



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3699

Introduced 2/14/2020, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

See Index

Creates the Safety in Electronic Smoking Act. Provides that it is unlawful for a person to sell or distribute specified electronic cigarettes and electronic cigarette packaging. Contains advertising and manufacturing requirements. Provides civil and criminal penalties. Provides that the Department of Agriculture, Department of Revenue, Department of Public Health, and Illinois State Police shall have equal and joint authority to administer and enforce the Act, may adopt rules, and may inspect any business that manufactures, transports, or distributes electronic cigarettes to ensure compliance with the Act. Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Removes language providing that an "electronic cigarette" does not include a tobacco product and that a "tobacco product" does not include an electronic cigarette. Provides prohibitions regarding the sale of electronic cigarettes and allows specified peace officers to seize any tobacco products or electronic cigarettes involved in a specified violation. Makes other changes. Amends the Prevention of Cigarette Sales to Persons under 21 Years of Age Act. Changes the Act's title to the Prevention of Cigarette and Electronic Cigarette Sales to Persons under 21 Years of Age Act. Defines "electronic cigarette" and refers to electronic cigarettes in conjunction with cigarettes. Makes other changes. Effective immediately.

LRB101 17378 CPF 70216 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 Safety
5 in Electronic Smoking Act.

6 Section 5. Definitions. In this Act:

7 "Additive" means any substance the intended use of which
8 results or may reasonably be expected to result, directly or
9 indirectly, in it becoming a component or otherwise affecting
10 the characteristic of any tobacco product, including, but not
11 limited to, any substances intended for use as a flavoring or
12 coloring or in producing, manufacturing, packing, processing,
13 preparing, treating, packaging, transporting, or holding.
14 "Additive" does not include tobacco or a pesticide chemical
15 residue in or on raw tobacco or a pesticide chemical.

16 "Consumable vapor product" means any liquid nicotine
17 solution or other material containing nicotine that is depleted
18 when used as a vapor product.

19 "Consumer" means an individual who acquires or seeks to
20 acquire electronic cigarettes for personal use.

21 "Distributor" means a person who sells, offers for sale, or
22 transfers any tobacco, consumable vapor product, electronic
23 cigarette, or tobacco product for resale and not for use or

1 consumption. "Distributor" includes a distributor as defined
2 in Section 1 of the Cigarette Tax Act, Section 1 of the
3 Cigarette Use Tax Act, and Section 10-5 of the Tobacco Products
4 Tax Act of 1995.

5 "Electronic cigarette" means:

6 (1) any device that employs a battery or other
7 mechanism to heat a solution or substance to produce a
8 vapor or aerosol intended for inhalation;

9 (2) any cartridge or container of a solution or
10 substance intended to be used with or in the device or to
11 refill the device; or

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

14 "Electronic cigarette" includes, but is not limited to, any
15 electronic nicotine delivery system, electronic cigar,
16 electronic cigarillo, electronic pipe, electronic hookah, vape
17 pen, or similar product or device, and any component or part
18 that can be used to build the product or device. "Electronic
19 cigarette" does not include: cigarettes, as defined in Section
20 1 of the Cigarette Tax Act; any product approved by the United
21 States Food and Drug Administration for sale as a smoking
22 cessation product, a tobacco dependence product, or for other
23 medical purposes that is marketed and sold solely for that
24 approved purpose; any asthma inhaler prescribed by a physician
25 for that condition that is marketed and sold solely for that
26 approved purpose; or any therapeutic product approved for use

1 under the Compassionate Use of Medical Cannabis Program Act.

2 "Manufacturer" means any person, wherever resident or
3 located, who manufactures and sells tobacco products.

4 "Manufacturer" does not include a person who makes,
5 manufactures, or fabricates tobacco products as a part of a
6 correctional industries program for sale to persons
7 incarcerated in penal institutions or resident patients of a
8 State-operated mental health facility.

9 "Modified risk tobacco product" means any tobacco product
10 that is sold or distributed to reduce harm or the risk of
11 tobacco related disease associated with commercially marketed
12 tobacco products.

13 "Person" means any individual, corporation, partnership,
14 limited liability company, association, or other organization
15 that engages in any for-profit or not-for-profit activities.

16 "Retailer" means a person who engages in this State in the
17 sale of or offers for sale electronic cigarettes or consumable
18 vapor products for use or consumption and not for resale in any
19 form. "Retailer" includes a retailer as defined in Section 1 of
20 the Cigarette Tax Act and Section 10-5 of the Tobacco Products
21 Tax Act of 1995.

22 "Secondary distributor" has the same meaning as defined in
23 Section 1 of the Cigarette Tax Act and Section 1 of the
24 Cigarette Use Tax Act.

25 "Tobacco product" has the same meaning as defined in
26 Section 10-5 of the Tobacco Products Tax Act of 1995.

