

# SB1706



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1706

Introduced 2/26/2021, by Sen. Cristina Castro

### SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5

Amends the Tobacco Products Tax Act of 1995. Provides that specified components of an "electronic cigarette" do not include any solution or substance that contains cannabis subject to tax under the Compassionate Use of Medical Cannabis Program Act or the Cannabis Cultivation Privilege Tax Law. Effective immediately.

LRB102 16571 CPF 21968 b

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Tobacco Products Tax Act of 1995 is amended  
5 by changing Section 10-5 as follows:

6 (35 ILCS 143/10-5)

7 Sec. 10-5. Definitions. For purposes of this Act:

8 "Business" means any trade, occupation, activity, or  
9 enterprise engaged in, at any location whatsoever, for the  
10 purpose of selling tobacco products.

11 "Cigarette" has the meaning ascribed to the term in  
12 Section 1 of the Cigarette Tax Act.

13 "Contraband little cigar" means:

14 (1) packages of little cigars containing 20 or 25  
15 little cigars that do not bear a required tax stamp under  
16 this Act;

17 (2) packages of little cigars containing 20 or 25  
18 little cigars that bear a fraudulent, imitation, or  
19 counterfeit tax stamp;

20 (3) packages of little cigars containing 20 or 25  
21 little cigars that are improperly tax stamped, including  
22 packages of little cigars that bear only a tax stamp of  
23 another state or taxing jurisdiction; or

1           (4) packages of little cigars containing other than 20  
2           or 25 little cigars in the possession of a distributor,  
3           retailer or wholesaler, unless the distributor, retailer,  
4           or wholesaler possesses, or produces within the time frame  
5           provided in Section 10-27 or 10-28 of this Act, an invoice  
6           from a stamping distributor, distributor, or wholesaler  
7           showing that the tax on the packages has been or will be  
8           paid.

9           "Correctional Industries program" means a program run by a  
10          State penal institution in which residents of the penal  
11          institution produce tobacco products for sale to persons  
12          incarcerated in penal institutions or resident patients of a  
13          State operated mental health facility.

14          "Department" means the Illinois Department of Revenue.

15          "Distributor" means any of the following:

16                 (1) Any manufacturer or wholesaler in this State  
17                 engaged in the business of selling tobacco products who  
18                 sells, exchanges, or distributes tobacco products to  
19                 retailers or consumers in this State.

20                 (2) Any manufacturer or wholesaler engaged in the  
21                 business of selling tobacco products from without this  
22                 State who sells, exchanges, distributes, ships, or  
23                 transports tobacco products to retailers or consumers  
24                 located in this State, so long as that manufacturer or  
25                 wholesaler has or maintains within this State, directly or  
26                 by subsidiary, an office, sales house, or other place of

1 business, or any agent or other representative operating  
2 within this State under the authority of the person or  
3 subsidiary, irrespective of whether the place of business  
4 or agent or other representative is located here  
5 permanently or temporarily.

6 (3) Any retailer who receives tobacco products on  
7 which the tax has not been or will not be paid by another  
8 distributor.

9 "Distributor" does not include any person, wherever  
10 resident or located, who makes, manufactures, or fabricates  
11 tobacco products as part of a Correctional Industries program  
12 for sale to residents incarcerated in penal institutions or  
13 resident patients of a State operated mental health facility.

14 "Electronic cigarette" means:

15 (1) any device that employs a battery or other  
16 mechanism to heat a solution or substance to produce a  
17 vapor or aerosol intended for inhalation, except any  
18 device that contains a solution or substance that contains  
19 cannabis subject to tax under the Compassionate Use of  
20 Medical Cannabis Program Act or the Cannabis Cultivation  
21 Privilege Tax Law;

22 (2) any cartridge or container of a solution or  
23 substance intended to be used with or in the device or to  
24 refill the device, except any cartridge or container of a  
25 solution or substance that contains cannabis subject to  
26 tax under the Compassionate Use of Medical Cannabis

1 Program Act or the Cannabis Cultivation Privilege Tax Law;

2 or

3 (3) any solution or substance, whether or not it  
4 contains nicotine, intended for use in the device, except  
5 any solution or substance that contains cannabis subject  
6 to tax under the Compassionate Use of Medical Cannabis  
7 Program Act or the Cannabis Cultivation Privilege Tax Law.

8 The changes made to the definition of "electronic  
9 cigarette" by this amendatory Act of the 102nd General  
10 Assembly apply on and after June 28, 2020, but no claim for  
11 credit or refund is allowed on or after the effective date  
12 of this amendatory Act of the 102nd General Assembly for  
13 such taxes paid during the period beginning June 28, 2020  
14 and the effective date of this amendatory Act of the 102nd  
15 General Assembly.

