



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2404

by Rep. Kathleen Willis

SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.5b
410 ILCS 82/10
410 ILCS 82/35

from Ch. 122, par. 10-20.5b

Amends the School Code and the Smoke Free Illinois Act. Provides that specified provisions concerning cigarettes apply also to electronic cigarettes. Defines "electronic cigarette" as any electronically actuated device which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation. Permits theater actors to use electronic cigarettes within performance spaces. Defines other terms.

LRB099 05468 JLK 25503 b

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 5. The School Code is amended by changing Section
5 10-20.5b as follows:

6 (105 ILCS 5/10-20.5b) (from Ch. 122, par. 10-20.5b)

7 Sec. 10-20.5b. Tobacco prohibition. Each school board
8 shall prohibit the use of tobacco or the use of electronic
9 cigarettes as defined in the Smoke Free Illinois Act on school
10 property by any school personnel, student, or other person when
11 such property is being used for any school purposes. The school
12 board may not authorize or permit any exception to or exemption
13 from the prohibition at any place or at any time, including
14 without limitation outside of school buildings or before or
15 after the regular school day or on days when school is not in
16 session. "School purposes" include but are not limited to all
17 events or activities or other use of school property that the
18 school board or school officials authorize or permit on school
19 property, including without limitation all interscholastic or
20 extracurricular athletic, academic, or other events sponsored
21 by the school board or in which pupils of the district
22 participate. For purposes of this Section "tobacco" shall mean
23 cigarette, cigar, or tobacco in any other form, including

1 smokeless tobacco which is any loose, cut, shredded, ground,
2 powdered, compressed or leaf tobacco that is intended to be
3 placed in the mouth without being smoked.

4 (Source: P.A. 89-181, eff. 7-19-95.)

5 Section 10. The Smoke Free Illinois Act is amended by
6 changing Sections 10 and 35 as follows:

7 (410 ILCS 82/10)

8 Sec. 10. Definitions. In this Act:

9 "Bar" means an establishment that is devoted to the serving
10 of alcoholic beverages for consumption by guests on the
11 premises and that derives no more than 10% of its gross revenue
12 from the sale of food consumed on the premises. "Bar" includes,
13 but is not limited to, taverns, nightclubs, cocktail lounges,
14 adult entertainment facilities, and cabarets.

15 "Department" means the Department of Public Health.

16 "Electronic cigarette" means any electronically actuated
17 device which in operation causes the user to exhale any smoke,
18 vapor, or other substance other than those produced by
19 unenhanced human exhalation. "Electronic cigarette" includes
20 any such device, whether manufactured, distributed, marketed,
21 or sold as an electronic cigarette, an electronic cigar, an
22 electronic cigarillo, an electronic pipe, an electronic
23 hookah, or under any other product name or descriptor.
24 "Electronic cigarette" does not include any asthma inhaler or

1 other device that has been specifically approved by the United
2 States Food and Drug Administration.

3 "Employee" means a person who is employed by an employer in
4 consideration for direct or indirect monetary wages or profits
5 or a person who volunteers his or her services for a non-profit
6 entity.

7 "Employer" means a person, business, partnership,
8 association, or corporation, including a municipal
9 corporation, trust, or non-profit entity, that employs the
10 services of one or more individual persons.

11 "Enclosed area" means all space between a floor and a
12 ceiling that is enclosed or partially enclosed with (i) solid
13 walls or windows, exclusive of doorways, or (ii) solid walls
14 with partitions and no windows, exclusive of doorways, that
15 extend from the floor to the ceiling, including, without
16 limitation, lobbies and corridors.

17 "Enclosed or partially enclosed sports arena" means any
18 sports pavilion, stadium, gymnasium, health spa, boxing arena,
19 swimming pool, roller rink, ice rink, bowling alley, or other
20 similar place where members of the general public assemble to
21 engage in physical exercise or participate in athletic
22 competitions or recreational activities or to witness sports,
23 cultural, recreational, or other events.

24 "Gaming equipment or supplies" means gaming
25 equipment/supplies as defined in the Illinois Gaming Board
26 Rules of the Illinois Administrative Code.

