



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4989

Introduced 2/8/2024, by Rep. Ryan Spain

SYNOPSIS AS INTRODUCED:

720 ILCS 675/1
720 ILCS 675/2

from Ch. 23, par. 2357
from Ch. 23, par. 2358

Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that a person under 21 years of age may not possess any tobacco product, electronic cigarette, or alternative nicotine product. Provides that a violation is a petty offense. Provides that for the first offense in a 24-month period, the person shall be fined \$200; for the second offense in a 24-month period, the person shall be fined \$400; for the third offense in a 24-month period, the person shall be fined \$600; and for the fourth or subsequent offense in a 24-month period, the person shall be fined \$800. Provides that for the purposes of this provision, the 24-month period shall begin with the person's first violation of the Act. Provides for distribution of the fines for violations.

LRB103 34711 RLC 68374 b

1 AN ACT concerning criminal law.

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

4 Section 5. The Prevention of Tobacco Use by Persons under
5 21 Years of Age and Sale and Distribution of Tobacco Products
6 Act is amended by changing Sections 1 and 2 as follows:

7 (720 ILCS 675/1) (from Ch. 23, par. 2357)

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

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

19 (a-5) No person under 16 years of age may sell any tobacco
20 product, electronic cigarette, or alternative nicotine product
21 at a retail establishment selling tobacco products, electronic
22 cigarettes, or alternative nicotine products. This subsection
23 does not apply to a sales clerk in a family-owned business

1 which can prove that the sales clerk is in fact a son or
2 daughter of the owner.

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

9 (1) examining from any person that appears to be under
10 30 years of age a government-issued photographic
11 identification that establishes the person to be 21 years
12 of age or older; or

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

21 (a-6) No person under 21 years of age in the furtherance or
22 facilitation of obtaining any tobacco product, electronic
23 cigarette, or alternative nicotine product shall display or
24 use a false or forged identification card or transfer, alter,
25 or deface an identification card.

26 (a-7) (Blank).

1 (a-7.5) A person under 21 years of age may not possess any
2 tobacco product, electronic cigarette, or alternative nicotine
3 product.

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

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

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

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

24 "Alternative nicotine product" means a product or
25 device not consisting of or containing tobacco that
26 provides for the ingestion into the body of nicotine,

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

13 "Electronic cigarette" means:

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

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

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

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

1 or device, and any component, part, or accessory of a
2 device used during the operation of the device, even if
3 the part or accessory was sold separately. "Electronic
4 cigarette" does not include: cigarettes as defined in
5 Section 1 of the Cigarette Tax Act; tobacco product and
6 alternative nicotine product as defined in this Section;
7 any 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; any asthma inhaler prescribed by a
12 physician for that condition and is being marketed and
13 sold solely for that approved purpose; any device that
14 meets the definition of cannabis paraphernalia under
15 Section 1-10 of the Cannabis Regulation and Tax Act; or
16 any cannabis product sold by a dispensing organization
17 pursuant to the Cannabis Regulation and Tax Act or the
18 Compassionate Use of Medical Cannabis Program Act.

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 "Tobacco product" means any product containing or made
26 from tobacco that is intended for human consumption,

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

16 (b) Tobacco products, electronic cigarettes, and
17 alternative nicotine products may be sold through a vending
18 machine only if such tobacco products, electronic cigarettes,
19 and alternative nicotine products are not placed together with
20 any non-tobacco product, other than matches, in the vending
21 machine and the vending machine is in any of the following
22 locations:

23 (1) (Blank).

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

26 (3) Places where alcoholic beverages are sold and

1 consumed on the premises and vending machine operation is
2 under the direct supervision of the owner or manager.

3 (4) (Blank).

4 (5) (Blank).

5 (c) (Blank).

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

12 (e) It is not a violation of this Act for a person under 21
13 years of age to purchase a tobacco product, electronic
14 cigarette, or alternative nicotine product if the person under
15 the age of 21 purchases or is given the tobacco product,
16 electronic cigarette, or alternative nicotine product in any
17 of its forms from a retail seller of tobacco products,
18 electronic cigarettes, or alternative nicotine products or an
19 employee of the retail seller pursuant to a plan or action to
20 investigate, patrol, or otherwise conduct a "sting operation"
21 or enforcement action against a retail seller of tobacco
22 products, electronic cigarettes, or alternative nicotine
23 products or a person employed by the retail seller of tobacco
24 products, electronic cigarettes, or alternative nicotine
25 products or on any premises authorized to sell tobacco
26 products, electronic cigarettes, or alternative nicotine

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

11 (f) No person shall honor or accept any discount, coupon,
12 or other benefit or reduction in price that is inconsistent
13 with 21 CFR 1140, subsequent United States Food and Drug
14 Administration industry guidance, or any rules adopted under
15 21 CFR 1140.