1 "Vapor product" means any noncombustible product that
2 employs a heating element, battery, electronic circuit, or
3 other means, regardless of shape or size, that can be used to
4 produce vapor from nicotine in a solution. "Vapor product"
5 includes, but is not limited to, any vapor cartridge or other
6 container of nicotine in a solution or other form that may be
7 used with or in an electronic cigarette, electronic cigar,
8 electronic cigarillo, electronic pipe, or similar product or
9 device.

10 Section 10. Enforcement; rulemaking.

11 (a) The Department of Agriculture, Department of Revenue,
12 Department of Public Health, and Illinois State Police shall
13 have equal and joint authority to administer and enforce this
14 Act and may adopt rules for the purpose of administering and
15 enforcing this Act.

16 (b) The Department of Agriculture, Department of Revenue,
17 Department of Public Health, and Illinois State Police may
18 inspect any business that manufactures, transports, or
19 distributes electronic cigarettes in the State to ensure
20 compliance with this Act.

21 Section 15. Prohibitions.

22 (a) It is unlawful for a person to do any of the following:

23 (1) To sell or distribute in this State; to acquire,
24 hold, own, possess, or transport, for sale or distribution

1 in this State; or to import, or cause to be imported into
2 this State for sale or distribution in this State:

3 (A) any electronic cigarette with packaging that:

4 (i) bears any statement, label, stamp,
5 sticker, or notice indicating that the
6 manufacturer did not intend the electronic
7 cigarette to be sold, distributed, or used in the
8 United States, including, but not limited to,
9 labels stating "For Export Only", "U.S. Tax
10 Exempt", "For Use Outside U.S.", or similar
11 wording; or

12 (ii) does not comply with:

13 (I) all requirements imposed by or
14 pursuant to federal law regarding warnings and
15 other information on packages of electronic
16 cigarettes manufactured, packaged, or imported
17 for sale, distribution, or use in the United
18 States; and

19 (II) all federal trademark and copyright
20 laws; and

21 (B) any electronic cigarette that the person
22 otherwise knows or has reason to know the manufacturer
23 did not intend to be sold, distributed, or used in the
24 United States.

25 (2) To alter the packaging of an electronic cigarette,
26 prior to sale or distribution to the ultimate consumer, so

1 as to remove, conceal, or obscure any statement, label,
2 stamp, sticker, or notice required under this Section or
3 federal law.

4 (3) To affix any stamp required under this Act to the
5 packaging of any electronic cigarettes described in
6 subparagraph (A) of paragraph (1) or altered in violation
7 of subparagraph (A) of paragraph (1).

8 (4) To sell in any one transaction more than 2
9 electronic cigarettes, 4 prepackaged cartridges of
10 electronic cigarette solution, or 100 milliliters of
11 electronic cigarette solution to a consumer.

12 (5) To adulterate an electronic cigarette for sale in
13 this State. An electronic cigarette is adulterated if:

14 (A) it consists in whole or in part of any filthy,
15 putrid, or decomposed substance, or is otherwise
16 contaminated by any added poisonous or deleterious
17 substance that may render the product injurious to
18 health;

19 (B) it is held or packaged in containers composed,
20 in whole or in part, of any poisonous or deleterious
21 substance that may render the contents injurious to
22 health; or

23 (C) it is required by 21 U.S.C. 387j(a) to have
24 premarket review and does not have an order in effect
25 under 21 U.S.C. 387j(c)(1)(A)(i) or is in violation of
26 an order under 21 U.S.C. 387j(c)(1)(A).

1 (b) A distributor, secondary distributor, retailer, or
2 person who violates this Section shall be guilty of a Class 4
3 felony.

4 Section 20. Additives. An electronic cigarette for sale in
5 this State shall not include the following additives:

- 6 (1) polyethylene glycol (PEG);
7 (2) vitamin E acetate; or
8 (3) medium chain triglycerides (MCT oil).

9 Section 25. Advertising.

10 (a) A manufacturer, distributor, or retailer may not market
11 an electronic cigarette as a modified risk tobacco product
12 unless it has been designated as a modified risk tobacco
13 product by the United States Food and Drug Administration.

14 (b) A manufacturer, distributor, or retailer may not
15 promote or advertise an electronic cigarette as providing
16 smoking cessation benefits to consumers unless it has approval
17 from the United States Food and Drug Administration to market
18 its electronic cigarette as a medical product for such purpose.

19 (c) A manufacturer, distributor, or retailer may not market
20 an electronic cigarette in a manner that includes fraudulent or
21 misleading terms or statements.

22 (d) A manufacturer, distributor, or retailer may not
23 advertise an electronic cigarette in a manner that:

- 24 (1) is intended to encourage persons under 21 years of

- 1 age to use an electronic cigarette; or
- 2 (2) is attractive to persons under 21 years of age and
- 3 used in advertising for, but not limited to, the following:
- 4 (A) cartoons;
- 5 (B) an image, character, or phrase that is similar
- 6 to one popularly used to advertise to children; or
- 7 (C) a video game, movie, video, or animated
- 8 television show known to appeal primarily to persons
- 9 under 21 years of age.

