

HB5221



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5221

by Rep. Tim Butler

SYNOPSIS AS INTRODUCED:

720 ILCS 675/1
720 ILCS 675/2

from Ch. 23, par. 2357
from Ch. 23, par. 2358

Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that a person under 21 years of age may not possess any tobacco product, electronic cigarette, or alternative nicotine product. Provides that a violation is a Class A misdemeanor.

LRB101 16849 RLC 66248 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Prevention of Tobacco Use by Persons under
5 21 Years of Age and Sale and Distribution of Tobacco Products
6 Act is amended by changing Sections 1 and 2 as follows:

7 (720 ILCS 675/1) (from Ch. 23, par. 2357)

8 Sec. 1. Prohibition on sale of tobacco products, electronic
9 cigarettes, and alternative nicotine products to persons under
10 21 years of age; prohibition on the distribution of tobacco
11 product samples, electronic cigarette samples, and alternative
12 nicotine product samples to any person; use of identification
13 cards; vending machines; lunch wagons; out-of-package sales.

14 (a) No person under 21 years of age shall buy any tobacco
15 product, electronic cigarette, or alternative nicotine
16 product. No person shall sell, buy for, distribute samples of
17 or furnish any tobacco product, electronic cigarette, or any
18 alternative nicotine product to any person under 21 years of
19 age.

20 (a-5) No person under 16 years of age may sell any tobacco
21 product, electronic cigarette, or alternative nicotine product
22 at a retail establishment selling tobacco products, electronic
23 cigarettes, or alternative nicotine products. This subsection

1 does not apply to a sales clerk in a family-owned business
2 which can prove that the sales clerk is in fact a son or
3 daughter of the owner.

4 (a-5.1) Before selling, offering for sale, giving, or
5 furnishing a tobacco product, electronic cigarette, or
6 alternative nicotine product to another person, the person
7 selling, offering for sale, giving, or furnishing the tobacco
8 product, electronic cigarette, or alternative nicotine product
9 shall verify that the person is at least 21 years of age by:

10 (1) examining from any person that appears to be under
11 30 years of age a government-issued photographic
12 identification that establishes the person to be 21 years
13 of age or older; or

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

22 (a-6) No person under 21 years of age in the furtherance or
23 facilitation of obtaining any tobacco product, electronic
24 cigarette, or alternative nicotine product shall display or use
25 a false or forged identification card or transfer, alter, or
26 deface an identification card.

1 (a-7) (Blank).

2 (a-7.5) A person under 21 years of age may not possess any
3 tobacco product, electronic cigarette, or alternative nicotine
4 product.

5 (a-8) A person shall not distribute without charge samples
6 of any tobacco product to any other person, regardless of age,
7 except for smokeless tobacco in an adult-only facility.

8 This subsection (a-8) does not apply to the distribution of
9 a tobacco product, electronic cigarette, or alternative
10 nicotine product sample in any adult-only facility.

11 (a-9) For the purpose of this Section:

12 "Adult-only facility" means a facility or restricted
13 area (whether open-air or enclosed) where the operator
14 ensures or has a reasonable basis to believe (such as by
15 checking identification as required under State law, or by
16 checking the identification of any person appearing to be
17 under the age of 30) that no person under legal age is
18 present. A facility or restricted area need not be
19 permanently restricted to persons under 21 years of age to
20 constitute an adult-only facility, provided that the
21 operator ensures or has a reasonable basis to believe that
22 no person under 21 years of age is present during the event
23 or time period in question.

