



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1296

Introduced 02/09/05, by Rep. Paul D. Froehlich - Karen A. Yarbrough - Deborah L. Graham - Elizabeth Coulson - John A. Fritchey, et al.

SYNOPSIS AS INTRODUCED:

New Act

Creates the Tobacco Control Act. Provides definitions. Prohibits any person from selling tobacco without obtaining a license. Requires retailers without a license to keep all tobacco products and paraphernalia from public view and prohibits the display of any tobacco-related advertisement that would lead a person to believe tobacco could be obtained from the retailer. Prohibits certain sales or dispersals of tobacco products. Requires an application for a tobacco retailer's license to be submitted in the name of the proprietor to the Illinois Liquor Control Commission and provides that a license issued in error or on the basis of false or misleading information shall be revoked. Sets forth the information to be provided in applications for new or renewal licenses. Requires the Commission to issue a license upon receipt of an application except for certain circumstances. Provides that a license is nontransferable and that violations accumulated against a location or business will continue to be counted against that location or business unless the location or business has been transferred in an arm's length transaction. Requires a retailer to pay a fee set by the Commission for a new or renewal license. Requires retailers to display the license and to display a sign at each point of sale, including on each vending machine. Provides for violations and compliance checks. Provides for penalties. Provides for severability. Effective July 1, 2006.

LRB094 07517 LJB 37684 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning tobacco.

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 Tobacco Control Act.

6 Section 5. Definitions. The following words and phrases,
7 whenever used in this Act, have the meanings defined in this
8 Section unless the context clearly requires otherwise:

9 "Commission" means the Illinois Liquor Control Commission.

10 "Person" means any natural person, partnership,
11 cooperative association, private corporation, personal
12 representative, receiver, trustee, assignee, or any other
13 legal entity.

14 "Proprietor" means a person with an ownership or
15 managerial interest in a business. An ownership interest shall
16 be deemed to exist when a Person has a 10% or greater interest
17 in the stock, assets, or income of a business other than the
18 sole interest of security for debt. A managerial interest shall
19 be deemed to exist when a person can or does have or can or does
20 share ultimate control over the day-to-day operations of a
21 business.

22 "Retailer" means any person who sells tobacco products to
23 individuals for personal consumption or who operates a facility
24 containing vending machines that dispense tobacco products or
25 self-service displays of tobacco products.

26 "Smoking" means possessing a lighted tobacco product,
27 tobacco paraphernalia, or any other weed or plant, including,
28 but not limited to, a lighted pipe, lighted cigar, or lighted
29 cigarette of any kind, or the lighting of a tobacco product,
30 tobacco paraphernalia, or any other weed or plant, including,
31 but not limited to, a pipe, cigar, or cigarette of any kind.

32 "Tobacco paraphernalia" means cigarette papers or

1 wrappers, pipes, holders of smoking materials of all types,
2 cigarette rolling machines, and any other item designed for the
3 smoking, preparation, storing, or consumption of tobacco
4 products.

5 "Tobacco product" means (i) any substance containing
6 tobacco leaf, including, but not limited to, cigarettes,
7 cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco,
8 bidis, or any other preparation of tobacco and (ii) any product
9 or formulation of matter containing biologically active
10 amounts of nicotine that is manufactured, sold, offered for
11 sale, or otherwise distributed with the expectation that the
12 product or matter will be introduced into the human body, but
13 does not include any product specifically approved by the
14 federal Food and Drug Administration for use in treating
15 nicotine or tobacco product dependence.

16 "Vending machine" means a machine, appliance, or other
17 mechanical device operated by currency, token, debit card, or
18 credit card that is designed or used for vending purposes,
19 including, but not limited to, machines or devices that use
20 remote control locking mechanisms.

21 Section 10. Tobacco retailer license required.

22 (a) It shall be unlawful for any person to act as a tobacco
23 retailer without first obtaining and maintaining a valid
24 tobacco retailer's license pursuant to this Act for each
25 location at which that retail activity is to occur.

26 (b) A retailer without a valid tobacco retailer's license,
27 including, but not limited to, a revoked license, shall:

28 (1) keep all tobacco products and tobacco
29 paraphernalia from public view; and

30 (2) not display any advertisement relating to tobacco
31 products or tobacco paraphernalia that promotes the sale or
32 distribution of the products from the retailer's location
33 or that would lead a reasonable consumer to believe that
34 the products can be obtained at the retailer's location.

35 (c) Nothing in this Act shall be construed to grant any

1 person obtaining and maintaining a tobacco retailer's license
2 any status or right other than the right to act as a retailer
3 at the location identified on the face of the license.

4 (d) Any retailer that sells tobacco products without a
5 tobacco retailer's license shall be subject to the fines and
6 penalties in Section 50 of this Act.

7 Section 15. Prohibitions concerning sales of tobacco
8 products.

9 (a) No license may be issued to authorize retailing at
10 other than a fixed location.

11 (b) No retailer may sell or distribute tobacco products to
12 any person under 18 years of age. Violations of this subsection
13 (b) are subject to the penalties contained in the Sale of
14 Tobacco to Minors Act.

