

SB3098



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3098

Introduced 2/2/2024, by Sen. Meg Loughran Cappel

SYNOPSIS AS INTRODUCED:

720 ILCS 675/1

from Ch. 23, par. 2357

Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that no person shall cause electronic cigarettes ordered or purchased by mail, through the Internet, or other remote sale methods, to be shipped to anyone in the State other than (i) a distributor, as defined in specified Acts, or (ii) a retailer, as defined in specified Acts. Effective immediately.

LRB103 37194 CES 67313 b

A BILL FOR

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 Section 1 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-5.2) No person shall cause electronic cigarettes
22 ordered or purchased by mail, through the Internet, or other
23 remote sale methods, to be shipped to anyone in the State other
24 than (i) a distributor, as defined in Section 1 of the
25 Cigarette Tax Act, Section 1 of the Cigarette Use Tax Act,
26 Section 10-5 of the Tobacco Products Tax Act of 1995, and

1 Section 5 of the Preventing Youth Vaping Act, or (ii) a
2 retailer, as defined in Section 1 of the Cigarette Tax Act,
3 Section 10-5 of the Tobacco Products Tax Act of 1995, and
4 Section 5 of the Preventing Youth Vaping Act.

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

10 (a-7) (Blank).

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

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

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

19 "Adult-only facility" means a facility or restricted
20 area (whether open-air or enclosed) where the operator
21 ensures or has a reasonable basis to believe (such as by
22 checking identification as required under State law, or by
23 checking the identification of any person appearing to be
24 under the age of 30) that no person under legal age is
25 present. A facility or restricted area need not be
26 permanently restricted to persons under 21 years of age to

1 constitute an adult-only facility, provided that the
2 operator ensures or has a reasonable basis to believe that
3 no person under 21 years of age is present during the event
4 or time period in question.

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

20 "Electronic cigarette" means:

21 (1) any device that employs a battery or other
22 mechanism to heat a solution or substance to produce a
23 vapor or aerosol intended for inhalation;

24 (2) any cartridge or container of a solution or
25 substance intended to be used with or in the device or
26 to refill the device; or

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

3 "Electronic cigarette" includes, but is not limited
4 to, any electronic nicotine delivery system, electronic
5 cigar, electronic cigarillo, electronic pipe, electronic
6 hookah, vape pen, or similar product or device, any
7 components or parts that can be used to build the product
8 or device, and any component, part, or accessory of a
9 device used during the operation of the device, even if
10 the part or accessory was sold separately. "Electronic
11 cigarette" does not include: cigarettes as defined in
12 Section 1 of the Cigarette Tax Act; tobacco product and
13 alternative nicotine product as defined in this Section;
14 any product approved by the United States Food and Drug
15 Administration for sale as a tobacco cessation product, as
16 a tobacco dependence product, or for other medical
17 purposes, and is being marketed and sold solely for that
18 approved purpose; any asthma inhaler prescribed by a
19 physician for that condition and is being marketed and
20 sold solely for that approved purpose; any device that
21 meets the definition of cannabis paraphernalia under
22 Section 1-10 of the Cannabis Regulation and Tax Act; or
23 any cannabis product sold by a dispensing organization
24 pursuant to the Cannabis Regulation and Tax Act or the
25 Compassionate Use of Medical Cannabis Program Act.

26 "Lunch wagon" means a mobile vehicle designed and

1 constructed to transport food and from which food is sold
2 to the general public.

3 "Nicotine" means any form of the chemical nicotine,
4 including any salt or complex, regardless of whether the
5 chemical is naturally or synthetically derived.

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

23 (b) Tobacco products, electronic cigarettes, and
24 alternative nicotine products may be sold through a vending
25 machine only if such tobacco products, electronic cigarettes,
26 and alternative nicotine products are not placed together with

1 any non-tobacco product, other than matches, in the vending
2 machine and the vending machine is in any of the following
3 locations:

4 (1) (Blank).

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

7 (3) Places where alcoholic beverages are sold and
8 consumed on the premises and vending machine operation is
9 under the direct supervision of the owner or manager.

10 (4) (Blank).

11 (5) (Blank).

12 (c) (Blank).

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

19 (e) It is not a violation of this Act for a person under 21
20 years of age to purchase a tobacco product, electronic
21 cigarette, or alternative nicotine product if the person under
22 the age of 21 purchases or is given the tobacco product,
23 electronic cigarette, or alternative nicotine product in any
24 of its forms from a retail seller of tobacco products,
25 electronic cigarettes, or alternative nicotine products or an
26 employee of the retail seller pursuant to a plan or action to

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

18 (f) No person shall honor or accept any discount, coupon,
19 or other benefit or reduction in price that is inconsistent
20 with 21 CFR 1140, subsequent United States Food and Drug
21 Administration industry guidance, or any rules adopted under
22 21 CFR 1140.