16 (g) Any peace officer or duly authorized member of the
17 Illinois State Police, a county sheriff's department, a
18 municipal police department, the Department of Revenue, the
19 Department of Public Health, a local health department, or the
20 Department of Human Services, upon discovering a violation of
21 subsection (a), (a-5), (a-5.1), (a-8), (b), or (d) of this
22 Section or a violation of the Preventing Youth Vaping Act, may
23 seize any tobacco products, alternative nicotine products, or
24 electronic cigarettes of the specific type involved in that
25 violation that are located at that place of business. The
26 tobacco products, alternative nicotine products, or electronic

1 cigarettes so seized are subject to confiscation and
2 forfeiture.

3 (h) If, within 60 days after any seizure under subsection
4 (g), a person having any property interest in the seized
5 property is charged with an offense under this Section or a
6 violation of the Preventing Youth Vaping Act, the court that
7 renders judgment upon the charge shall, within 30 days after
8 the judgment, conduct a forfeiture hearing to determine
9 whether the seized tobacco products or electronic cigarettes
10 were part of the inventory located at the place of business
11 when a violation of subsection (a), (a-5), (a-5.1), (a-8),
12 (b), or (d) of this Section or a violation of the Preventing
13 Youth Vaping Act occurred and whether any seized tobacco
14 products or electronic cigarettes were of a type involved in
15 that violation. The hearing shall be commenced by a written
16 petition by the State, which shall include material
17 allegations of fact, the name and address of every person
18 determined by the State to have any property interest in the
19 seized property, a representation that written notice of the
20 date, time, and place of the hearing has been mailed to every
21 such person by certified mail at least 10 days before the date,
22 and a request for forfeiture. Every such person may appear as a
23 party and present evidence at the hearing. The quantum of
24 proof required shall be a preponderance of the evidence, and
25 the burden of proof shall be on the State. If the court
26 determines that the seized property was subject to forfeiture,

1 an order of forfeiture and disposition of the seized property
2 shall be entered and the property shall be received by the
3 prosecuting office, who shall effect its destruction.

4 (i) If a seizure under subsection (g) is not followed by a
5 charge under subsection (a), (a-5), (a-5.1), (a-8), (b), or
6 (d) of this Section or under the Preventing Youth Vaping Act,
7 or if the prosecution of the charge is permanently terminated
8 or indefinitely discontinued without any judgment of
9 conviction or acquittal:

10 (1) the prosecuting office may commence in the circuit
11 court an in rem proceeding for the forfeiture and
12 destruction of any seized tobacco products or electronic
13 cigarettes; and

14 (2) any person having any property interest in the
15 seized tobacco products or electronic cigarettes may
16 commence separate civil proceedings in the manner provided
17 by law.

18 (j) After the Department of Revenue has seized any tobacco
19 product, nicotine product, or electronic cigarette as provided
20 in subsection (g) and a person having any property interest in
21 the seized property has not been charged with an offense under
22 this Section or a violation of the Preventing Youth Vaping
23 Act, the Department of Revenue must hold a hearing and
24 determine whether the seized tobacco products, alternative
25 nicotine products, or electronic cigarettes were part of the
26 inventory located at the place of business when a violation of

1 subsection (a), (a-5), (a-5.1), (a-8), (b), or (d) of this
2 Section or a violation of the Preventing Youth Vaping Act
3 occurred and whether any seized tobacco product, alternative
4 nicotine product, or electronic cigarette was of a type
5 involved in that violation. The Department of Revenue shall
6 give not less than 20 days' notice of the time and place of the
7 hearing to the owner of the property, if the owner is known,
8 and also to the person in whose possession the property was
9 found if that person is known and if the person in possession
10 is not the owner of the property. If neither the owner nor the
11 person in possession of the property is known, the Department
12 of Revenue must cause publication of the time and place of the
13 hearing to be made at least once each week for 3 weeks
14 successively in a newspaper of general circulation in the
15 county where the hearing is to be held.

16 If, as the result of the hearing, the Department of
17 Revenue determines that the tobacco products, alternative
18 nicotine products, or the electronic cigarettes were part of
19 the inventory located at the place of business when a
20 violation of subsection (a), (a-5), (a-5.1), (a-8), (b), or
21 (d) of this Section or a violation of the Preventing Youth
22 Vaping Act at the time of seizure, the Department of Revenue
23 must enter an order declaring the tobacco product, alternative
24 nicotine product, or electronic cigarette confiscated and
25 forfeited to the State, to be held by the Department of Revenue
26 for disposal by it as provided in Section 10-58 of the Tobacco

1 Products Tax Act of 1995. The Department of Revenue must give
2 notice of the order to the owner of the property, if the owner
3 is known, and also to the person in whose possession the
4 property was found if that person is known and if the person in
5 possession is not the owner of the property. If neither the
6 owner nor the person in possession of the property is known,
7 the Department of Revenue must cause publication of the order
8 to be made at least once each week for 3 weeks successively in
9 a newspaper of general circulation in the county where the
10 hearing was held.

