



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3146

Introduced 2/19/2021, by Rep. Kathleen Willis

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.935 new

Creates the Vapor Products Regulatory Act. Provides that on and after January 1, 2022 no person may engage in business as a retailer of vapor products in this State without first having obtained a vapor products retail license from the Department of Revenue. Provides that applications shall be made to the Department and submitted electronically with the name and address of the applicant, the address of the proposed retailer of vapor products in this State, and any other information the Department may lawfully require. Provides that the annual license fee shall be \$150. Provides that specified felons, corporations, and persons are ineligible to receive a retailer's license under the Act. Provides that acting as a retailer without a license is a punishable offense. Requires retailers to keep records for at least 3 years. Prohibits the distribution of vapor products to, and possession by, persons under minimum legal age. Defines "person under minimum legal age". Provides penalties for distribution of vapor products to, and possession by, persons under minimum legal age. Amends the State Finance Act. Creates the Vapor Products Compliance Fund. Effective January 1, 2022.

LRB102 13531 CPF 21630 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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 Vapor
5 Products Regulatory Act.

6 Section 5. Definitions. In this Act:

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

18 "Age restricted area" means a signed designated area in a
19 retail establishment to which persons under minimum legal age
20 are not permitted access unless accompanied by a parent or
21 legal guardian.

22 "Department" means the Department of Revenue.

23 "Electronic nicotine delivery system" means a powered

1 vaporizer, and any component parts of a powered vaporizer
2 intended to be used in the powered vaporizer, that converts
3 e-liquid into vapor which is intended for inhalation.

4 "E-liquid" means a substance that contains nicotine and
5 flavoring, substances, or other additives and is intended for
6 use in a vapor product.

7 "Person" means any natural individual, firm, partnership,
8 association, joint stock company, joint adventure, or public
9 or private corporation, however formed, limited liability
10 company, or a receiver, executor, administrator, trustee,
11 conservator, or other representative appointed by order of any
12 court.

13 "Person under minimum legal age" means a person who is not
14 at least 21 years of age.

15 "Records" means all data maintained by the retailer of
16 vapor products, including data on paper, microfilm,
17 microfiche, or any type of machine-sensible data compilation.

18 "Retailer of vapor products" means any person engaged in
19 the business of selling e-liquids or vapor products to
20 consumers in this State for use or consumption and not for
21 resale in any form, for valuable consideration, regardless of
22 amount, quantity, or number of sales. "Retailer of vapor
23 products" does not include any person or business subject to
24 the Cigarette Tax Act, the Tobacco Products Tax Act of 1995,
25 the Prevention of Tobacco Use By Persons under 21 Years of Age
26 and Sale and Distribution of Tobacco Products Act, the Display

1 of Tobacco Products Act, or the Use of Medical Cannabis
2 Program Act.

3 "Sale" means any transfer, exchange, or barter in any
4 manner or by any means whatsoever for consideration and
5 includes all sales made by persons.

6 "Vapor product" means an e-liquid or electronic nicotine
7 delivery system as defined in this Act.

8 Section 10. Retailer's license; fee.

9 (a) On and after January 1, 2022 no person may engage in
10 business as a retailer of vapor products in this State without
11 first having obtained a vapor products retail license from the
12 Department. Applications for a license shall be made to the
13 Department, by electronic means, in a form prescribed by the
14 Department. Each applicant for a license under this Section
15 shall furnish to the Department, in an electronic format
16 established by the Department, the following information:

17 (1) the name and address of the applicant;

18 (2) the address of the location at which the applicant
19 proposes to engage in business as a retailer of vapor
20 products in this State;

21 (3) a statement of compliance with applicable federal
22 requirements under 15 U.S.C. 376a for common carriers or
23 other delivery services regarding purchasers accepting a
24 delivery sale order from a person without: obtaining the
25 full name, birth date, and residential address of that

1 person; and verifying that information using a
2 commercially available database or aggregate of databases
3 regularly used by government and businesses for age and
4 identity verification and authentication; and

5 (4) any other additional information as the Department
6 may lawfully require by its rules.

7 (b) The annual license fee payable to the Department for
8 each retailer's license shall be \$150. \$75 of the fee shall be
9 deposited into the Tax Compliance and Administration Fund and
10 shall be used by the Department for the cost of administration
11 and enforcement of this Act. \$75 of the fee shall be deposited
12 into the Vapor Products Compliance Fund and shall be used by
13 the Department of Human Services for unannounced
14 investigations of retailers licensed under this Act.

