



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2275

Introduced 10/28/2019, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

New Act
20 ILCS 2310/2310-437 new
35 ILCS 143/10-25

Creates the Flavored Tobacco Ban Act. Prohibits the sale or distribution by an establishment of any flavored tobacco product. Provides that the Department of Public Health shall enforce the Act and may adopt rules or guidelines for the implementation and enforcement of the Act. Amends the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois. Requires the Department of Public Health to develop warning labels regarding the health risks of electronic cigarettes to be displayed at each retailer where any electronic cigarette product is sold and in any electronic cigarette advertisement. Provides that the Department shall adopt rules for the implementation and enforcement of the provisions. 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. Effective immediately.

LRB101 14449 CPF 63360 b

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.

12 "Characterizing flavor" means a distinguishable taste or
13 aroma, other than the taste or aroma of tobacco, imparted by a
14 tobacco product or any byproduct produced by the tobacco
15 product. "Characterizing flavor" includes, but is not limited
16 to, tastes or aromas relating to any fruit, chocolate, vanilla,
17 honey, candy, cocoa, dessert, alcoholic beverage, mint,
18 wintergreen, herb, or spice. A tobacco product does not have a
19 characterizing flavor solely because of the use of additives or
20 flavorings or the provision of ingredient information. Rather,
21 it is the presence of a distinguishable taste or aroma that
22 constitutes a characterizing flavor.

23 "Constituent" means any ingredient, substance, chemical,

1 or compound, other than tobacco, water, or reconstituted
2 tobacco sheet, that is added by a manufacturer to a tobacco
3 product during the processing, manufacture, or packing of the
4 tobacco product.

5 "Department" means the Department of Public Health.

6 "Distinguishable" means perceivable by either the sense of
7 smell or taste.

8 "Electronic cigarette" means:

9 (1) any device that employs a battery or other
10 mechanism to heat a solution or substance to produce a
11 vapor or aerosol intended for inhalation;

12 (2) any cartridge or container of a solution or
13 substance intended to be used with or in the device or to
14 refill the device; or

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

17 "Electronic cigarette" includes, but is not limited to, any
18 electronic nicotine delivery system, electronic cigar,
19 electronic cigarillo, electronic pipe, electronic hookah, vape
20 pen, or similar product or device, and any components or parts
21 that can be used to build the product or device.

22 "Establishment" means a retailer's place of business open
23 to the general public for the sale of goods or services related
24 to tobacco products.

25 "Flavored tobacco product" means any tobacco product that
26 contains a constituent that imparts a characterizing flavor.

1 "Labeling" means written, printed, pictorial, or graphic
2 matter upon any tobacco product or any of its packaging.

3 "Packaging" means a pack, box, carton, or container of any
4 kind or, if no other container, any wrapping or cellophane in
5 which a tobacco product is sold or offered for sale to a
6 consumer.

7 "Retailer" means a person who sells or offers for sale
8 flavored cigarettes, flavored tobacco products, or tobacco
9 products for use or consumption and not for resale in any form.

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

1 Section 10. Sale or distribution of flavored tobacco
2 products prohibited.

3 (a) The sale or distribution by an establishment of any
4 flavored tobacco product is prohibited.

5 (b) There is a rebuttable presumption that a tobacco
6 product is a flavored tobacco product if a manufacturer or any
7 of a manufacturer's agents or employees, in the course of their
8 agency or employment, has made a statement or claim directed to
9 consumers or to the public that the tobacco product has or
10 produces a characterizing flavor, including, but not limited
11 to, text, color, or images on the product's labeling or
12 packaging that are used to explicitly or implicitly communicate
13 that the tobacco product has a characterizing flavor.

14 Section 15. Administrative rules; enforcement. The
15 Department shall enforce this Act and may adopt rules or
16 guidelines for the implementation and enforcement of this Act.

17 Section 20. Violations. Upon a decision by the Department
18 that an establishment or an establishment's agent or employee
19 has engaged in any conduct that violates this Act, the
20 Department of Revenue may suspend that establishment's
21 retailer's license under Section 10-25 of the Tobacco Products
22 Tax Act of 1995. Any suspension shall be preceded by a notice
23 of correction or a notice of initial determination of
24 violation.

1 Section 25. No conflict with federal or State law. Nothing
2 in this Act shall be interpreted or applied to create any
3 requirement, power, or duty that is preempted by federal or
4 State law.

5 Section 85. The Department of Public Health Powers and
6 Duties Law of the Civil Administrative Code of Illinois is
7 amended by adding Section 2310-437 as follows:

8 (20 ILCS 2310/2310-437 new)

9 Sec. 2310-437. Electronic cigarette warning labels. The
10 Department shall develop warning labels regarding the health
11 risks of electronic cigarettes, as defined in Section 5 of the
12 Flavored Tobacco Ban Act. The warning labels shall be displayed
13 at each retailer where any electronic cigarette product is sold
14 and in any electronic cigarette advertisement. On or before 60
15 days after the effective date of this amendatory Act of the
16 101st General Assembly, the Department shall adopt rules for
17 the implementation and enforcement of this Section.

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.

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

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

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

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

1 Tobacco Products Act occurring at the retailer's licensed
2 location, during a 24-month period, shall be counted as a
3 violation against the retailer.

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

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

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

25 A training program that facilitates compliance with
26 minimum-age tobacco laws must include at least the following

1 elements: (i) it must explain that only individuals displaying
2 valid identification demonstrating that they are 21 years of
3 age or older shall be eligible to purchase cigarettes or
4 tobacco products and (ii) it must explain where a clerk can
5 check identification for a date of birth. The training may be
6 conducted electronically. Each retailer that has a training
7 program shall require each employee who completes the training
8 program to sign a form attesting that the employee has received
9 and completed tobacco training. The form shall be kept in the
10 employee's file and may be used to provide proof of training.

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

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

23 Section 97. Severability. The provisions of this Act are
24 severable under Section 1.31 of the Statute on Statutes.

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.