24 "Alternative nicotine product" means a product or
25 device not consisting of or containing tobacco that
26 provides for the ingestion into the body of nicotine,

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

13 "Electronic cigarette" means:

14 (1) any device that employs a battery or other
15 mechanism to heat a solution or substance to produce a
16 vapor or aerosol intended for inhalation;

17 (2) any cartridge or container of a solution or
18 substance intended to be used with or in the device or
19 to refill the device; or

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

22 "Electronic cigarette" includes, but is not limited
23 to, any electronic nicotine delivery system, electronic
24 cigar, electronic cigarillo, electronic pipe, electronic
25 hookah, vape pen, or similar product or device, and any
26 components or parts that can be used to build the product

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

15 "Lunch wagon" means a mobile vehicle designed and
16 constructed to transport food and from which food is sold
17 to the general public.

18 "Nicotine" means any form of the chemical nicotine,
19 including any salt or complex, regardless of whether the
20 chemical is naturally or synthetically derived.

21 "Tobacco product" means any product containing or made
22 from tobacco that is intended for human consumption,
23 whether smoked, heated, chewed, absorbed, dissolved,
24 inhaled, snorted, sniffed, or ingested by any other means,
25 including, but not limited to, cigarettes, cigars, little
26 cigars, chewing tobacco, pipe tobacco, snuff, snus, and any

1 other smokeless tobacco product which contains tobacco
2 that is finely cut, ground, powdered, or leaf and intended
3 to be placed in the oral cavity. "Tobacco product" includes
4 any component, part, or accessory of a tobacco product,
5 whether or not sold separately. "Tobacco product" does not
6 include: an electronic cigarette and alternative nicotine
7 product as defined in this Section; or any product that has
8 been approved by the United States Food and Drug
9 Administration for sale as a tobacco cessation product, as
10 a tobacco dependence product, or for other medical
11 purposes, and is being marketed and sold solely for that
12 approved purpose.

13 (b) Tobacco products, electronic cigarettes, and
14 alternative nicotine products may be sold through a vending
15 machine only if such tobacco products, electronic cigarettes,
16 and alternative nicotine products are not placed together with
17 any non-tobacco product, other than matches, in the vending
18 machine and the vending machine is in any of the following
19 locations:

20 (1) (Blank).

21 (2) Places to which persons under 21 years of age are
22 not permitted access at any time.

23 (3) Places where alcoholic beverages are sold and
24 consumed on the premises and vending machine operation is
25 under the direct supervision of the owner or manager.

26 (4) (Blank).

1 (5) (Blank).

2 (c) (Blank).

3 (d) The sale or distribution by any person of a tobacco
4 product as defined in this Section, including but not limited
5 to a single or loose cigarette, that is not contained within a
6 sealed container, pack, or package as provided by the
7 manufacturer, which container, pack, or package bears the
8 health warning required by federal law, is prohibited.

9 (e) It is not a violation of this Act for a person under 21
10 years of age to purchase a tobacco product, electronic
11 cigarette, or alternative nicotine product if the person under
12 the age of 21 purchases or is given the tobacco product,
13 electronic cigarette, or alternative nicotine product in any of
14 its forms from a retail seller of tobacco products, electronic
15 cigarettes, or alternative nicotine products or an employee of
16 the retail seller pursuant to a plan or action to investigate,
17 patrol, or otherwise conduct a "sting operation" or enforcement
18 action against a retail seller of tobacco products, electronic
19 cigarettes, or alternative nicotine products or a person
20 employed by the retail seller of tobacco products, electronic
21 cigarettes, or alternative nicotine products or on any premises
22 authorized to sell tobacco products, electronic cigarettes, or
23 alternative nicotine products to determine if tobacco
24 products, electronic cigarettes, or alternative nicotine
25 products are being sold or given to persons under 21 years of
26 age if the "sting operation" or enforcement action is approved

1 by, conducted by, or conducted on behalf of the Department of
2 State Police, the county sheriff, a municipal police
3 department, the Department of Revenue, the Department of Public
4 Health, or a local health department. The results of any sting
5 operation or enforcement action, including the name of the
6 clerk, shall be provided to the retail seller within 7 business
7 days.

8 (Source: P.A. 101-2, eff. 7-1-19.)

