



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3960

Introduced 11/12/2019, by Rep. Kathleen Willis

SYNOPSIS AS INTRODUCED:

See Index

Creates the Electronic Cigarettes Youth Access Prevention Act. Provides that a person who sells an electronic cigarette without a proper license under the Tobacco Products Tax Act of 1995 shall be subject to specified additional civil penalties. Prohibits manufacturers, distributors, or retailers of electronic cigarettes from selling, offering for sale, or distributing any electronic cigarette with labeling or packaging intended to be attractive to persons under 21 years of age and provides criteria to determine whether packaging or labeling is attractive to such persons. Requires all labeling and packaging of electronic cigarettes to include nicotine warning statements. Provides that manufacturers, distributors, or retailers of electronic cigarettes shall not sell, advertise, or market an electronic cigarette unless specified conditions have been met. Provides that a retailer shall not sell more than 2 electronic cigarettes or 5 cartridges or containers of electronic cigarette solution in one transaction to a final consumer. Provides that failure to comply with the marketing, labeling, advertisement, or additional retailer requirements of the Act is punishable by a civil penalty. Provides that provisions regarding marketing, labeling, and advertisement requirements do not apply to any noncommercial speech. Requires moneys collected from the civil penalties to be deposited into the Electronic Cigarettes Youth Access Prevention Fund to be used by the Department of Human Services for the implementation and enforcement of the Act, including, but not limited to, unannounced investigations of retailers licensed under the Tobacco Products Tax Act of 1995 and investigations of unlicensed sellers of electronic cigarettes. Amends the State Finance Act to make a conforming change. Effective immediately.

LRB101 15348 RPS 64549 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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
5 Electronic Cigarettes Youth Access Prevention Act.

6 Section 5. Definitions. In this Act:

7 "Adult-only retail location" means a facility that is
8 licensed to sell electronic cigarettes as a retailer under the
9 Tobacco Products Tax Act of 1995 and that does not allow a
10 minor to enter the premises.

11 "Advertise" means the publication or dissemination of an
12 advertisement.

13 "Advertisement" means any written or verbal statement,
14 illustration, or depiction that is calculated to induce sales
15 of electronic cigarettes, including any written, printed,
16 graphic, or other material, billboard, sign, or other outdoor
17 display, public transit card, other periodical literature,
18 publication, or in a radio or television broadcast, or in any
19 other media. "Advertisement" does not include:

20 (1) Any label affixed to any electronic cigarette, or
21 any individual covering, carton, or other wrapper of such
22 container that constitutes a part of the labeling.

23 (2) Any editorial or other reading material, such as a

1 news release, in any periodical, publication, or newspaper
2 for the publication of which no money or valuable
3 consideration is paid or promised, directly or indirectly,
4 by any licensee under the Tobacco Products Tax Act of 1995,
5 and which is not written by or at the direction of the
6 licensee.

7 "Advertising sign" means any sign, poster, display,
8 billboard, or any other stationary or permanently affixed
9 advertisement promoting the sale of electronic cigarettes
10 which are not manufactured, distributed, or sold on the same
11 lot.

12 "Department" means the Department of Human Services.

13 "Distributor" has the same meaning ascribed to it in
14 Section 10-5 of the Tobacco Products Tax Act of 1995.

15 "Electronic cigarette" has the same meaning ascribed to it
16 in Section 10-5 of the Tobacco Products Tax Act of 1995.

17 "Health-related statement" means any statement related to
18 health, and includes statements of a curative or therapeutic
19 nature that, expressly or by implication, suggest a
20 relationship between the consumption of electronic cigarettes
21 and health benefits or effects on health.

22 "Manufacturer" has the same meaning ascribed to it in
23 Section 10-5 of the Tobacco Products Tax Act of 1995.

24 "Market" or "marketing" means any act or process of
25 promoting or selling electronic cigarettes, including, but not
26 limited to, sponsorship of sporting events, point-of-sale

1 advertising, and development of products specifically designed
2 to appeal to persons under 21 years of age.

3 "Retailer" has the same meaning ascribed to it in Section
4 10-5 of the Tobacco Products Tax Act of 1995.

