9 extent that there is an inconsistency between this Act and a
10 local standard that imposes greater restrictions on the access
11 to tobacco products, related tobacco products, alternative
12 nicotine products, or solutions or substances intended for use
13 with electronic cigarettes, the greater restriction on the
14 access to tobacco products, related tobacco products,
15 alternative nicotine product, or solution or substance
16 intended for use with electronic cigarettes in the local
17 standard shall prevail.

18 Section 90. The Tobacco Products Tax Act of 1995 is amended
19 by changing Section 10-25 as follows:

20 (35 ILCS 143/10-25)

21 Sec. 10-25. License actions.

22 (a) The Department may, after notice and a hearing, revoke,
23 cancel, or suspend the license of any distributor or retailer

1 who violates any of the provisions of this Act, fails to keep
2 books and records as required under this Act, fails to make
3 books and records available for inspection upon demand by a
4 duly authorized employee of the Department, or violates a rule
5 or regulation of the Department for the administration and
6 enforcement of this Act. The notice shall specify the alleged
7 violation or violations upon which the revocation,
8 cancellation, or suspension proceeding is based.

9 (b) The Department may revoke, cancel, or suspend the
10 license of any distributor for a violation of the Tobacco
11 Product Manufacturers' Escrow Enforcement Act as provided in
12 Section 20 of that Act.

13 (b-5) The Department may suspend the license of any
14 distributor for a violation of the Flavored Tobacco Ban Act as
15 provided in Section 20 of that Act.

16 (c) If the retailer has a training program that facilitates
17 compliance with minimum-age tobacco laws, the Department shall
18 suspend for 3 days the license of that retailer for a fourth or
19 subsequent violation of the Prevention of Tobacco Use by
20 Persons under 21 Years of Age and Sale and Distribution of
21 Tobacco Products Act, as provided in subsection (a) of Section
22 2 of that Act. For the purposes of this Section, any violation
23 of subsection (a) of Section 2 of the Prevention of Tobacco Use
24 by Persons under 21 Years of Age and Sale and Distribution of
25 Tobacco Products Act occurring at the retailer's licensed
26 location, during a 24-month period, shall be counted as a

1 violation against the retailer.

2 If the retailer does not have a training program that
3 facilitates compliance with minimum-age tobacco laws, the
4 Department shall suspend for 3 days the license of that
5 retailer for a second violation of the Prevention of Tobacco
6 Use by Persons under 21 Years of Age and Sale and Distribution
7 of Tobacco Products Act, as provided in subsection (a-5) of
8 Section 2 of that Act.

9 If the retailer does not have a training program that
10 facilitates compliance with minimum-age tobacco laws, the
11 Department shall suspend for 7 days the license of that
12 retailer for a third violation of the Prevention of Tobacco Use
13 by Persons under 21 Years of Age and Sale and Distribution of
14 Tobacco Products Act, as provided in subsection (a-5) of
15 Section 2 of that Act.

16 If the retailer does not have a training program that
17 facilitates compliance with minimum-age tobacco laws, the
18 Department shall suspend for 30 days the license of a retailer
19 for a fourth or subsequent violation of the Prevention of
20 Tobacco Use by Persons under 21 Years of Age and Sale and
21 Distribution of Tobacco Products Act, as provided in subsection
22 (a-5) of Section 2 of that Act.

23 A training program that facilitates compliance with
24 minimum-age tobacco laws must include at least the following
25 elements: (i) it must explain that only individuals displaying
26 valid identification demonstrating that they are 21 years of

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

9 (d) The Department may, by application to any circuit
10 court, obtain an injunction restraining any person who engages
11 in business as a distributor of tobacco products without a
12 license (either because his or her license has been revoked,
13 canceled, or suspended or because of a failure to obtain a
14 license in the first instance) from engaging in that business
15 until that person, as if that person were a new applicant for a
16 license, complies with all of the conditions, restrictions, and
17 requirements of Section 10-20 of this Act and qualifies for and
18 obtains a license. Refusal or neglect to obey the order of the
19 court may result in punishment for contempt.

20 (Source: P.A. 100-940, eff. 8-17-18; 101-2, eff. 7-1-19.)

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