



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB1913

Introduced 2/17/2021, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

410 ILCS 76/10
410 ILCS 76/15

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

LRB102 13489 CPF 18836 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 5. The Tobacco Products Compliance Act is amended
5 by changing Sections 10 and 15 as follows:

6 (410 ILCS 76/10)

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

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

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

14 (410 ILCS 76/15)

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

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

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

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

1 (4) If the tobacco product fails to comply with
2 Section 3-10 of the Cigarette Use Tax Act.

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

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

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

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

25 A manufacturer or distributor ~~To enforce against a~~
26 ~~violation of the Act or any rule adopted under this Act by any~~

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

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

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.