15 An applicant for a license shall pay the fee to the
16 Department at the time of submitting its application for
17 license to the Department. The Department shall require an
18 applicant for a license under this Section to electronically
19 file and pay the fee.

20 (c) The following are ineligible to receive a retailer's
21 license under this Act:

22 (1) a person who has been convicted of a felony
23 related to the illegal transportation, sale, or
24 distribution of any age-restricted product or item under
25 any federal or State law, if the Department, after
26 investigation and a hearing if requested by the applicant,

1 determines that the person has not been sufficiently
2 rehabilitated to warrant the public trust;

3 (2) a corporation, if any officer, manager, or
4 director of the corporation, or any stockholder or
5 stockholders owning in the aggregate more than 5% of the
6 stock of the corporation, would not be eligible to receive
7 a license under this Act for any reason; or

8 (3) a person who has been convicted of a violation of
9 the federal Trademark Act of 1946 related to the sale of
10 vapor products in the United States.

11 (d) The Department, upon receipt of an application and
12 license fee, in proper form, from a person who is eligible to
13 receive a retailer's license under this Act, shall issue to
14 the applicant a license in form as prescribed by the
15 Department, which license shall permit the applicant to which
16 it is issued to engage in business as a retailer of vapor
17 products under this Act at the place shown on his or her
18 application. All licenses issued by the Department under this
19 Section shall be valid for a period not to exceed one year
20 after issuance unless sooner revoked, canceled, or suspended
21 as provided in this Act. No license issued under this Section
22 is transferable or assignable. The license shall be
23 conspicuously displayed in the place of business conducted by
24 the licensee in this State under the license. A person who
25 obtains a license as a retailer of vapor products who ceases to
26 do business as specified in the license, or who never

1 commenced business, or whose license is suspended or revoked,
2 shall immediately surrender the license to the Department. The
3 Department shall not issue a license to a retailer of vapor
4 products unless the retailer of vapor products is also validly
5 registered under the Retailers' Occupation Tax Act. A person
6 who obtains a license as a retailer of vapor products who
7 ceases to do business as specified in the license, or who never
8 commenced business, or whose license is suspended or revoked,
9 shall immediately surrender the license to the Department.

10 (e) Any person aggrieved by any decision of the Department
11 under this Section may, within 30 days after notice of the
12 decision, protest and request a hearing. Upon receiving a
13 request for hearing, the Department shall give written notice
14 to the person requesting the hearing of the time and place
15 fixed for the hearing and shall hold a hearing in conformity
16 with the provisions of this Act and then issue its final
17 administrative decision in the matter to that person. In
18 absence of protest and request for a hearing within 30 days,
19 the Department's decision shall become final without any
20 further determination being made or notice given.

21 Section 20. Acting as a retailer of vapor products without
22 a license; penalty. A person who knowingly acts as a retailer
23 of vapor products in this State without first having obtained
24 a license to do so in compliance with this Act is guilty of a
25 Class A misdemeanor for the first offense and a Class 4 felony

1 for a second or subsequent offense. Each day the person
2 operates as a retailer of vapor products without a license
3 constitutes a separate offense. The Department may, by
4 application to any circuit court, obtain an injunction
5 restraining any person who engages in business as a retailer
6 of vapor products without a license (either because his or her
7 license has been revoked, canceled, or suspended or because of
8 a failure to obtain a license in the first instance) from
9 engaging in that business until that person, as if that person
10 were a new applicant for a license, complies with all of the
11 conditions, restrictions, and requirements of this Act and
12 qualifies for and obtains a license.

13 Section 25. Revocation, cancellation, or suspension of a
14 retail license.

15 (a) The Department may, after notice and hearing, revoke,
16 cancel, or suspend the license of any retailer of vapor
17 products for the violation of any provision of this Act, or for
18 noncompliance with any provision of this Act, or for any
19 noncompliance with any lawful rule adopted by the Department
20 under this Act, or because the licensee is determined to be
21 ineligible for a license for any one or more of the reasons
22 provided in this Act.