1 "Gaming facility" means an establishment utilized
2 primarily for the purposes of gaming and where gaming equipment
3 or supplies are operated for the purposes of accruing business
4 revenue.

5 "Healthcare facility" means an office or institution
6 providing care or treatment of diseases, whether physical,
7 mental, or emotional, or other medical, physiological, or
8 psychological conditions, including, but not limited to,
9 hospitals, rehabilitation hospitals, weight control clinics,
10 nursing homes, homes for the aging or chronically ill,
11 laboratories, and offices of surgeons, chiropractors, physical
12 therapists, physicians, dentists, and all specialists within
13 these professions. "Healthcare facility" includes all waiting
14 rooms, hallways, private rooms, semiprivate rooms, and wards
15 within healthcare facilities.

16 "Live theater location" means any building, playhouse,
17 room, hall, or other place utilized by live performers to
18 present artistic representations of real or imagined events in
19 front of a live audience.

20 "Performance space" means the portion or portions of a live
21 theater location where performances occur. "Performance space"
22 excludes all other portions of live theater locations,
23 including, but not limited to, hallways, lobbies, and public
24 restrooms.

25 "Place of employment" means any area under the control of a
26 public or private employer that employees are required to

1 enter, leave, or pass through during the course of employment,
2 including, but not limited to entrances and exits to places of
3 employment, including a minimum distance, as set forth in
4 Section 70 of this Act, of 15 feet from entrances, exits,
5 windows that open, and ventilation intakes that serve an
6 enclosed area where smoking is prohibited; offices and work
7 areas; restrooms; conference and classrooms; break rooms and
8 cafeterias; and other common areas. A private residence or
9 home-based business, unless used to provide licensed child
10 care, foster care, adult care, or other similar social service
11 care on the premises, is not a "place of employment", nor are
12 enclosed laboratories, not open to the public, in an accredited
13 university or government facility where the activity of smoking
14 is exclusively conducted for the purpose of medical or
15 scientific health-related research. Rulemaking authority to
16 implement this amendatory Act of the 95th General Assembly, if
17 any, is conditioned on the rules being adopted in accordance
18 with all provisions of the Illinois Administrative Procedure
19 Act and all rules and procedures of the Joint Committee on
20 Administrative Rules; any purported rule not so adopted, for
21 whatever reason, is unauthorized.

22 "Private club" means a not-for-profit association that (1)
23 has been in active and continuous existence for at least 3
24 years prior to the effective date of this amendatory Act of the
25 95th General Assembly, whether incorporated or not, (2) is the
26 owner, lessee, or occupant of a building or portion thereof

1 used exclusively for club purposes at all times, (3) is
2 operated solely for a recreational, fraternal, social,
3 patriotic, political, benevolent, or athletic purpose, but not
4 for pecuniary gain, and (4) only sells alcoholic beverages
5 incidental to its operation. For purposes of this definition,
6 "private club" means an organization that is managed by a board
7 of directors, executive committee, or similar body chosen by
8 the members at an annual meeting, has established bylaws, a
9 constitution, or both to govern its activities, and has been
10 granted an exemption from the payment of federal income tax as
11 a club under 26 U.S.C. 501.

12 "Private residence" means the part of a structure used as a
13 dwelling, including, without limitation: a private home,
14 townhouse, condominium, apartment, mobile home, vacation home,
15 cabin, or cottage. For the purposes of this definition, a
16 hotel, motel, inn, resort, lodge, bed and breakfast or other
17 similar public accommodation, hospital, nursing home, or
18 assisted living facility shall not be considered a private
19 residence.

