

SB1864



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1864

Introduced 2/15/2019, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

410 ILCS 82/10
720 ILCS 675/1.5

Amends the Smoke Free Illinois Act. Includes the use of alternative nicotine products and electronic cigarettes in the definition of "smoke" or "smoking". Defines "electronic cigarette", "nicotine", and "tobacco product". Amends the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act. Provides that "alternative nicotine product" does not include electronic cigarettes. Effective January 1, 2020.

LRB101 10924 CPF 56080 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 Smoke Free Illinois Act is amended by
5 changing Section 10 as follows:

6 (410 ILCS 82/10)

7 Sec. 10. Definitions. In this Act:

8 "Bar" means an establishment that is devoted to the serving
9 of alcoholic beverages for consumption by guests on the
10 premises and that derives no more than 10% of its gross revenue
11 from the sale of food consumed on the premises. "Bar" includes,
12 but is not limited to, taverns, nightclubs, cocktail lounges,
13 adult entertainment facilities, and cabarets.

14 "Department" means the Department of Public Health.

15 "Electronic cigarette" means:

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

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

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

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

18 "Employee" means a person who is employed by an employer in
19 consideration for direct or indirect monetary wages or profits
20 or a person who volunteers his or her services for a non-profit
21 entity.

22 "Employer" means a person, business, partnership,
23 association, or corporation, including a municipal
24 corporation, trust, or non-profit entity, that employs the
25 services of one or more individual persons.

26 "Enclosed area" means all space between a floor and a

1 ceiling that is enclosed or partially enclosed with (i) solid
2 walls or windows, exclusive of doorways, or (ii) solid walls
3 with partitions and no windows, exclusive of doorways, that
4 extend from the floor to the ceiling, including, without
5 limitation, lobbies and corridors.

6 "Enclosed or partially enclosed sports arena" means any
7 sports pavilion, stadium, gymnasium, health spa, boxing arena,
8 swimming pool, roller rink, ice rink, bowling alley, or other
9 similar place where members of the general public assemble to
10 engage in physical exercise or participate in athletic
11 competitions or recreational activities or to witness sports,
12 cultural, recreational, or other events.

13 "Gaming equipment or supplies" means gaming
14 equipment/supplies as defined in the Illinois Gaming Board
15 Rules of the Illinois Administrative Code.

16 "Gaming facility" means an establishment utilized
17 primarily for the purposes of gaming and where gaming equipment
18 or supplies are operated for the purposes of accruing business
19 revenue.

20 "Healthcare facility" means an office or institution
21 providing care or treatment of diseases, whether physical,
22 mental, or emotional, or other medical, physiological, or
23 psychological conditions, including, but not limited to,
24 hospitals, rehabilitation hospitals, weight control clinics,
25 nursing homes, homes for the aging or chronically ill,
26 laboratories, and offices of surgeons, chiropractors, physical

1 therapists, physicians, dentists, and all specialists within
2 these professions. "Healthcare facility" includes all waiting
3 rooms, hallways, private rooms, semiprivate rooms, and wards
4 within healthcare facilities.

5 "Nicotine" means any form of chemical nicotine, including
6 any salt or complex, regardless of whether the chemical is
7 naturally or synthetically derived.

8 "Place of employment" means any area under the control of a
9 public or private employer that employees are required to
10 enter, leave, or pass through during the course of employment,
11 including, but not limited to entrances and exits to places of
12 employment, including a minimum distance, as set forth in
13 Section 70 of this Act, of 15 feet from entrances, exits,
14 windows that open, and ventilation intakes that serve an
15 enclosed area where smoking is prohibited; offices and work
16 areas; restrooms; conference and classrooms; break rooms and
17 cafeterias; and other common areas. A private residence or
18 home-based business, unless used to provide licensed child
19 care, foster care, adult care, or other similar social service
20 care on the premises, is not a "place of employment", nor are
21 enclosed laboratories, not open to the public, in an accredited
22 university or government facility where the activity of smoking
23 is exclusively conducted for the purpose of medical or
24 scientific health-related research. Rulemaking authority to
25 implement this amendatory Act of the 95th General Assembly, if
26 any, is conditioned on the rules being adopted in accordance

1 with all provisions of the Illinois Administrative Procedure
2 Act and all rules and procedures of the Joint Committee on
3 Administrative Rules; any purported rule not so adopted, for
4 whatever reason, is unauthorized.

5 "Private club" means a not-for-profit association that (1)
6 has been in active and continuous existence for at least 3
7 years prior to the effective date of this amendatory Act of the
8 95th General Assembly, whether incorporated or not, (2) is the
9 owner, lessee, or occupant of a building or portion thereof
10 used exclusively for club purposes at all times, (3) is
11 operated solely for a recreational, fraternal, social,
12 patriotic, political, benevolent, or athletic purpose, but not
13 for pecuniary gain, and (4) only sells alcoholic beverages
14 incidental to its operation. For purposes of this definition,
15 "private club" means an organization that is managed by a board
16 of directors, executive committee, or similar body chosen by
17 the members at an annual meeting, has established bylaws, a
18 constitution, or both to govern its activities, and has been
19 granted an exemption from the payment of federal income tax as
20 a club under 26 U.S.C. 501.