23 (g) Any peace officer or duly authorized member of the
24 Illinois State Police, a county sheriff's department, a
25 municipal police department, the Department of Revenue, the
26 Department of Public Health, a local health department, or the

1 Department of Human Services, upon discovering a violation of
2 subsection (a), (a-5), (a-5.1), (a-5.2), (a-8), (b), or (d) of
3 this Section or a violation of the Preventing Youth Vaping
4 Act, may seize any tobacco products, alternative nicotine
5 products, or electronic cigarettes of the specific type
6 involved in that violation that are located at that place of
7 business. The tobacco products, alternative nicotine products,
8 or electronic cigarettes so seized are subject to confiscation
9 and forfeiture.

10 (h) If, within 60 days after any seizure under subsection
11 (g), a person having any property interest in the seized
12 property is charged with an offense under this Section or a
13 violation of the Preventing Youth Vaping Act, the court that
14 renders judgment upon the charge shall, within 30 days after
15 the judgment, conduct a forfeiture hearing to determine
16 whether the seized tobacco products or electronic cigarettes
17 were part of the inventory located at the place of business
18 when a violation of subsection (a), (a-5), (a-5.1), (a-5.2),
19 (a-8), (b), or (d) of this Section or a violation of the
20 Preventing Youth Vaping Act occurred and whether any seized
21 tobacco products or electronic cigarettes were of a type
22 involved in that violation. The hearing shall be commenced by
23 a written petition by the State, which shall include material
24 allegations of fact, the name and address of every person
25 determined by the State to have any property interest in the
26 seized property, a representation that written notice of the

1 date, time, and place of the hearing has been mailed to every
2 such person by certified mail at least 10 days before the date,
3 and a request for forfeiture. Every such person may appear as a
4 party and present evidence at the hearing. The quantum of
5 proof required shall be a preponderance of the evidence, and
6 the burden of proof shall be on the State. If the court
7 determines that the seized property was subject to forfeiture,
8 an order of forfeiture and disposition of the seized property
9 shall be entered and the property shall be received by the
10 prosecuting office, who shall effect its destruction.

11 (i) If a seizure under subsection (g) is not followed by a
12 charge under subsection (a), (a-5), (a-5.1), (a-5.2), (a-8),
13 (b), or (d) of this Section or under the Preventing Youth
14 Vaping Act, or if the prosecution of the charge is permanently
15 terminated or indefinitely discontinued without any judgment
16 of conviction or acquittal:

17 (1) the prosecuting office may commence in the circuit
18 court an in rem proceeding for the forfeiture and
19 destruction of any seized tobacco products or electronic
20 cigarettes; and

21 (2) any person having any property interest in the
22 seized tobacco products or electronic cigarettes may
23 commence separate civil proceedings in the manner provided
24 by law.

25 (j) After the Department of Revenue has seized any tobacco
26 product, nicotine product, or electronic cigarette as provided

1 in subsection (g) and a person having any property interest in
2 the seized property has not been charged with an offense under
3 this Section or a violation of the Preventing Youth Vaping
4 Act, the Department of Revenue must hold a hearing and
5 determine whether the seized tobacco products, alternative
6 nicotine products, or electronic cigarettes were part of the
7 inventory located at the place of business when a violation of
8 subsection (a), (a-5), (a-5.1), (a-5.2), (a-8), (b), or (d) of
9 this Section or a violation of the Preventing Youth Vaping Act
10 occurred and whether any seized tobacco product, alternative
11 nicotine product, or electronic cigarette was of a type
12 involved in that violation. The Department of Revenue shall
13 give not less than 20 days' notice of the time and place of the
14 hearing to the owner of the property, if the owner is known,
15 and also to the person in whose possession the property was
16 found if that person is known and if the person in possession
17 is not the owner of the property. If neither the owner nor the
18 person in possession of the property is known, the Department
19 of Revenue must cause publication of the time and place of the
20 hearing to be made at least once each week for 3 weeks
21 successively in a newspaper of general circulation in the
22 county where the hearing is to be held.

23 If, as the result of the hearing, the Department of
24 Revenue determines that the tobacco products, alternative
25 nicotine products, or the electronic cigarettes were part of
26 the inventory located at the place of business when a

1 violation of subsection (a), (a-5), (a-5.1), (a-5.2), (a-8),
2 (b), or (d) of this Section or a violation of the Preventing
3 Youth Vaping Act at the time of seizure, the Department of
4 Revenue must enter an order declaring the tobacco product,
5 alternative nicotine product, or electronic cigarette
6 confiscated and forfeited to the State, to be held by the
7 Department of Revenue for disposal by it as provided in
8 Section 10-58 of the Tobacco Products Tax Act of 1995. The
9 Department of Revenue must give notice of the order to the
10 owner of the property, if the owner is known, and also to the
11 person in whose possession the property was found if that
12 person is known and if the person in possession is not the
13 owner of the property. If neither the owner nor the person in
14 possession of the property is known, the Department of Revenue
15 must cause publication of the order to be made at least once
16 each week for 3 weeks successively in a newspaper of general
17 circulation in the county where the hearing was held.

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.