



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3854

Introduced 1/21/2022, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

See Index

Creates the Flavored Tobacco Ban Act. Provides that a tobacco retailer or his or her agents or employees may not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product, flavored related tobacco product, flavored alternative nicotine product, or flavored solution or substance intended for use with electronic cigarettes. Provides that (1) "tobacco product" includes products containing tetrahydrocannabinol and products containing a mixture of tetrahydrocannabinol and nicotine, and (2) "tobacco retailer" includes dispensing organizations and dispensing organization agents, as those terms are defined in the Cannabis Regulation and Tax Act. Creates a presumption that a tobacco product, related tobacco product, alternative nicotine product, or solution or substance intended for use with electronic cigarettes is a banned product, solution, or substance intended for use with electronic cigarettes if it has or produces a characterizing flavor. Establishes penalties for violations. Provides that all moneys collected as fines and civil penalties for violations of the Act shall be distributed: one-half to the State agency or unit of local government that successfully prosecuted the offender; and one-half to the Department of Revenue to be used for enforcing the Act and the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that the Act does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to specified products, solutions, or substances than the restrictions imposed by the Act. Amends the Tobacco Products Tax Act of 1995. Permits the Department of Revenue to suspend the license of any distributor that violates the Flavored Tobacco Ban Act.

LRB102 21286 CPF 30397 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

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

4 Section 1. Short title. This Act may be cited as the
5 Flavored Tobacco Ban Act.

6 Section 5. Definitions. In this Act:

7 "Alternative nicotine product" means a product or device
8 not consisting of or containing tobacco that provides for the
9 ingestion into the body of nicotine, whether by chewing,
10 smoking, absorbing, dissolving, inhaling, snorting, sniffing,
11 or by any other means. "Alternative nicotine product" does not
12 include: cigarettes as defined in Section 1 of the Cigarette
13 Tax Act and tobacco products as defined in Section 10-5 of the
14 Tobacco Products Tax Act of 1995; tobacco product and
15 electronic cigarette as defined in this Section; or any
16 product approved by the United States Food and Drug
17 Administration for sale as a tobacco cessation product, as a
18 tobacco dependence product, or for other medical purposes, and
19 is being marketed and sold solely for that approved purpose.

20 "Characterizing flavor" means a distinguishable taste or
21 aroma, including, but not limited to, any fruit, chocolate,
22 vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
23 herb, spice, tobacco, menthol, mint, or wintergreen flavoring.

1 In no event shall a tobacco product, related tobacco product,
2 alternative nicotine product, or solution or substance
3 intended for use with electronic cigarettes or any component
4 part of a tobacco product, related tobacco product,
5 alternative nicotine product, or solution or substance
6 intended for use with electronic cigarettes be construed to
7 have a characterizing flavor based solely on the use of trace
8 additives or flavorings or the provision of ingredient
9 information.

10 "Constituent" means any ingredient, substance, chemical,
11 or compound, other than tobacco, water, or reconstituted
12 tobacco sheet, that is added by a manufacturer to a tobacco
13 product during the processing, manufacture, or packing of the
14 tobacco product.

15 "Distinguishable" means perceivable by either the sense of
16 smell or taste.

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,

1 any electronic nicotine delivery system, electronic cigar,
2 electronic cigarillo, electronic pipe, electronic hookah, vape
3 pen, or similar product or device, and any components or parts
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 and tobacco products as defined in
7 Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco
8 product, related tobacco product, and alternative nicotine
9 product as defined in this Section; any product approved by
10 the United States Food and Drug Administration for sale as a
11 tobacco cessation product, as a tobacco dependence product, or
12 for other medical purposes, and is being marketed and sold
13 solely for that approved purpose; any asthma inhaler
14 prescribed by a physician for that condition and is being
15 marketed and sold solely for that approved purpose; or any
16 therapeutic product approved for use under the Compassionate
17 Use of Medical Cannabis Pilot Program Act.

18 "Flavored alternative nicotine product" means any
19 alternative nicotine product that contains a natural or
20 artificial constituent or additive that imparts a
21 characterizing flavor.

22 "Flavored related tobacco product" means any related
23 tobacco product that contains a natural or artificial
24 constituent or additive that imparts a characterizing flavor.

25 "Flavored solution or substance intended for use with
26 electronic cigarettes" means any solution or substance

1 intended for use with electronic cigarettes that contains a
2 natural or artificial constituent or additive that imparts a
3 characterizing flavor.

4 "Flavored tobacco product" means any tobacco product that
5 contains a natural or artificial constituent or additive that
6 imparts a characterizing flavor.

7 "Labeling" means written, printed, pictorial, or graphic
8 matter upon a tobacco product, related tobacco product,
9 alternative nicotine product, or solution or substance
10 intended for use with electronic cigarettes or any of its
11 packaging.

12 "Packaging" or "package" means a pack, box, carton, or
13 container of any kind, or, if no other container, any
14 wrapping, including cellophane, in which a tobacco product,
15 related tobacco product, alternative nicotine product, or
16 solution or substance intended for use with electronic
17 cigarettes is sold or offered for sale to a consumer.

18 "Related tobacco product" means any product intended for
19 or traditionally used with tobacco, including, but not limited
20 to, papers, wraps, tubes, or filters. A product of a type that
21 has in the past been used in conjunction with tobacco or
22 nicotine use will be deemed a "related tobacco product"
23 regardless of any labeling or descriptive language on such
24 product stating that the product is not intended for use with
25 tobacco or for non-tobacco use only or other similar language.

