

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****SB0285**

Introduced 2/3/2005, by Sen. James T. Meeks

**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 07514 LJB 37681 b

FISCAL NOTE ACT  
MAY APPLY

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.