23 (b) A person aggrieved by any decision of the Department
24 under this Section may, within 30 days after notice of the
25 decision, protest and request a hearing. Upon receiving a

1 request for a hearing, the Department shall give notice to the
2 person requesting the hearing of the time and place fixed for
3 the hearing and shall hold a hearing in conformity with the
4 provisions of this Act and then issue its final administrative
5 decision in the matter to that person. In the absence of a
6 protest and request for a hearing within 30 days, the
7 Department's decision shall become final without any further
8 determination being made or notice given. The final decisions
9 of the Department shall be subject to judicial review
10 according to the provisions of the Administrative Review Law.

11 (c) If the retailer of vapor products has a training
12 program that facilitates compliance with minimum-age vapor
13 products laws, the Department shall suspend for 3 days the
14 license of that retailer of vapor products for a fourth or
15 subsequent violation of subsection (a) or (b) of Section 50.
16 For the purposes of this Section, any violation of Section 50
17 occurring at the licensed location for the retailer of vapor
18 products during a 24-month period shall be counted as a
19 violation against the retailer of vapor products.

20 If the retailer of vapor products does not have a training
21 program that facilitates compliance with minimum-age vapor
22 products laws, the Department shall suspend for 3 days the
23 license of that retailer of vapor products for a second
24 violation of subsection (a) or (b) of Section 50.

25 If the retailer of vapor products does not have a training
26 program that facilitates compliance with minimum-age vapor

1 products laws, the Department shall suspend for 7 days the
2 license of that retailer of vapor products for a third
3 violation of subsection (a) or (b) of Section 50.

4 If the retailer of vapor products does not have a training
5 program that facilitates compliance with minimum-age vapor
6 products laws, the Department shall suspend for 30 days the
7 license of a retailer of vapor products for a fourth or
8 subsequent violation of subsection (a) or (b) of Section 50.

9 Section 30. Vapor product labeling and safety. Any
10 e-liquid container sold by a retailer in this State shall:

11 (1) use childproof caps that have the child-resistant
12 effectiveness set forth in the federal prevention
13 packaging standards under 16 C.F.R. 1700.15(b)(1); and

14 (2) contain a label that meets the requirements set
15 forth in 21 C.F.R. 1143.3.

16 Section 35. Peace officer investigation.

17 (a) Whenever any peace officer of the State shall have
18 reason to believe that any violation of this Act has occurred
19 and that the person so violating the Act has in his, hers, or
20 its possession any vapor product, or any vending device
21 containing the vapor products, he or she may file or cause to
22 be filed his or her complaint in writing, verified by
23 affidavit, with any court within whose jurisdiction the
24 premises to be searched are situated, stating the facts upon

1 which the belief is founded, the premises to be searched, and
2 the property to be seized, and procure a search warrant and
3 execute the warrant.

4 (b) Upon the execution of the search warrant, the peace
5 officer executing the search warrant shall make due return of
6 the warrant to the court issuing the warrant, together with an
7 inventory of the property taken under the warrant. The court
8 shall then issue process against the owner of the property if
9 he or she is known. If he or she is not known, the process
10 shall be issued against the person in whose possession the
11 property so taken is found, if that person is known. In case of
12 inability to serve the process upon the owner or the person in
13 possession of the property at the time of its seizure, notice
14 of the proceedings before the court shall be given as required
15 by the statutes of the State governing cases of attachment.
16 Upon the return of the process duly served or upon the posting
17 or publishing of notice made, the court or jury, if a jury
18 shall be demanded, shall proceed to determine whether or not
19 the property so seized was held or possessed in violation of
20 this Act, or whether, if a vending device has been so seized,
21 it contained at the time of its seizure any vapor products held
22 or possessed in violation of this Act.

23 Section 40. Destruction or use of forfeited property. When
24 any vapor product or any vending device has been declared
25 forfeited to the State and all proceedings for judicial review

1 have terminated, the Department shall either destroy the
2 property or maintain and allow the use of the property in an
3 undercover capacity.

4 Section 45. Retailers; records.

5 (a) A retailer of vapor products who is required to
6 procure a license under this Act shall keep within this State
7 complete and accurate records of vapor products purchased,
8 sold, or otherwise disposed of and shall preserve and keep all
9 invoices, bills of lading, sales records, and copies of bills
10 of sale, returns, and other pertinent papers and documents
11 relating to the purchase, sale, or disposition of vapor
12 products. The records need not be maintained on the licensed
13 premises, but must be maintained in this State; however, if
14 access is available electronically, the records may be
15 maintained out-of-State. All original invoices or copies of
16 invoices covering purchases of vapor products must be retained
17 on the licensed premises for a period of 90 days after the
18 purchase, unless the Department has granted a waiver in
19 response to a written request in cases where records are kept
20 at a central business location within this State or in cases
21 where records that are available electronically are maintained
22 out-of-State. The Department shall adopt rules regarding the
23 eligibility for a waiver, revocation of a waiver, and
24 requirements and standards for maintenance and accessibility
25 of records located at a central location out-of-State under a

1 waiver provided under this Section.