10 Section 30. Manufacturer requirements.

11 (a) A manufacturer shall ensure that the label on an

12 electronic cigarette container meets the nicotine

13 addictiveness warning statement requirements under 21 CFR

14 1143.3.

15 (b) A manufacturer, including, but not limited to, a

16 manufacturer of a closed system vapor product, shall annually

17 submit a report to the Attorney General setting forth:

18 (1) each new product that the manufacturer is producing

19 and is sold in the State, with a list of the contents and

20 ingredients by volume;

21 (2) whether the manufacturer has stopped producing

22 products previously produced and sold in the State; and

23 (3) the milligrams per milliliter of nicotine in each

24 product the manufacturer produces.

25 A report submitted under this subsection is confidential,

1 and the Attorney General may not disclose it to another person.
2 A manufacturer is not required to submit a report described
3 under this subsection if the manufacturer submits to the
4 Attorney General a certification, by October 1 of each year,
5 that each of the manufacturer's vapor products sold in the
6 State has been filed with the United States Food and Drug
7 Administration.

8 (d) A manufacturer must annually provide the Attorney
9 General with a list of the ingredients added in the
10 manufacturing of electronic cigarettes.

11 Section 35. Violations.

12 (a) A person who, by himself or herself, by his or her
13 employee or agent, or as the employee or agent of another
14 person, violates any rule adopted under this Act for which a
15 penalty is not otherwise specified shall be fined not less than
16 \$1,000 for the first offense, not less than \$1,500 for a second
17 offense, and not less than \$2,500 for a third offense.

18 A person who, by himself or herself, by his or her
19 employee or agent, or as the employee or agent of another
20 person, commits a fourth or subsequent violation of any rule
21 adopted under this Act for which a penalty is not otherwise
22 specified is guilty of a Class 3 felony and subject to:

23 (1) a fine of not less than \$1,000 and not more than
24 \$10,000, or the total amount of any money gained for each
25 day on which a violation has been found, whichever is

1 greater;

2 (2) imprisonment; or

3 (3) both.

4 (b) A violation of Section 15 or 25 of this Act constitutes
5 an unlawful practice under the Consumer Fraud and Deceptive
6 Business Practices Act.

7 Section 40. The Prevention of Tobacco Use by Persons under
8 21 Years of Age and Sale and Distribution of Tobacco Products
9 Act is amended by changing Section 1 as follows:

10 (720 ILCS 675/1) (from Ch. 23, par. 2357)

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

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

23 (a-5) No person under 16 years of age may sell any tobacco
24 product, electronic cigarette, or alternative nicotine product

1 at a retail establishment selling tobacco products, electronic
2 cigarettes, or alternative nicotine products. This subsection
3 does not apply to a sales clerk in a family-owned business
4 which can prove that the sales clerk is in fact a son or
5 daughter of the owner.

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

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

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

24 (a-6) No person under 21 years of age in the furtherance or
25 facilitation of obtaining any tobacco product, electronic
26 cigarette, or alternative nicotine product shall display or use

1 a false or forged identification card or transfer, alter, or
2 deface an identification card.

3 (a-7) (Blank).

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

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

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

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

23 "Alternative nicotine product" means a product or
24 device not consisting of or containing tobacco that
25 provides for the ingestion into the body of nicotine,
26 whether by chewing, smoking, absorbing, dissolving,

1 inhaling, snorting, sniffing, or by any other means.

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

12 "Electronic cigarette" means:

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

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

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

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

1 cigarettes as defined in Section 1 of the Cigarette Tax Act
2 ~~and tobacco products as defined in Section 10-5 of the~~
3 ~~Tobacco Products Tax Act of 1995;~~ tobacco product and
4 alternative nicotine product as defined in this Section;
5 any product approved by the United States Food and Drug
6 Administration for sale as a tobacco cessation product, as
7 a tobacco dependence product, or for other medical
8 purposes, and is being marketed and sold solely for that
9 approved purpose; any asthma inhaler prescribed by a
10 physician for that condition and is being marketed and sold
11 solely for that approved purpose; or any therapeutic
12 product approved for use under the Compassionate Use of
13 Medical Cannabis ~~Pilot~~ Program Act.

14 "Listed or nondiscounted price" means the price listed
15 for an electronic cigarette on its package or on any
16 related shelving, posting, advertising, or display at the
17 location where the electronic cigarette is sold or offered
18 for sale to consumers, including all applicable taxes.

19 "Lunch wagon" means a mobile vehicle designed and
20 constructed to transport food and from which food is sold
21 to the general public.

22 "Nicotine" means any form of the chemical nicotine,
23 including any salt or complex, regardless of whether the
24 chemical is naturally or synthetically derived.