21 "Private residence" means the part of a structure used as a
22 dwelling, including, without limitation: a private home,
23 townhouse, condominium, apartment, mobile home, vacation home,
24 cabin, or cottage. For the purposes of this definition, a
25 hotel, motel, inn, resort, lodge, bed and breakfast or other
26 similar public accommodation, hospital, nursing home, or

1 assisted living facility shall not be considered a private
2 residence.

3 "Public place" means that portion of any building or
4 vehicle used by and open to the public, regardless of whether
5 the building or vehicle is owned in whole or in part by private
6 persons or entities, the State of Illinois, or any other public
7 entity and regardless of whether a fee is charged for
8 admission, including a minimum distance, as set forth in
9 Section 70 of this Act, of 15 feet from entrances, exits,
10 windows that open, and ventilation intakes that serve an
11 enclosed area where smoking is prohibited. A "public place"
12 does not include a private residence unless the private
13 residence is used to provide licensed child care, foster care,
14 or other similar social service care on the premises. A "public
15 place" includes, but is not limited to, hospitals, restaurants,
16 retail stores, offices, commercial establishments, elevators,
17 indoor theaters, libraries, museums, concert halls, public
18 conveyances, educational facilities, nursing homes,
19 auditoriums, enclosed or partially enclosed sports arenas,
20 meeting rooms, schools, exhibition halls, convention
21 facilities, polling places, private clubs, gaming facilities,
22 all government owned vehicles and facilities, including
23 buildings and vehicles owned, leased, or operated by the State
24 or State subcontract, healthcare facilities or clinics,
25 enclosed shopping centers, retail service establishments,
26 financial institutions, educational facilities, ticket areas,

1 public hearing facilities, public restrooms, waiting areas,
2 lobbies, bars, taverns, bowling alleys, skating rinks,
3 reception areas, and no less than 75% of the sleeping quarters
4 within a hotel, motel, resort, inn, lodge, bed and breakfast,
5 or other similar public accommodation that are rented to
6 guests, but excludes private residences.

7 "Restaurant" means (i) an eating establishment, including,
8 but not limited to, coffee shops, cafeterias, sandwich stands,
9 and private and public school cafeterias, that gives or offers
10 for sale food to the public, guests, or employees, and (ii) a
11 kitchen or catering facility in which food is prepared on the
12 premises for serving elsewhere. "Restaurant" includes a bar
13 area within the restaurant.

14 "Retail tobacco store" means a retail establishment that
15 derives more than 80% of its gross revenue from the sale of
16 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
17 and other smoking devices for burning tobacco and related
18 smoking accessories and in which the sale of other products is
19 merely incidental. "Retail tobacco store" includes an enclosed
20 workplace that manufactures, imports, or distributes tobacco
21 or tobacco products, when, as a necessary and integral part of
22 the process of making, manufacturing, importing, or
23 distributing a tobacco product for the eventual retail sale of
24 that tobacco or tobacco product, tobacco is heated, burned, or
25 smoked, or a lighted tobacco product is tested, provided that
26 the involved business entity: (1) maintains a specially

1 designated area or areas within the workplace for the purpose
2 of the heating, burning, smoking, or lighting activities, and
3 does not create a facility that permits smoking throughout; (2)
4 satisfies the 80% requirement related to gross sales; and (3)
5 delivers tobacco products to consumers, retail establishments,
6 or other wholesale establishments as part of its business.
7 "Retail tobacco store" does not include a tobacco department or
8 section of a larger commercial establishment or any
9 establishment with any type of liquor, food, or restaurant
10 license. Rulemaking authority to implement this amendatory Act
11 of the 95th General Assembly, if any, is conditioned on the
12 rules being adopted in accordance with all provisions of the
13 Illinois Administrative Procedure Act and all rules and
14 procedures of the Joint Committee on Administrative Rules; any
15 purported rule not so adopted, for whatever reason, is
16 unauthorized.

17 "Smoke" or "smoking" means the carrying, smoking, burning,
18 inhaling, or exhaling of any kind of lighted pipe, cigar,
19 cigarette, hookah, weed, herbs, or any other lighted smoking
20 equipment. "Smoke" or "smoking" includes the use of alternative
21 nicotine products and electronic cigarettes, as defined in this
22 Section. "Smoke" or "smoking" does not include smoking that is
23 associated with a native recognized religious ceremony,
24 ritual, or activity by American Indians that is in accordance
25 with the federal American Indian Religious Freedom Act, 42
26 U.S.C. 1996 and 1996a.

1 "State agency" has the meaning formerly ascribed to it in
2 subsection (a) of Section 3 of the Illinois Purchasing Act (now
3 repealed).

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

20 "Unit of local government" has the meaning ascribed to it
21 in Section 1 of Article VII of the Illinois Constitution of
22 1970.

23 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09; 96-797,
24 eff. 1-1-10.)

25 Section 10. 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, electronic cigarettes, and
14 products ~~any product~~ approved by the United States Food and
15 Drug Administration as ~~a~~ non-tobacco products ~~product~~ for sale
16 as ~~a~~ tobacco cessation products ~~product~~, as ~~a~~ tobacco
17 dependence products ~~product~~, or for other medical purposes, and
18 ~~is being~~ marketed and sold solely for that approved purpose.

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

25 (c) Before selling, offering for sale, giving, or

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

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

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

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

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

20 Section 99. Effective date. This Act takes effect January
21 1, 2020.