2 (b) Records shall be preserved for a period of at least 3
3 years after the later of the date of the records or the date of
4 the entries appearing in the records, unless the Department,
5 in writing, authorizes their destruction or disposal at an
6 earlier date. At all times during the usual business hours of
7 the day, any duly authorized agent or employee of the
8 Department may enter any place of business of the retailer of
9 vapor products without a search warrant and may inspect the
10 records required to be maintained under this Section. If the
11 agent or employee is denied free access or is hindered or
12 interfered with in making the examination as provided in this
13 Section, the license of the retailer of vapor products shall
14 be subject to suspension or revocation by the Department.

15 Section 50. Distribution of vapor products to, and
16 possession by, persons under minimum legal age prohibited.

17 (a) A person, either directly or indirectly by an agent or
18 employee, or by a vending machine owned by the person or
19 located in the person's establishment, may not sell, offer for
20 sale, give, or furnish any vapor product to a person under
21 minimum legal age.

22 (b) Before selling, offering for sale, giving, or
23 furnishing a vapor product to another person, the person
24 selling, offering for sale, giving, or furnishing the vapor
25 product shall, by doing the following, verify that the person

1 is not a person under minimum legal age:

2 (1) if the person appears to be under 27 years of age,
3 examining a government-issued photographic identification
4 that establishes that the person is not a person under
5 minimum legal age; or

6 (2) for sales made through the Internet or other
7 remote sales methods, performing an age verification
8 through an independent, third-party age verification
9 service that compares information available from public
10 records to the personal information entered by the person
11 during the ordering process that establishes that the
12 person is not a person under minimum legal age.

13 (c) A person under minimum legal age shall not possess a
14 vapor product.

15 (d) The Department of Human Services shall administer a
16 program to conduct unannounced investigations of Illinois
17 retailers licensed under this Act to determine compliance with
18 State and federal laws relating to the illegal sale of vapor
19 products to persons under minimum legal age. The results of
20 the unannounced investigations shall be reported to the
21 Department of Human Services and the Department of Revenue.

22 Section 55. Penalties for distribution of vapor products
23 to, and possession by, persons under minimum legal age.

24 (a) Any person who violates subsection (a) or (b) of
25 Section 50 is guilty of a petty offense. For the first offense

1 in a 24-month period, the person shall be fined \$200 if his or
2 her employer has a training program that facilitates
3 compliance with minimum-age vapor product laws. For the second
4 offense in a 24-month period, the person shall be fined \$400 if
5 his or her employer has a training program that facilitates
6 compliance with minimum-age vapor products laws. For the third
7 offense in a 24-month period, the person shall be fined \$600 if
8 his or her employer has a training program that facilitates
9 compliance with minimum-age vapor product laws. For the fourth
10 or subsequent offense in a 24-month period, the person shall
11 be fined \$800 if his or her employer has a training program
12 that facilitates compliance with minimum-age vapor products
13 laws. For the purposes of this subsection, the 24-month period
14 shall begin with the person's first violation of the Act. The
15 penalties in this subsection are in addition to any other
16 penalties provided by law.

17 (b) Any retailer of vapor products who violates subsection
18 (a) or (b) of Section 50 is guilty of a petty offense. For the
19 first offense in a 24-month period, the retailer of vapor
20 products shall be fined \$200 if it does not have a training
21 program that facilitates compliance with minimum-age vapor
22 product laws. For the second offense in a 24-month period, the
23 retailer of vapor products shall be fined \$400 if it does not
24 have a training program that facilitates compliance with
25 minimum-age vapor products laws. For the third offense in a
26 24-month period, the retailer of vapor products shall be fined

1 \$600 if it does not have a training program that facilitates
2 compliance with minimum-age vapor product laws. For the fourth
3 or subsequent offense in a 24-month period, the retailer of
4 vapor products shall be fined \$800 if it does not have a
5 training program that facilitates compliance with minimum-wage
6 vapor products laws. For the purposes of this subsection, the
7 24-month period shall begin with the person's first violation
8 of the Act. The penalties in this subsection are in addition to
9 any other penalties provided by law.