25 "Price reduction instrument" means any coupon,
26 voucher, rebate, card, paper, note, form, statement,

1 ticket, image, or other issue whether in paper, digital, or
2 other form used for commercial purposes to receive an
3 article, product, service, or accommodation without charge
4 or for less than the listed or nondiscounted price.

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

23 (b) Tobacco products, electronic cigarettes, and
24 alternative nicotine products may be sold through a vending
25 machine only if such tobacco products, electronic cigarettes,
26 and alternative nicotine products are not placed together with

1 any non-tobacco product, other than matches, in the vending
2 machine and the vending machine is in any of the following
3 locations:

4 (1) (Blank).

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

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

10 (4) (Blank).

11 (5) (Blank).

12 (c) (Blank).

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

19 (e) It is not a violation of this Act for a person under 21
20 years of age to purchase a tobacco product, electronic
21 cigarette, or alternative nicotine product if the person under
22 the age of 21 purchases or is given the tobacco product,
23 electronic cigarette, or alternative nicotine product in any of
24 its forms from a retail seller of tobacco products, electronic
25 cigarettes, or alternative nicotine products or an employee of
26 the retail seller pursuant to a plan or action to investigate,

1 patrol, or otherwise conduct a "sting operation" or enforcement
2 action against a retail seller of tobacco products, electronic
3 cigarettes, or alternative nicotine products or a person
4 employed by the retail seller of tobacco products, electronic
5 cigarettes, or alternative nicotine products or on any premises
6 authorized to sell tobacco products, electronic cigarettes, or
7 alternative nicotine products to determine if tobacco
8 products, electronic cigarettes, or alternative nicotine
9 products are being sold or given to persons under 21 years of
10 age if the "sting operation" or enforcement action is approved
11 by, conducted by, or conducted on behalf of the Department of
12 State Police, the county sheriff, a municipal police
13 department, the Department of Revenue, the Department of Public
14 Health, or a local health department. The results of any sting
15 operation or enforcement action, including the name of the
16 clerk, shall be provided to the retail seller within 7 business
17 days.

18 (f) No person shall:

19 (1) honor or accept a price reduction instrument in any
20 transaction related to the sale of electronic cigarettes to
21 a consumer;

22 (2) sell or offer for sale an electronic cigarette to a
23 consumer through a multi-package discount or otherwise
24 provide to a consumer any electronic cigarette for less
25 than the listed or nondiscounted price in exchange for the
26 purchase of any other electronic cigarette by the consumer;

1 (3) sell, offer for sale, or otherwise provide any
2 product other than electronic cigarettes to a consumer for
3 less than the listed or nondiscounted price in exchange for
4 the purchase of electronic cigarettes by the consumer; or

5 (4) sell, offer for sale, or otherwise provide
6 electronic cigarettes to a consumer for less than the
7 listed nondiscounted price.

8 (g) Any peace officer or duly authorized member of the
9 Department of Revenue or the Department of Public Health, upon
10 discovering a violation of subsection (a), (a-5), (a-5.1),
11 (a-8), (b), or (d) of this Section, may seize any tobacco
12 products or electronic cigarettes of the type involved in that
13 violation that are located at that place of business. The
14 tobacco products or electronic cigarettes so seized are subject
15 to confiscation and forfeiture.

16 (h) If, within 60 days after any seizure under subsection
17 (g), a person having any property interest in the seized
18 property is charged with an offense under this Section, the
19 court that renders judgment upon the charge shall, within 30
20 days after the judgment, conduct a forfeiture hearing to
21 determine whether the seized tobacco products or electronic
22 cigarettes were part of the inventory located at the place of
23 business when a violation of subsection (a), (a-5), (a-5.1),
24 (a-8), (b), or (d) of this Section occurred and whether any
25 seized tobacco products or electronic cigarettes were of a type
26 involved in that violation. The hearing shall be commenced by a

1 written petition by the State, which shall include material
2 allegations of fact, the name and address of every person
3 determined by the State to have any property interest in the
4 seized property, a representation that written notice of the
5 date, time, and place of the hearing has been mailed to every
6 such person by certified mail at least 10 days before the date,
7 and a request for forfeiture. Every such person may appear as a
8 party and present evidence at the hearing. The quantum of proof
9 required shall be a preponderance of the evidence, and the
10 burden of proof shall be on the State. If the court determines
11 that the seized property was subject to forfeiture, an order of
12 forfeiture and disposition of the seized property shall be
13 entered and the property shall be received by the State's
14 Attorney, who shall affect its destruction.

15 (i) If a seizure under subsection (g) is not followed by a
16 charge under subsection (a), (a-5), (a-5.1), (a-8), (b), or (d)
17 of this Section, or if the prosecution of the charge is
18 permanently terminated or indefinitely discontinued without
19 any judgment of conviction or acquittal:

20 (1) the State's Attorney may commence in the circuit
21 court an in rem proceeding for the forfeiture and
22 destruction of any seized tobacco products or electronic
23 cigarettes; and

24 (2) any person having any property interest in the
25 seized tobacco products or electronic cigarettes may
26 commence separate civil proceedings in the manner provided

1 by law.

