

HB4849



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4849

Introduced 2/18/2020, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

410 ILCS 76/10
410 ILCS 76/15

Amends the Tobacco Products Compliance Act. Provides that a manufacturer or distributor of a tobacco product has a private right of action against another manufacturer or distributor of a tobacco product for a tobacco product sold within the State of Illinois if specified conditions and requirements are met. Provides that a manufacturer or distributor (rather than any interested party) may file suit for violations under the Act. Contains provisions regarding recovery for prevailing in an enforcement action. Makes other changes. Effective immediately.

LRB101 18890 CPF 68349 b

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 5. The Tobacco Products Compliance Act is amended
5 by changing Sections 10 and 15 as follows:

6 (410 ILCS 76/10)

7 Sec. 10. Compliance reports. Any person who manufactures
8 any tobacco product in the State for distribution or sale in
9 the United States shall be required to provide annually, by
10 June 1, 2020 and by June 1 of each year thereafter, a written
11 certification, including supporting evidence and
12 documentation, of such person's compliance with Sections 903,
13 904, 905, and 920 of the federal Family Smoking Prevention and
14 Tobacco Control Act to the Illinois Department of Public
15 Health, to the extent such person's manufacture qualifies as
16 one that requires compliance with such Act. Such qualifying
17 person will also be required to provide, for each tobacco
18 product manufactured, sold, or distributed by the person
19 (including all tobacco products manufactured in the State by
20 the person and all other tobacco products sold or distributed
21 by the person) copies of any written evidence and documentation
22 prepared to comply with 21 U.S.C. 387(g), (i), and (t), that
23 each such tobacco product, as required by the Tobacco Control

1 Act, is one of the following: (i) "grandfathered" (that is,
2 first introduced into interstate commerce for commercial
3 distribution in the United States on or before February 15,
4 2007); (ii) "provisional" (that is, first introduced into
5 interstate commerce for commercial distribution in the United
6 States between February 15, 2007 and March 22, 2011, and for
7 which a substantial equivalence report was submitted to the FDA
8 by March 22, 2011); or (iii) determined to be "substantially
9 equivalent" (that is, is the subject of a marketing
10 authorization order from the FDA after review of a premarket
11 submission intended to demonstrate substantial equivalence).
12 (Source: P.A. 101-582, eff. 8-26-19.)

13 (410 ILCS 76/15)

14 Sec. 15. Private right of action. A manufacturer or
15 distributor of a tobacco product has a private right of action
16 against another manufacturer or distributor of a tobacco
17 product for a tobacco product sold within the State of
18 Illinois, as follows:

19 (1) If the tobacco product fails to comply with Section
20 2 of the Cigarette Tax Act.

21 (2) If the tobacco product fails to comply with Section
22 3 of the Cigarette Tax Act.

23 (3) If the tobacco product fails to comply with Section
24 3 of the Cigarette Use Tax Act.

25 (4) If the tobacco product fails to comply with Section

1 3-10 of the Cigarette Use Tax Act.

2 (5) If the tobacco product fails to comply with any
3 rule adopted under this Act pertaining to revenue by any
4 political subdivision of the State, as described in this
5 Act.

6 (6) If the tobacco product fails to comply with a local
7 ordinance pertaining to a tobacco product, if the tobacco
8 product was actually sold in a jurisdiction subject to such
9 ordinance.

10 For paragraphs (1) through (5), the manufacturer or
11 distributor seeking to initiate the private right of action
12 must give notice by certified mail, first class postage
13 prepaid, to the Director of Revenue, or his or her designee, of
14 a violation of Section 2 or Section 3 of the Cigarette Tax Act,
15 and the Department of Revenue must decline to take action
16 within 60 days of such notice.

17 For paragraph (6), the manufacturer or distributor seeking
18 to initiate the private right of action must give notice by
19 certified mail, first class postage prepaid, to the clerk of
20 the unit of local government, or his or her designee, of a
21 violation of the local ordinance, and the unit of local
22 government must decline to take action within 90 days of such
23 notice.

24 A manufacturer or distributor ~~To enforce against a~~
25 ~~violation of the Act or any rule adopted under this Act by any~~
26 ~~local government or political subdivision as described in this~~

1 ~~Act, any interested party~~ may file suit in circuit court in the
2 county where the alleged violation occurred or where any person
3 who is a party to the action resides. Actions may be brought by
4 one or more manufacturers or distributors ~~persons~~ for and on
5 behalf of themselves and other persons similarly situated. If
6 the interested party prevails in its enforcement action, it
7 will be entitled to recover: (A) one-third of the noncompliant
8 tax revenue, with the remainder to be conveyed to (i) the
9 Department of Revenue for actions brought under paragraphs (1)
10 through (5), and (B) the unit of local government for actions
11 brought under paragraph (6); and (B) damages of 3 times its
12 attorney's fees and costs, and, in addition, the court or other
13 adjudicating body, at its discretion, may assess punitive
14 damages for any wanton or flagrant violation of the law.

15 (Source: P.A. 101-582, eff. 8-26-19.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.