15 (c) Each retailer shall request and examine the
16 photographic identification of any person purchasing tobacco
17 products so as to verify that the purchaser is 18 years of age
18 or older. No verification is required for any person who
19 appears without reasonable doubt to be over the age of 27
20 years.

21 (d) No retailer may break or otherwise open any cigarette
22 or smokeless tobacco package to sell or distribute individual
23 cigarettes or a number of unpackaged cigarettes that is smaller
24 than the minimum cigarette package size of 20 cigarettes or any
25 quantity of cigarette tobacco or smokeless tobacco that is
26 smaller than the smallest package distributed by the
27 manufacturer for individual consumer use.

28 (e) No person shall give away, barter, exchange, distribute
29 or in any way dispense free of charge or at nominal cost any
30 tobacco product samples or any coupon redeemable for any
31 tobacco products on any public street, alley, or sidewalk, in
32 any public park, ground, or playground, in areas open to the
33 public, in any publicly owned or operated building, or at any
34 place located within 100 feet of any building or other location
35 used primarily as a school, child care facility, or for the

1 education or recreation of children under 18 years of age.

2 (f) No retailer may sell or distribute tobacco products at
3 any place located within 100 feet of any building or other
4 location used primarily as a school, child care facility, or
5 for the education or recreation of children under 18 years of
6 age. This prohibition shall not apply to those businesses
7 engaged in the retail sale of tobacco products at a location
8 that would otherwise be prohibited by this Act that were in
9 existence prior to the effective date of this Act. This
10 exemption shall apply to any new owner at the same location
11 providing the same services.

12 (g) Any retailer that sells or distributes tobacco products
13 through a vending machine pursuant to the Sale of Tobacco to
14 Minors Act shall obtain a tobacco retailer's license from the
15 Commission.

16 Section 20. Application procedure.

17 (a) Application for a tobacco retailer's license shall be
18 submitted in the name of each proprietor proposing to conduct
19 retail tobacco sales and shall be signed by each proprietor or
20 an authorized agent thereof. A license that is issued in error
21 or on the basis of false or misleading information supplied by
22 a proprietor shall be revoked pursuant to subsection (a) of
23 Section 50 of this Act.

24 (b) All applications for new and renewal licenses shall be
25 submitted on a form supplied by the Commission and shall
26 contain all of the following information:

27 (1) The name, address, and telephone number of each
28 proprietor.

29 (2) The business name, address, and telephone number of
30 the single fixed location for which a tobacco retailer's
31 license is sought.

32 (3) The name and mailing address authorized by each
33 proprietor to receive all license-related communications
34 and notices. If an authorized address is not supplied, each
35 proprietor shall be understood to consent to the provision

1 of notice at the business address specified in paragraph
2 (2).

3 (4) Any other information the Commission deems
4 necessary for the administration or enforcement of this
5 Act.

6 Section 25. Issuance of license. Upon the receipt of an
7 application for a tobacco retailer's license and the license
8 fee, the Commission shall issue a license unless substantial
9 record evidence demonstrates that (i) the application is
10 incomplete or inaccurate or (ii) the application seeks
11 authorization for retailing that is prohibited pursuant to any
12 other local, State, or federal law.

13 Section 30. Nontransferability of licenses.

14 (a) A tobacco retailer's license is nontransferable. If the
15 information required in the license application pursuant to
16 Section 20 of this Act changes, a new tobacco retailer's
17 license is required before the business may continue to act as
18 a tobacco retailer. This includes, but is not limited to, the
19 retailer changing locations or the new ownership of the
20 business.

21 (b) Notwithstanding any other provision of this Act,
22 violations accumulated against a location or business shall
23 continue to be counted against the location or business unless
24 the location or business has been transferred to a new
25 proprietor and the new proprietor provides the Commission with
26 documentation demonstrating by clear and convincing evidence
27 that the new proprietor has acquired or is acquiring the
28 location or business in an arm's length transaction.

29 Section 35. Fee for licenses.

30 (a) A tobacco retailer's license is invalid unless the
31 appropriate fee has been paid in full and the term of the
32 license has not expired. The term of a tobacco retailer's
33 license is one year. Each retailer shall apply to the

1 Commission for the renewal of his or her tobacco retailer's
2 license no later than 30 days prior to expiration of the term.

3 (b) The fee to issue or to renew a tobacco retailer's
4 license shall be established by the Commission. The fee shall
5 be calculated so as to recover the total cost of both license
6 administration and license enforcement. All fees shall be used
7 exclusively to fund the administration and enforcement of
8 licenses. Fees are nonrefundable except as may be required by
9 law.

10 (c) A tobacco retailer's license that is not timely renewed
11 pursuant to subsection (a) of this Section shall expire at the
12 end of its term. To reinstate a license that has expired due to
13 the failure to timely pay the renewal fee, the proprietor must
14 (i) submit the renewal fee plus a reinstatement fee of 10% of
15 the renewal fee and (ii) submit a signed affidavit affirming
16 that the proprietor has not sold any tobacco products or
17 tobacco paraphernalia during any period that the license was
18 expired.