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

3 Section 45. The Prevention of Cigarette Sales to Persons
4 under 21 Years of Age Act is amended by changing Sections 1, 2,
5 5, 6, 7, 8, 9, 10, and 20 as follows:

6 (720 ILCS 678/1)

7 Sec. 1. Short title. This Act may be cited as the
8 Prevention of Cigarette and Electronic Cigarette Sales to
9 Persons under 21 Years of Age Act.

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

11 (720 ILCS 678/2)

12 Sec. 2. Definitions. For the purpose of this Act:

13 "Cigarette", when used in this Act, means any roll for
14 smoking made wholly or in part of tobacco irrespective of size
15 or shape and whether or not the tobacco is flavored,
16 adulterated, or mixed with any other ingredient, and the
17 wrapper or cover of which is made of paper or any other
18 substance or material except whole leaf tobacco.

19 "Clear and conspicuous statement" means the statement is of
20 sufficient type size to be clearly readable by the recipient of
21 the communication.

22 "Consumer" means an individual who acquires or seeks to
23 acquire cigarettes or electronic cigarettes for personal use.

1 "Delivery sale" means any sale of cigarettes or electronic
2 cigarettes to a consumer if:

3 (a) the consumer submits the order for such sale by
4 means of a telephone or other method of voice transmission,
5 the mails, or the Internet or other online service, or the
6 seller is otherwise not in the physical presence of the
7 buyer when the request for purchase or order is made; or

8 (b) the cigarettes or electronic cigarettes are
9 delivered by use of a common carrier, private delivery
10 service, or the mails, or the seller is not in the physical
11 presence of the buyer when the buyer obtains possession of
12 the cigarettes or electronic cigarettes.

13 "Delivery service" means any person (other than a person
14 that makes a delivery sale) who delivers to the consumer the
15 cigarettes or electronic cigarettes sold in a delivery sale.

16 "Department" means the Department of Revenue.

17 "Electronic cigarette" means:

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

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

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

26 "Electronic cigarette" includes, but is not limited to, any

1 electronic nicotine delivery system, electronic cigar,
2 electronic cigarillo, electronic pipe, electronic hookah, vape
3 pen, or similar product or device, and any component or part
4 that can be used to build the product or device. "Electronic
5 cigarette" does not include: cigarettes, as defined in Section
6 1 of the Cigarette Tax Act; any product approved by the United
7 States Food and Drug Administration for sale as a tobacco
8 cessation product, a tobacco dependence product, or for other
9 medical purposes that is marketed and sold solely for that
10 approved purpose; any asthma inhaler prescribed by a physician
11 for that condition that is marketed and sold solely for that
12 approved purpose; or any therapeutic product approved for use
13 under the Compassionate Use of Medical Cannabis Program Act.

14 "Government-issued identification" means a State driver's
15 license, State identification card, passport, a military
16 identification or an official naturalization or immigration
17 document, such as an alien registration recipient card
18 (commonly known as a "green card") or an immigrant visa.

19 "Mails" or "mailing" mean the shipment of cigarettes or
20 electronic cigarettes through the United States Postal
21 Service.

22 "Out-of-state sale" means a sale of cigarettes or
23 electronic cigarettes to a consumer located outside of this
24 State where the consumer submits the order for such sale by
25 means of a telephonic or other method of voice transmission,
26 the mails or any other delivery service, facsimile

1 transmission, or the Internet or other online service and where
2 the cigarettes or electronic cigarettes are delivered by use of
3 the mails or other delivery service.

4 "Person" means any individual, corporation, partnership,
5 limited liability company, association, or other organization
6 that engages in any for-profit or not-for-profit activities.

7 "Shipping package" means a container in which packs or
8 cartons of cigarettes or electronic cigarettes are shipped in
9 connection with a delivery sale.

10 "Shipping documents" means bills of lading, air bills, or
11 any other documents used to evidence the undertaking by a
12 delivery service to deliver letters, packages, or other
13 containers.

14 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

15 (720 ILCS 678/5)

16 Sec. 5. Unlawful shipment or transportation of cigarettes
17 or electronic cigarettes.

18 (a) It is unlawful for any person engaged in the business
19 of selling cigarettes or electronic cigarettes to ship or cause
20 to be shipped any cigarettes electronic cigarettes unless the
21 person shipping the cigarettes or electronic cigarettes:

22 (1) is licensed as a distributor under ~~either~~ the
23 Cigarette Tax Act, ~~or~~ the Cigarette Use Tax Act, or the
24 Tobacco Products Tax Act of 1995; or delivers the
25 cigarettes or electronic cigarettes to a distributor

1 licensed under ~~either~~ the Cigarette Tax Act, ~~or~~ the
2 Cigarette Use Tax Act, or the Tobacco Products Tax Act of
3 1995; or

4 (2) ships them to an export warehouse proprietor
5 pursuant to Chapter 52 of the Internal Revenue Code, or an
6 operator of a customs bonded warehouse pursuant to Section
7 1311 or 1555 of Title 19 of the United States Code.