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

1 for that condition that is marketed and sold solely for that  
2 approved purpose; or any therapeutic product approved for use  
3 under the Compassionate Use of Medical Cannabis Program Act.

4 "Little cigar" means and includes any roll, made wholly or  
5 in part of tobacco, where such roll has an integrated  
6 cellulose acetate filter and weighs less than 4 pounds per  
7 thousand and the wrapper or cover of which is made in whole or  
8 in part of tobacco.

9 "Manufacturer" means any person, wherever resident or  
10 located, who manufactures and sells tobacco products, except a  
11 person who makes, manufactures, or fabricates tobacco products  
12 as a part of a Correctional Industries program for sale to  
13 persons incarcerated in penal institutions or resident  
14 patients of a State operated mental health facility.

15 Beginning on January 1, 2013, "moist snuff" means any  
16 finely cut, ground, or powdered tobacco that is not intended  
17 to be smoked, but shall not include any finely cut, ground, or  
18 powdered tobacco that is intended to be placed in the nasal  
19 cavity.

20 "Person" means any natural individual, firm, partnership,  
21 association, joint stock company, joint venture, limited  
22 liability company, or public or private corporation, however  
23 formed, or a receiver, executor, administrator, trustee,  
24 conservator, or other representative appointed by order of any  
25 court.

26 "Place of business" means and includes any place where

1 tobacco products are sold or where tobacco products are  
2 manufactured, stored, or kept for the purpose of sale or  
3 consumption, including any vessel, vehicle, airplane, train,  
4 or vending machine.

5 "Retailer" means any person in this State engaged in the  
6 business of selling tobacco products to consumers in this  
7 State, regardless of quantity or number of sales.

8 "Sale" means any transfer, exchange, or barter in any  
9 manner or by any means whatsoever for a consideration and  
10 includes all sales made by persons.

11 "Stamp" or "stamps" mean the indicia required to be  
12 affixed on a package of little cigars that evidence payment of  
13 the tax on packages of little cigars containing 20 or 25 little  
14 cigars under Section 10-10 of this Act. These stamps shall be  
15 the same stamps used for cigarettes under the Cigarette Tax  
16 Act.

17 "Stamping distributor" means a distributor licensed under  
18 this Act and also licensed as a distributor under the  
19 Cigarette Tax Act or Cigarette Use Tax Act.

20 "Tobacco products" means any cigars, including little  
21 cigars; cheroots; stogies; periques; granulated, plug cut,  
22 crimp cut, ready rubbed, and other smoking tobacco; snuff  
23 (including moist snuff) or snuff flour; cavendish; plug and  
24 twist tobacco; fine-cut and other chewing tobaccos; shorts;  
25 refuse scraps, clippings, cuttings, and sweeping of tobacco;  
26 and other kinds and forms of tobacco, prepared in such manner

1 as to be suitable for chewing or smoking in a pipe or  
2 otherwise, or both for chewing and smoking; but does not  
3 include cigarettes as defined in Section 1 of the Cigarette  
4 Tax Act or tobacco purchased for the manufacture of cigarettes  
5 by cigarette distributors and manufacturers defined in the  
6 Cigarette Tax Act and persons who make, manufacture, or  
7 fabricate cigarettes as a part of a Correctional Industries  
8 program for sale to residents incarcerated in penal  
9 institutions or resident patients of a State operated mental  
10 health facility.

11 Beginning on July 1, 2019, "tobacco products" also  
12 includes electronic cigarettes.

13 "Wholesale price" means the established list price for  
14 which a manufacturer sells tobacco products to a distributor,  
15 before the allowance of any discount, trade allowance, rebate,  
16 or other reduction. In the absence of such an established list  
17 price, the manufacturer's invoice price at which the  
18 manufacturer sells the tobacco product to unaffiliated  
19 distributors, before any discounts, trade allowances, rebates,  
20 or other reductions, shall be presumed to be the wholesale  
21 price.

22 "Wholesaler" means any person, wherever resident or  
23 located, engaged in the business of selling tobacco products  
24 to others for the purpose of resale. "Wholesaler", when used  
25 in this Act, does not include a person licensed as a  
26 distributor under Section 10-20 of this Act unless expressly



1 stated in this Act.

2 (Source: P.A. 101-31, eff. 6-28-19; 101-593, eff. 12-4-19.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.