9 (720 ILCS 675/2) (from Ch. 23, par. 2358)

10 Sec. 2. Penalties.

11 (a) Any person who violates subsection (a), (a-5), (a-5.1),
12 (a-8), (b), or (d) of Section 1 of this Act is guilty of a petty
13 offense. For the first offense in a 24-month period, the person
14 shall be fined \$200 if his or her employer has a training
15 program that facilitates compliance with minimum-age tobacco
16 laws. For the second offense in a 24-month period, the person
17 shall be fined \$400 if his or her employer has a training
18 program that facilitates compliance with minimum-age tobacco
19 laws. For the third offense in a 24-month period, the person
20 shall be fined \$600 if his or her employer has a training
21 program that facilitates compliance with minimum-age tobacco
22 laws. For the fourth or subsequent offense in a 24-month
23 period, the person shall be fined \$800 if his or her employer
24 has a training program that facilitates compliance with
25 minimum-age tobacco laws. For the purposes of this subsection,

1 the 24-month period shall begin with the person's first
2 violation of the Act. The penalties in this subsection are in
3 addition to any other penalties prescribed under the Cigarette
4 Tax Act and the Tobacco Products Tax Act of 1995.

5 (a-1) Any person under 21 years of age who violates
6 subsection (a-7.5) of Section 1 is guilty of a Class A
7 misdemeanor.

8 (a-5) Any retailer who violates subsection (a), (a-5),
9 (a-5.1), (a-8), (b), or (d) of Section 1 of this Act is guilty
10 of a petty offense. For the first offense in a 24-month period,
11 the retailer shall be fined \$200 if it does not have a training
12 program that facilitates compliance with minimum-age tobacco
13 laws. For the second offense in a 24-month period, the retailer
14 shall be fined \$400 if it does not have a training program that
15 facilitates compliance with minimum-age tobacco laws. For the
16 third offense within a 24-month period, the retailer shall be
17 fined \$600 if it does not have a training program that
18 facilitates compliance with minimum-age tobacco laws. For the
19 fourth or subsequent offense in a 24-month period, the retailer
20 shall be fined \$800 if it does not have a training program that
21 facilitates compliance with minimum-age tobacco laws. For the
22 purposes of this subsection, the 24-month period shall begin
23 with the person's first violation of the Act. The penalties in
24 this subsection are in addition to any other penalties
25 prescribed under the Cigarette Tax Act and the Tobacco Products
26 Tax Act of 1995.

1 (a-6) For the purpose of this Act, a training program that
2 facilitates compliance with minimum-age tobacco laws must
3 include at least the following elements: (i) it must explain
4 that only individuals displaying valid identification
5 demonstrating that they are 21 years of age or older shall be
6 eligible to purchase tobacco products, electronic cigarettes,
7 or alternative nicotine products and (ii) it must explain where
8 a clerk can check identification for a date of birth. The
9 training may be conducted electronically. Each retailer that
10 has a training program shall require each employee who
11 completes the training program to sign a form attesting that
12 the employee has received and completed tobacco training. The
13 form shall be kept in the employee's file and may be used to
14 provide proof of training.

15 (b) ~~(Blank).~~ If a person under 21 years of age violates
16 subsection (a-6) of Section 1, he or she is guilty of a Class A
17 misdemeanor.

18 (c) (Blank).

19 (d) (Blank).

20 (e) (Blank).

21 (f) (Blank).

22 (g) (Blank).

23 (h) All moneys collected as fines for violations of
24 subsection (a), (a-5), (a-5.1), (a-6), (a-7.5), (a-8), (b), or
25 (d) ~~or (a-7)~~ of Section 1 shall be distributed in the following
26 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 enforcing this Act.

6 Any violation of subsection (a) or (a-5) of Section 1 shall
7 be reported to the Department of Revenue within 7 business
8 days.

9 (Source: P.A. 100-201, eff. 8-18-17; 101-2, eff. 7-1-19;
10 revised 4-29-19.)