8 For purposes of this subsection (a), a person is a licensed
9 distributor if the person's name appears on a list of licensed
10 distributors published by the Illinois Department of Revenue.
11 The term cigarette has the same meaning as defined in Section 1
12 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax
13 Act. Nothing in this Act prohibits a person licensed as a
14 distributor under the Cigarette Tax Act, ~~or~~ the Cigarette Use
15 Tax Act, or the Tobacco Products Tax Act of 1995 from shipping
16 or causing to be shipped any cigarettes or electronic
17 cigarettes to a registered retailer under the Retailers'
18 Occupation Tax Act provided the cigarette tax, ~~or~~ cigarette use
19 tax, or tobacco product tax has been paid.

20 (b) A common or contract carrier may transport cigarettes
21 or electronic cigarettes to any individual person in this State
22 only if the carrier reasonably believes such cigarettes or
23 electronic cigarettes have been received from a person
24 described in paragraph (a) (1). Common or contract carriers may
25 make deliveries of cigarettes or electronic cigarettes to
26 licensed distributors described in paragraph (a) (1) of this

1 Section. Nothing in this subsection (b) shall be construed to
2 prohibit a person other than a common or contract carrier from
3 transporting not more than 1,000 cigarettes at any one time to
4 any person in this State.

5 (c) A common or contract carrier may not complete the
6 delivery of any cigarettes or electronic cigarettes to persons
7 other than those described in paragraph (a) (1) of this Section
8 without first obtaining from the purchaser an official written
9 identification from any state or federal agency that displays
10 the person's date of birth or a birth certificate that includes
11 a reliable confirmation that the purchaser is at least 21 years
12 of age; that the cigarettes or electronic cigarettes purchased
13 are not intended for consumption by an individual who is
14 younger than 21 years of age; and a written statement signed by
15 the purchaser that certifies the purchaser's address and that
16 the purchaser is at least 21 years of age. The statement shall
17 also confirm: (1) that the purchaser understands that signing
18 another person's name to the certification is illegal; (2) that
19 the sale of cigarettes to individuals under 21 years of age is
20 illegal; and (3) that the purchase of cigarettes by individuals
21 under 21 years of age is illegal under the laws of Illinois.

22 (d) When a person engaged in the business of selling
23 cigarettes or electronic cigarettes ships or causes to be
24 shipped any cigarettes or electronic cigarettes to any person
25 in this State, other than in the cigarette or electronic
26 cigarette manufacturer's or tobacco products manufacturer's

1 original container or wrapping, the container or wrapping must
2 be plainly and visibly marked with the word "cigarettes" or
3 "electronic cigarettes".

4 (e) When a peace officer of this State or any duly
5 authorized officer or employee of the Illinois Department of
6 Public Health or Department of Revenue discovers any cigarettes
7 or electronic cigarettes which have been or which are being
8 shipped or transported in violation of this Section, he or she
9 shall seize and take possession of the cigarettes or electronic
10 cigarettes, and the cigarettes or electronic cigarettes shall
11 be subject to a forfeiture action pursuant to the procedures
12 provided under the Cigarette Tax Act, ~~or~~ Cigarette Use Tax Act,
13 or Tobacco Products Tax Act of 1995.

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

15 (720 ILCS 678/6)

16 Sec. 6. Prevention of delivery sales to persons under 21
17 years of age.

18 (a) No person shall make a delivery sale of cigarettes or
19 electronic cigarettes to any individual who is under 21 years
20 of age.

21 (b) Each person accepting a purchase order for a delivery
22 sale shall comply with the provisions of this Act and all other
23 laws of this State generally applicable to sales of cigarettes
24 or electronic cigarettes that occur entirely within this State.

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

1 (720 ILCS 678/7)

2 Sec. 7. Age verification and shipping requirements to
3 prevent delivery sales to persons under 21 years of age.

4 (a) No person, other than a delivery service, shall mail,
5 ship, or otherwise cause to be delivered a shipping package in
6 connection with a delivery sale unless the person:

7 (1) prior to the first delivery sale to the prospective
8 consumer, obtains from the prospective consumer a written
9 certification which includes a statement signed by the
10 prospective consumer that certifies:

11 (A) the prospective consumer's current address;

12 and

13 (B) that the prospective consumer is at least the
14 legal minimum age;

15 (2) informs, in writing, such prospective consumer
16 that:

17 (A) the signing of another person's name to the
18 certification described in this Section is illegal;

19 (B) sales of cigarettes or electronic cigarettes
20 to individuals under 21 years of age are illegal;