11 (Source: P.A. 101-2, eff. 7-1-19; 102-538, eff. 8-20-21;
12 102-575, eff. 1-1-22; 102-813, eff. 5-13-22.)

13 (720 ILCS 675/2) (from Ch. 23, par. 2358)

14 Sec. 2. Penalties.

15 (a) Any person who violates subsection (a), (a-5),
16 (a-5.1), (a-8), (b), or (d) of Section 1 of this Act is guilty
17 of a petty offense. For the first offense in a 24-month period,
18 the person shall be fined \$200 if his or her employer has a
19 training program that facilitates compliance with minimum-age
20 tobacco laws. For the second offense in a 24-month period, the
21 person shall be fined \$400 if his or her employer has a
22 training program that facilitates compliance with minimum-age
23 tobacco laws. For the third offense in a 24-month period, the
24 person shall be fined \$600 if his or her employer has a
25 training program that facilitates compliance with minimum-age

1 tobacco laws. For the fourth or subsequent offense in a
2 24-month period, the person shall be fined \$800 if his or her
3 employer has a training program that facilitates compliance
4 with minimum-age tobacco laws. For the purposes of this
5 subsection, the 24-month period shall begin with the person's
6 first violation of the Act. The penalties in this subsection
7 are in addition to any other penalties prescribed under the
8 Cigarette Tax Act and the Tobacco Products Tax Act of 1995.

9 (a-1) Any person who violates subsection (a-7.5) of
10 Section 1 is guilty of a petty offense. For the first offense
11 in a 24-month period, the person shall be fined \$200. For the
12 second offense in a 24-month period, the person shall be fined
13 \$400. For the third offense in a 24-month period, the person
14 shall be fined \$600. For the fourth or subsequent offense in a
15 24-month period, the person shall be fined \$800. For the
16 purposes of this subsection, the 24-month period shall begin
17 with the person's first violation of the Act.

18 (a-5) Any retailer who violates subsection (a), (a-5),
19 (a-5.1), (a-8), (b), or (d) of Section 1 of this Act is guilty
20 of a petty offense. For the first offense in a 24-month period,
21 the retailer shall be fined \$200 if it does not have a training
22 program that facilitates compliance with minimum-age tobacco
23 laws. For the second offense in a 24-month period, the
24 retailer shall be fined \$400 if it does not have a training
25 program that facilitates compliance with minimum-age tobacco
26 laws. For the third offense within a 24-month period, the

1 retailer shall be fined \$600 if it does not have a training
2 program that facilitates compliance with minimum-age tobacco
3 laws. For the fourth or subsequent offense in a 24-month
4 period, the retailer shall be fined \$800 if it does not have a
5 training program that facilitates compliance with minimum-age
6 tobacco 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 prescribed under the Cigarette Tax Act and
10 the Tobacco Products Tax Act of 1995.

11 (a-6) For the purpose of this Act, a training program that
12 facilitates compliance with minimum-age tobacco laws must
13 include at least the following elements: (i) it must explain
14 that only individuals displaying valid identification
15 demonstrating that they are 21 years of age or older shall be
16 eligible to purchase tobacco products, electronic cigarettes,
17 or alternative nicotine products and (ii) it must explain
18 where a clerk can check identification for a date of birth. The
19 training may be conducted electronically. Each retailer that
20 has a training program shall require each employee who
21 completes the training program to sign a form attesting that
22 the employee has received and completed tobacco training. The
23 form shall be kept in the employee's file and may be used to
24 provide proof of training.

25 (b) If a person under 21 years of age violates subsection
26 (a-6) of Section 1, he or she is guilty of a Class A

1 misdemeanor.

2 (c) (Blank).

3 (d) (Blank).

4 (e) (Blank).

5 (f) (Blank).

6 (g) (Blank).

7 (h) All moneys collected as fines for violations of
8 subsection (a), (a-5), (a-5.1), (a-6), (a-7.5), (a-8), (b), or
9 (d) of Section 1 shall be 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 enforcing this Act.

15 Any violation of subsection (a) or (a-5) of Section 1
16 shall be reported to the Department of Revenue within 7
17 business days.

18 (Source: P.A. 101-2, eff. 7-1-19; 102-558, eff. 8-20-21.)