26 "Retail location" means: (1) a building from which tobacco

1 products, related tobacco products, alternative nicotine
2 products, or solutions or substances intended for use with
3 electronic cigarettes are sold at retail; or (2) a vending
4 machine.

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

24 "Tobacco retailer" means a person who engages in this
25 State in the sale of tobacco products, related tobacco
26 products, alternative nicotine products, or solutions or

1 substances intended for use with electronic cigarettes
2 directly to the public from a retail location, including a
3 person who operates vending machines from which tobacco
4 products, related tobacco products, alternative nicotine
5 products, or solutions or substances intended for use with
6 electronic cigarettes are sold in this State. "Tobacco
7 retailer" includes dispensing organizations and dispensing
8 organization agents, as those terms are defined in Section
9 1-10 of the Cannabis Regulation and Tax Act.

10 Section 10. Prohibition; penalties.

11 (a) A tobacco retailer or any of the tobacco retailer's
12 agents or employees may not sell, offer for sale, or possess
13 with the intent to sell or offer for sale, a flavored tobacco
14 product, flavored related tobacco product, flavored
15 alternative nicotine product, or flavored solution or
16 substance intended for use with electronic cigarettes. There
17 is a presumption that a tobacco product, related tobacco
18 product, alternative nicotine product, or solution or
19 substance intended for use with electronic cigarettes is a
20 flavored tobacco product, flavored related tobacco product,
21 flavored alternative nicotine product, or flavored solution or
22 substance intended for use with electronic cigarettes if the
23 tobacco product, related tobacco product, alternative nicotine
24 product, or solution or substance intended for use with
25 electronic cigarettes has or produces a characterizing flavor,

1 including, but not limited to, text, color, or images on the
2 product's labeling or packaging that are used to explicitly or
3 implicitly communicate or suggest that the tobacco product,
4 related tobacco product, alternative nicotine product, or
5 solution or substance intended for use with electronic
6 cigarettes has a characterizing flavor. A product with
7 labeling or packaging that suggests the presence of a
8 characterizing flavor or uses a concept flavor is presumed to
9 be a flavored tobacco product, flavored related tobacco
10 product, flavored alternative nicotine product, or flavored
11 solution or substance intended for use with electronic
12 cigarettes.

13 (b) Any person, other than a manufacturer or distributor,
14 who violates subsection (a) is guilty of a petty offense and
15 shall be fined an amount as follows:

16 (1) For the first offense, the offender shall be fined
17 an amount of \$100 for each individual package of tobacco
18 product, related tobacco product, alternative nicotine
19 product, or solution or substance intended for use with
20 electronic cigarettes sold or offered for sale.

21 (2) For a second offense within a 2-year period, the
22 offender shall be fined \$250 for each individual package
23 of tobacco product, related tobacco product, alternative
24 nicotine product, or solution or substance intended for
25 use with electronic cigarettes sold or offered for sale.

26 (3) For a third or subsequent offense within a 2-year

1 period, the offender shall be fined \$500 for each
2 individual package of tobacco product, related tobacco
3 product, alternative nicotine product, or solution or
4 substance intended for use with electronic cigarettes sold
5 or offered for sale.

6 (c) A manufacturer or distributor shall be subject to a
7 civil penalty not to exceed \$50,000 for each brand or style of
8 the manufacturer's or distributor's tobacco products, related
9 tobacco products, alternative nicotine products, or solutions
10 or substances intended for use with electronic cigarettes that
11 is found to have been sold or offered for sale in violation of
12 this Act on more than one occasion during any 30-day period.
13 With respect to a manufacturer or distributor, it is an
14 affirmative defense to a finding of a violation under this Act
15 that the sale or offer for sale, occurred without the
16 knowledge, consent, authorization or involvement, direct or
17 indirect, of the manufacturer or distributor.

18 (d) Moneys received as fines and civil penalties under
19 this Act shall be remitted to the State Treasurer to be used as
20 provided in paragraphs (1) and (2) of this subsection. All
21 moneys collected as fines and civil penalties for violations
22 of this Act shall be distributed in the following manner:

23 (1) one-half of each fine and civil penalty shall be
24 distributed to the State agency or unit of local
25 government that successfully prosecuted the offender; and

26 (2) one-half of each fine and civil penalty shall be

1 remitted to the Department of Revenue to be used for
2 enforcing this Act and the Prevention of Tobacco Use by
3 Persons under 21 Years of Age and Sale and Distribution of
4 Tobacco Products Act.

5 Section 15. Local preemption. This Act does not preempt or
6 otherwise prohibit the adoption of a local standard that
7 imposes greater restrictions on the access to tobacco
8 products, related tobacco products, alternative nicotine
9 products, or solutions or substances intended for use with
10 electronic cigarettes than the restrictions imposed by this
11 Act. To the extent that there is an inconsistency between this
12 Act and a local standard that imposes greater restrictions on
13 the access to tobacco products, related tobacco products,
14 alternative nicotine products, or solutions or substances
15 intended for use with electronic cigarettes, the greater
16 restriction on the access to tobacco products, related tobacco
17 products, alternative nicotine product, or solution or
18 substance intended for use with electronic cigarettes in the
19 local standard shall prevail.

20 Section 90. The Tobacco Products Tax Act of 1995 is
21 amended by changing Section 10-25 as follows:

22 (35 ILCS 143/10-25)

23 Sec. 10-25. License actions.

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

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

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

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

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

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

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

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

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

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

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

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

1

INDEX

2

Statutes amended in order of appearance

3

New Act

4

35 ILCS 143/10-25