10 (c) A training program that facilitates compliance with
11 minimum-age vapor products laws must include at least the
12 following elements: (i) it must explain that only individuals
13 displaying valid identification demonstrating that they are of
14 legal age shall be eligible to purchase vapor products; and
15 (ii) it must explain where a clerk can check identification
16 for a date of birth. The training may be conducted
17 electronically. Each retailer of vapor products that has a
18 training program shall require each employee who completes the
19 training program to sign a form attesting that the employee
20 has received and completed the vapor products training. The
21 form shall be kept in the employee's file and may be used to
22 provide proof of training.

23 (d) If a person under minimum legal age violates
24 subsection (c) of Section 50, he or she is guilty of a petty
25 offense and the court may impose a sentence of 25 hours of
26 community service and a fine of \$50 for a first violation.

1 A second violation of subsection (c) of Section 50 by a
2 person under minimum legal age that occurs within 12 months
3 after the first violation is punishable by a fine of \$75 and 50
4 hours of community service.

5 A third or subsequent violation by a person under minimum
6 legal age of subsection (c) of Section 50 that occurs within 12
7 months after the first violation is punishable by a \$200 fine
8 and 50 hours of community service.

9 Any second or subsequent violation not within the 12-month
10 time period after the first violation is punishable as
11 provided for a first violation.

12 (e) If a person under minimum legal age is convicted of or
13 placed on supervision for a violation of subsection (c) of
14 Section 50, the court may, in its discretion, and upon
15 recommendation by the State's Attorney, order that person
16 under minimum legal age and his or her parents or legal
17 guardian to attend a youth diversion program if that program
18 is available in the jurisdiction where the offender resides.
19 Attendance at a youth diversion program shall be time-credited
20 against any community service time imposed for any first
21 violation of subsection (c) of Section 50. In addition to any
22 other penalty that the court may impose for a violation of
23 subsection (c) of Section 50, the court, upon request by the
24 State's Attorney, may in its discretion require the offender
25 to remit a fee for his or her attendance at a youth diversion
26 program.

1 For the purposes of this Section, a "youth diversion
2 program" includes, but is not limited to, a seminar designed
3 to educate a person on the physical and psychological effects
4 of using nicotine products and the health consequences of
5 using nicotine products that can be conducted with a
6 locality's youth diversion program.

7 (g) All moneys collected as fines for violations of
8 Section (a), (b), or (c) of Section 50 of this Act shall be
9 distributed in the following manner:

10 (1) one-half of each fine shall be distributed to the
11 unit of local government or other entity that successfully
12 prosecuted the offender; and

13 (2) one-half shall be remitted to the State to be used
14 for enforcement of this Act.

15 Any violation of subsection (a) or (b) of Section 50 shall
16 be reported to the Department within 7 business days.

17 Section 60. Display of vapor products.

18 (a) All vapor products must be sold from behind the
19 counter or displayed in an age restricted area or sealed
20 display case.

21 (b) The restrictions in this Section do not apply to an
22 adult-only facility.

23 (c) The restrictions in this Section do not apply to a
24 retail store that (i) derives at least 90% of its revenue from
25 tobacco, tobacco related products, or vapor products; (ii)

1 does not permit persons under minimum legal age to enter the
2 premises unless accompanied by a parent or legal guardian;
3 (iii) posts a sign on the main entranceway stating that
4 persons under minimum legal age are prohibited from entering
5 unless accompanied by a parent or legal guardian; and (iv) is
6 subject to the Cigarette Tax Act, the Tobacco Products Tax Act
7 of 1995, the Prevention of Tobacco Use By Persons under 21
8 Years of Age and Sale and Distribution of Tobacco Products
9 Act, or the Display of Tobacco Products Act.

10 (d) A violation of this Section is a petty offense for
11 which a court shall impose a fine of not less than \$100 nor
12 more than \$1,000.

13 Section 900. The State Finance Act is amended by adding
14 Section 5.935 as follows:

15 (30 ILCS 105/5.935 new)

16 Sec. 5.935. The Vapor Products Compliance Fund.

17 Section 999. Effective date. This Act takes effect January
18 1, 2022.