5 Section 10. Sale of electronic cigarettes without a
6 license.

7 (a) Any person who sells an electronic cigarette without a
8 proper license under the Tobacco Products Tax Act of 1995 shall
9 be subject to the following penalties:

10 (1) For a first violation, a civil penalty of not less
11 than \$2,500 and not to exceed \$5,000.

12 (2) For a second violation, a civil penalty of more
13 than \$5,000 and not to exceed \$10,000.

14 (3) For a third or subsequent violation, a civil
15 penalty of \$10,000.

16 (b) Any violation of this Section that occurs on school
17 property shall be considered an aggravating factor and shall,
18 at a minimum, double the penalties provided under paragraphs
19 (1) through (3) of subsection (a) of this Section.

20 (c) The penalties under this Section are in addition to any
21 other penalty imposed under Illinois law. Moneys collected from
22 the civil penalties imposed under this Section shall be
23 deposited into the Electronic Cigarettes Youth Access
24 Prevention Fund.

1 Section 15. Marketing, labeling, and advertisement of
2 electronic cigarettes.

3 (a) A manufacturer, distributor, or retailer of electronic
4 cigarettes shall not sell, offer for sale, or distribute any
5 electronic cigarette with labeling or packaging intended to be
6 attractive to persons under 21 years of age. Labeling or
7 packaging of an electronic cigarette is attractive to persons
8 under 21 years of age if it uses packaging or labeling that:

9 (1) is false or misleading;

10 (2) promotes overconsumption of electronic cigarettes;

11 (3) depicts the actual consumption of an electronic
12 cigarette by a person 21 years of age or older;

13 (4) depicts a person under 21 years of age consuming an
14 electronic cigarette;

15 (5) makes any health, medicinal, or therapeutic claims
16 about electronic cigarettes;

17 (6) includes an image of an electronic cigarette;

18 (7) depicts an image designed or likely to appeal to
19 minors, including cartoons, toys, superheroes, or
20 children, or any other likeness to images, characters, or
21 phrases, including, but not limited to, unicorns, designed
22 in any manner to make consumption of electronic cigarettes
23 appealing to or encourage consumption of electronic
24 cigarettes by persons under 21 years of age;

25 (8) imitates or mimics trademark or trade dress of food
26 products, including, but not limited to, candy, cookies,

1 juice boxes, or soft drinks, or celebrity images that are
2 or have primarily been marketed towards persons under 21
3 years of age;

4 (9) contains images of food products primarily
5 targeted to minors, including, but not limited to, juice
6 boxes, soft drinks, pop, cereal, candy, or dessert; or

7 (10) contains the terms "candy", "candies", "kandy",
8 "kandeez", "bubble gum", "cotton candy", "gummy bear",
9 "cupcake", "milkshake", or any variants in the spelling of
10 those terms.

11 (b) All labeling and packaging of electronic cigarettes
12 shall include proper nicotine warning statements required
13 under federal law or by administrative rule;

14 (c) A manufacturer, distributor, or retailer of electronic
15 cigarettes shall not sell, advertise, or market an electronic
16 cigarette unless all of the following conditions have been met:

17 (1) All advertisements and marketing must accurately
18 and legibly identify the person or entity paying for the
19 publication of the advertisement or marketing.

20 (2) Any advertising or marketing in broadcast, cable,
21 radio, print, or digital communications, or any event
22 marketing or sponsorship, must only be made where at least
23 71.6% of the audience is reasonably expected to be 21 years
24 of age or older, as determined by reliable, up-to-date
25 audience composition data.

26 (3) All advertising must be truthful and appropriately

1 substantiated.

2 (4) Advertising or marketing must not be presented in a
3 manner that is false or untrue in any material matter, or
4 that, irrespective of falsity, directly or by ambiguity,
5 omission, or inference, or by the addition of irrelevant
6 scientific or technical matter, tends to create a
7 misleading impression.

8 (5) Publishing or disseminating advertising or
9 marketing containing any statement concerning a brand or
10 product must not be inconsistent with any statement on the
11 labeling thereof.

12 (6) Advertising or marketing of electronic cigarettes
13 must not be presented in a manner intended to encourage
14 persons under the age of 21 to consume electronic
15 cigarettes.