19 Section 40. Other requirements and prohibitions.

20 (a) Each license shall be prominently displayed in a
21 publicly and readily visible location at the licensed location.

22 (b) Every retailer of tobacco products shall place and
23 maintain, in legible condition, at each point of sale of
24 tobacco products to consumers, including the front of each
25 vending machine, a sign stating the following:

26 WARNING - IT IS A VIOLATION OF THE LAW FOR CIGARETTES OR
27 OTHER TOBACCO PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE
28 AGE OF 18.

29 The sign shall not be less than 8 inches by 11 inches in
30 size, except for a sign placed on the front of a vending
31 machine. The sign for a vending machine shall not be less than
32 4 inches by 4 inches in size. The text of the printed sign
33 shall be in red letters on a white background, and the letters
34 must be at least one inch high.

1 Section 45. License violations; compliance checks.

2 (a) It shall be a violation of a tobacco retailer's license
3 for a licensee, including his or her agent or employee, to
4 violate any of the following laws:

5 (1) any local, State, or federal tobacco-related law;

6 (2) any local, State, or federal sign laws; or

7 (3) any local, State, or federal laws restricting the
8 age of purchase for any product.

9 (b) Compliance with this Act may be monitored by any local,
10 State, or federal law enforcement agency. Any unit of local
11 government may enforce the penal provisions of this Act. The
12 law enforcement agency or unit or local government shall
13 compile a record of violations under this Act and forward it to
14 the Commission for administrative review.

15 Compliance checks shall determine, at a minimum, if the
16 retailer is conducting business in a manner that complies with
17 tobacco laws regulating youth access to tobacco. When
18 appropriate, the compliance checks shall determine compliance
19 with other tobacco-related laws.

20 Section 50. Enforcement.

21 (a) In addition to any other penalty authorized by law, a
22 tobacco retailer's license shall be revoked if the Commission
23 finds, after notice to the licensee and opportunity to be
24 heard, that the licensee, including his or her agents or
25 employees, has violated any of the requirements, conditions, or
26 prohibitions of this Act.

27 A decision of the Commission to revoke a license is
28 appealable to the appropriate municipal court and must be filed
29 with the applicable clerk's office and the Commission within 10
30 days after mailing of the Commission's decision to the
31 licensee. An appeal shall stay all proceedings in furtherance
32 of the appealed action. A revocation pursuant to subsection (b)
33 of this Section is not subject to appeal.

34 (b) A tobacco retailer's license shall be revoked if the
35 Commission finds, after notice and opportunity to be heard by

1 the tobacco retailer, that one or more of the bases for denial
2 of a license under Section 20 existed at the time application
3 was made or at anytime before the license was issued. The
4 revocation shall be without prejudice to the filing of a new
5 application for a license.

6 (c) The Commission shall impose a fine upon any person who
7 violates the provisions of this Act, except that subsection (b)
8 of Section 15 is subject to the penalties contained in the Sale
9 of Tobacco to Minors Act. Penalties imposed shall include the
10 following:

11 (1) for a first violation, a fine of \$500;

12 (2) for a second violation, occurring after a final
13 determination of liability for a first violation and within
14 a 12 month period after a final determination of liability
15 for a first violation, a fine of \$1,000 and a suspension of
16 the tobacco retailer's license for 30 days; and

17 (3) for a third violation, occurring after a final
18 determination of liability for a second violation and
19 within a 12 month period after the determination of
20 liability for a second violation, a fine of \$1,500 and a
21 revocation of the tobacco retailer's license for one year.

22 Each instance in which Section 15 of this Act is violated
23 shall constitute a separate and distinct offense.

24 The Commission shall impose a \$1,000 fine upon any person
25 who sells tobacco products without a license as required by
26 Section 10 of this Act or after a license issued pursuant to
27 this Act has been suspended. Each instance in which a person
28 sells tobacco products in violation of Section 10 of this Act
29 shall constitute a separate and distinct violation.

30 (d) The Commission may suspend any license issued under the
31 provisions of this Act if it is determined that the licensee
32 has violated any of the provisions of this Act not requiring
33 the revocation of a license under subsection (a).

34 The Commission shall adopt rules governing license
35 suspension hearings under this Act.

36 (e) In addition to imposing the fines and other penalties

1 provided by this Act, the Commission may, in the name of the
2 People of the State of Illinois, through the Attorney General
3 of the State of Illinois or the State's Attorney of any county
4 in which the action is brought, petition for an order enjoining
5 a violation or for an order enforcing compliance with this Act.
6 Upon the filing of a verified petition in court, the court may
7 issue a temporary restraining order, without notice or bond,
8 and may preliminarily and permanently enjoin the violation, and
9 if it is established that the person has violated or is
10 violating the injunction, the court may punish the offender for
11 contempt of court. Proceedings under this Section shall be in
12 addition to, and not in lieu of, all other remedies and
13 penalties provided by this Act.

14 (f) Causing, permitting, aiding, abetting, or concealing a
15 violation of any provision of this Act shall constitute a
16 violation of this Act subject to the fines and penalties
17 contained in this Act.

18 Section 97. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 99. Effective date. This Act takes effect July 1,
21 2006.