21 (C) the purchase of cigarettes or electronic
22 cigarettes by individuals under 21 years of age is
23 illegal; and

24 (D) the name and identity of the prospective
25 consumer may be reported to the state of the consumer's

1 current address under the Act of October 19, 1949 (15
2 U.S.C. § 375, et seq.), commonly known as the Jenkins
3 Act;

4 (3) makes a good faith effort to verify the date of
5 birth of the prospective consumer provided pursuant to this
6 Section by:

7 (A) comparing the date of birth against a
8 commercially available database; or

9 (B) obtaining a photocopy or other image of a
10 valid, government-issued identification stating the
11 date of birth or age of the prospective consumer;

12 (4) provides to the prospective consumer a notice that
13 meets the requirements of subsection (b);

14 (5) receives payment for the delivery sale from the
15 prospective consumer by a credit or debit card that has
16 been issued in such consumer's name, or by a check or other
17 written instrument in such consumer's name; however, no
18 money order or cash payment shall be received or permitted
19 and the seller shall submit to each credit card acquiring
20 company with which it has credit card sales identification
21 information in an appropriate form and format so that the
22 words "tobacco product" may be printed in the purchaser's
23 credit card statement when a purchase of a cigarette or
24 electronic cigarette is made by credit card payment; and

25 (6) ensures that the shipping package is delivered to
26 the same address as is shown on the government-issued

1 identification or contained in the commercially available
2 database. No delivery described under this Section shall be
3 permitted to any post office box.

4 (b) The notice required under this Section shall include:

5 (1) a statement that cigarette and electronic
6 cigarette sales to consumers below 21 years of age are
7 illegal;

8 (2) a statement that sales of cigarettes and electronic
9 cigarettes are restricted to those consumers who provide
10 verifiable proof of age in accordance with subsection (a);

11 (3) a statement that cigarette or electronic cigarette
12 sales are subject to tax under Section 2 of the Cigarette
13 Tax Act ~~(35 ILCS 130/2)~~, Section 2 of the Cigarette Use Tax
14 Act, ~~and~~ Section 3 of the Use Tax Act, and Section 10-10 of
15 the Tobacco Products Tax Act of 1995 and an explanation of
16 how the correct tax has been, or is to be, paid with
17 respect to such delivery sale.

18 (c) A statement meets the requirement of this Section if:

19 (1) the statement is clear and conspicuous;

20 (2) the statement is contained in a printed box set
21 apart from the other contents of the communication;

22 (3) the statement is printed in bold, capital letters;

23 (4) the statement is printed with a degree of color
24 contrast between the background and the printed statement
25 that is no less than the color contrast between the
26 background and the largest text used in the communication;

1 and

2 (5) for any printed material delivered by electronic
3 means, the statement appears at both the top and the bottom
4 of the electronic mail message or both the top and the
5 bottom of the Internet website homepage.

6 (d) Each person, other than a delivery service, who mails,
7 ships, or otherwise causes to be delivered a shipping package
8 in connection with a delivery sale shall:

9 (1) include as part of the shipping documents a clear
10 and conspicuous statement stating: "Cigarettes or
11 Electronic Cigarettes: Illinois Law Prohibits Shipping to
12 Individuals Under 21 and Requires the Payment of All
13 Applicable Taxes";

14 (2) use a method of mailing, shipping, or delivery that
15 requires a signature before the shipping package is
16 released to the consumer; and

17 (3) ensure that the shipping package is not delivered
18 to any post office box.

19 (Source: P.A. 101-2, eff. 7-1-19; revised 4-29-19.)

20 (720 ILCS 678/8)

21 Sec. 8. Registration and reporting requirements to prevent
22 delivery sales to persons under 21 years of age.

23 (a) Not later than the 15th day of each month, each person
24 making a delivery sale during the previous calendar month shall
25 file a report with the Department containing the following

1 information:

2 (1) the seller's name, trade name, and the address of
3 such person's principal place of business and any other
4 place of business;

5 (2) the name and address of the consumer to whom such
6 delivery sale was made;

7 (3) the brand style or brand styles of the cigarettes
8 or electronic cigarettes that were sold in such delivery
9 sale;

10 (4) the quantity of cigarettes or electronic
11 cigarettes that were sold in such delivery sale;

12 (5) an indication of whether or not the cigarettes or
13 electronic cigarettes sold in the delivery sale bore a tax
14 stamp evidencing payment of the tax under Section 2 of the
15 Cigarette Tax Act ~~(35 ILCS 130/2)~~; and

16 (6) such other information the Department may require.

17 (b) Each person engaged in business within this State who
18 makes an out-of-state sale shall, for each individual sale,
19 submit to the appropriate tax official of the state in which
20 the consumer is located the information required in subsection
21 (a).

22 (c) Any person that satisfies the requirements of 15 U.S.C.
23 Section 376 shall be deemed to satisfy the requirements of
24 subsections (a) and (b).