16 (7) Publishing or disseminating advertising or
17 marketing containing symbols, language, music, gestures,
18 cartoon characters, or other content elements must not be
19 known to appeal primarily to persons under 21 years of age.

20 (8) Advertising or marketing electronic cigarettes
21 must not be on an advertising sign within 1,000 feet of a
22 daycare center, a school offering instruction in grades
23 kindergarten through 12, a playground, or a youth center.
24 This condition shall not apply to the placement of
25 advertising signs inside a premises licensed under the
26 Tobacco Products Tax Act of 1995 and that are not visible

1 by normal unaided vision from a public place, provided that
2 such advertising signs do not advertise electronic
3 cigarettes in a manner intended to encourage persons under
4 the age of 21 to consume electronic cigarettes.

5 (9) Publishing or disseminating advertising or
6 marketing must not contain any health-related statement
7 that is untrue in any particular manner or tends to create
8 a misleading impression as to the health benefits of
9 consumption of electronic cigarettes.

10 (10) Advertising must not contain any reference to an
11 electronic cigarette as a smoking cessation device or as a
12 product that may be helpful to quit smoking.

13 (11) Advertising must not use a health care
14 professional or a person who appears to be under 25 years
15 of age to advertise an electronic cigarette.

16 (d) Violations of this Section shall be punishable by the
17 following civil penalties, and moneys collected from the civil
18 penalties under this Section shall be deposited into the
19 Electronic Cigarettes Youth Access Prevention Fund:

20 (1) For a first violation, a civil penalty of not less
21 than \$2,500 and not to exceed \$5,000.

22 (2) For a second violation, a civil penalty of more
23 than \$5,000 and not to exceed \$10,000.

24 (3) For a third or subsequent violation, a civil
25 penalty of \$10,000.

26 (e) This Section does not apply to any noncommercial

1 speech.

2 (f) This Section does not apply to electronic cigarettes
3 that are in the possession of a manufacturer, distributor, or
4 retailer on the effective date of this Act. Any product that is
5 in the possession of a manufacturer, distributor, or retailer
6 on the effective date of this Act must be sold to a final
7 consumer no later than 180 days after the effective date of
8 this Act unless otherwise exempt under subsection (g).

9 (g) This Section does not apply to any electronic
10 cigarettes that are in the possession of a manufacturer,
11 distributor, or retailer and that are not intended to be sold
12 to a final consumer in the State of Illinois.

13 Section 20. Additional limitations on the sale of
14 electronic cigarettes.

15 (a) A retailer shall not sell more than 2 electronic
16 cigarettes or 5 cartridges or containers of electronic
17 cigarette solution in one transaction to a final consumer.

18 (b) In a sale by a retailer, the retailer must perform an
19 age verification through an independent, third-party age
20 verification service that compares information available from
21 public records to the personal information entered by the buyer
22 during the ordering process and that establishes the buyer is
23 of legal age or older.

24 (c) Violations of this Section shall be punishable by the
25 following civil penalties, and moneys collected from the civil

1 penalties under this Section shall be deposited into the
2 Electronic Cigarettes Youth Access Prevention Fund:

3 (1) For a first violation, a civil penalty of not less
4 than \$2,500 and not to exceed \$5,000.

5 (2) For a second violation, a civil penalty of more
6 than \$5,000 and not to exceed \$10,000.

7 (3) For a third and subsequent violation, a civil
8 penalty of \$10,000.

9 Section 25. Electronic Cigarettes Youth Access Prevention
10 Fund. The Electronic Cigarettes Youth Access Prevention Fund is
11 created within the State treasury. Moneys in the Fund shall be
12 used by the Department for the implementation and enforcement
13 of this Act, including, but not limited to, unannounced
14 investigations of retailers licensed under the Tobacco
15 Products Tax Act of 1995 and investigations of unlicensed
16 sellers of electronic cigarettes.

17 Section 95. The State Finance Act is amended by adding
18 Section 5.930 as follows:

19 (30 ILCS 105/5.930 new)

20 Sec. 5.930. The Electronic Cigarettes Youth Access
21 Prevention Fund.

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.

1

INDEX

2

Statutes amended in order of appearance

3

New Act

4

30 ILCS 105/5.930 new