25 (d) The Department is authorized to disclose to the
26 Attorney General any information received under this title and

1 requested by the Attorney General. The Department and the
2 Attorney General shall share with each other the information
3 received under this title and may share the information with
4 other federal, State, or local agencies for purposes of
5 enforcement of this title or the laws of the federal government
6 or of other states.

7 (e) This Section shall not be construed to impose liability
8 upon any delivery service, or officers or employees thereof,
9 when acting within the scope of business of the delivery
10 service.

11 (f) The Department may establish procedures requiring
12 electronic transmission of the information required by this
13 Section directly to the Department on forms prescribed and
14 furnished by the Department.

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

16 (720 ILCS 678/9)

17 Sec. 9. Statements for delivery sales.

18 (a) Each person who makes a delivery sale shall collect and
19 remit to the Department all excise taxes imposed by this State
20 with respect to such delivery sale and maintain evidence of
21 such payment unless the person is located outside the State and
22 includes a statement on the outside of the shipping package
23 stating: "Illinois law requires the payment of state taxes on
24 this shipment of cigarettes or electronic cigarettes. You are
25 legally responsible for all applicable unpaid state taxes on

1 these cigarettes or electronic cigarettes."

2 (b) A statement meets the requirements of subsection (a) if
3 the statement is:

4 (1) clear and conspicuous;

5 (2) contained in a printed box set apart from the
6 shipping label and other markings contained on the shipping
7 package;

8 (3) printed in bold, capital letters;

9 (4) printed with a degree of color contrast between the
10 background and the printed statement that is no less than
11 the color contrast between the background and the largest
12 text used on the shipping label; and

13 (5) located on the same side of the shipping package as
14 the shipping label.

15 (Source: P.A. 95-1053, eff. 1-1-10.)

16 (720 ILCS 678/10)

17 Sec. 10. Violation.

18 (a) A person who violates subsection (a), (b), or (c) of
19 Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A
20 misdemeanor. A second or subsequent violation of subsection
21 (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a
22 Class 4 felony.

23 (b) The Department of Revenue shall impose a civil penalty
24 not to exceed \$5,000 on any person who violates subsection (a),
25 (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The

1 Department of Revenue shall impose a civil penalty not to
2 exceed \$5,000 on any person engaged in the business of selling
3 cigarettes or electronic cigarettes who ships or causes to be
4 shipped any such cigarettes or electronic cigarettes to any
5 person in this State in violation of subsection (d) of Section
6 5. Civil penalties imposed and collected by the Department
7 shall be deposited into the Tax Compliance and Administration
8 Fund.

9 (c) All cigarettes or electronic cigarettes sold or
10 attempted to be sold in a delivery sale that does not meet the
11 requirements of this Act shall be forfeited to the State. All
12 cigarettes or electronic cigarettes forfeited to this State
13 under this Act shall be destroyed or maintained and used in an
14 undercover capacity. The Department may, prior to any
15 destruction of cigarettes or electronic cigarettes, permit the
16 true holder of the trademark rights in the cigarette or
17 electronic cigarette brand to inspect such contraband
18 cigarettes or electronic cigarettes, in order to assist the
19 Department in any investigation regarding such cigarettes or
20 electronic cigarettes.

21 (d) Any person aggrieved by any decision of the Department
22 of Revenue may, within 60 days after notice of that decision,
23 protest in writing and request a hearing. The Department of
24 Revenue shall give notice to the person of the time and place
25 for the hearing and shall hold a hearing before it issues a
26 final administrative decision. Absent a written protest within

1 60 days, the Department's decision shall become final without
2 any further determination made or notice given.

3 (e) The penalties provided for in this Section are in
4 addition to any other penalties provided for by law.

5 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

6 (720 ILCS 678/20)

7 Sec. 20. Tip line.

8 (a) Not later than 120 days after the effective date of
9 this amendatory Act of the 95th General Assembly, the
10 Department shall establish, publicize, and maintain a
11 toll-free telephone number to receive information related to
12 the sale and delivery of contraband cigarettes or electronic
13 cigarettes.

14 (b) The Attorney General may pay a reward of up to \$5,000
15 to any person who furnishes information leading to the
16 Department's collection of excise taxes imposed upon delivery
17 sales which otherwise would not have been collected but for the
18 information provided by the person.

19 (Source: P.A. 95-1053, eff. 1-1-10.)

20 Section 97. Severability. If any provision of this Act or
21 its application to any person or circumstance is held invalid,
22 the invalidity of that provision or application does not affect
23 other provisions or applications of this Act that can be given
24 effect without the invalid provision or application.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 720 ILCS 675/1 from Ch. 23, par. 2357

5 720 ILCS 678/1

6 720 ILCS 678/2

7 720 ILCS 678/5

8 720 ILCS 678/6

9 720 ILCS 678/7

10 720 ILCS 678/8

11 720 ILCS 678/9

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