20 "Public place" means that portion of any building or
21 vehicle used by and open to the public, regardless of whether
22 the building or vehicle is owned in whole or in part by private
23 persons or entities, the State of Illinois, or any other public
24 entity and regardless of whether a fee is charged for
25 admission, including a minimum distance, as set forth in
26 Section 70 of this Act, of 15 feet from entrances, exits,

1 windows that open, and ventilation intakes that serve an
2 enclosed area where smoking is prohibited. A "public place"
3 does not include a private residence unless the private
4 residence is used to provide licensed child care, foster care,
5 or other similar social service care on the premises. A "public
6 place" includes, but is not limited to, hospitals, restaurants,
7 retail stores, offices, commercial establishments, elevators,
8 indoor theaters, libraries, museums, concert halls, public
9 conveyances, educational facilities, nursing homes,
10 auditoriums, enclosed or partially enclosed sports arenas,
11 meeting rooms, schools, exhibition halls, convention
12 facilities, polling places, private clubs, gaming facilities,
13 all government owned vehicles and facilities, including
14 buildings and vehicles owned, leased, or operated by the State
15 or State subcontract, healthcare facilities or clinics,
16 enclosed shopping centers, retail service establishments,
17 financial institutions, educational facilities, ticket areas,
18 public hearing facilities, public restrooms, waiting areas,
19 lobbies, bars, taverns, bowling alleys, skating rinks,
20 reception areas, and no less than 75% of the sleeping quarters
21 within a hotel, motel, resort, inn, lodge, bed and breakfast,
22 or other similar public accommodation that are rented to
23 guests, but excludes private residences.

24 "Restaurant" means (i) an eating establishment, including,
25 but not limited to, coffee shops, cafeterias, sandwich stands,
26 and private and public school cafeterias, that gives or offers

1 for sale food to the public, guests, or employees, and (ii) a
2 kitchen or catering facility in which food is prepared on the
3 premises for serving elsewhere. "Restaurant" includes a bar
4 area within the restaurant.

5 "Retail tobacco store" means a retail establishment that
6 derives more than 80% of its gross revenue from the sale of
7 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
8 and other smoking devices for burning tobacco and related
9 smoking accessories and and from the sale of electronic
10 cigarettes in which the sale of other products is merely
11 incidental. "Retail tobacco store" includes an enclosed
12 workplace that manufactures, imports, or distributes tobacco
13 or tobacco products, when, as a necessary and integral part of
14 the process of making, manufacturing, importing, or
15 distributing a tobacco product for the eventual retail sale of
16 that tobacco or tobacco product, tobacco is heated, burned, or
17 smoked, or a lighted tobacco product is tested, provided that
18 the involved business entity: (1) maintains a specially
19 designated area or areas within the workplace for the purpose
20 of the heating, burning, smoking, or lighting activities, and
21 does not create a facility that permits smoking throughout; (2)
22 satisfies the 80% requirement related to gross sales; and (3)
23 delivers tobacco products to consumers, retail establishments,
24 or other wholesale establishments as part of its business.
25 "Retail tobacco store" does not include a tobacco department or
26 section of a larger commercial establishment or any

1 establishment with any type of liquor, food, or restaurant
2 license. Rulemaking authority to implement this amendatory Act
3 of the 95th General Assembly, if any, is conditioned on the
4 rules being adopted in accordance with all provisions of the
5 Illinois Administrative Procedure Act and all rules and
6 procedures of the Joint Committee on Administrative Rules; any
7 purported rule not so adopted, for whatever reason, is
8 unauthorized.

9 "Smoke" or "smoking" means the carrying, smoking, burning,
10 inhaling, or exhaling of any kind of lighted pipe, cigar,
11 cigarette, hookah, weed, herbs, or any other lighted smoking
12 equipment or the use of any electronic cigarette. "Smoke" or
13 "smoking" does not include smoking that is associated with a
14 native recognized religious ceremony, ritual, or activity by
15 American Indians that is in accordance with the federal
16 American Indian Religious Freedom Act, 42 U.S.C. 1996 and
17 1996a.

18 "State agency" has the meaning formerly ascribed to it in
19 subsection (a) of Section 3 of the Illinois Purchasing Act (now
20 repealed).

21 "Theater actor" means an individual in the process of
22 presenting an artistic representation of real or imagined
23 events in front of a live audience, or in the process of
24 rehearsing to do the same.

25 "Unit of local government" has the meaning ascribed to it
26 in Section 1 of Article VII of the Illinois Constitution of

1 1970.

2 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09; 96-797,
3 eff. 1-1-10.)

4 (410 ILCS 82/35)

5 Sec. 35. Exemptions.

6 (a) Notwithstanding any other provision of this Act,
7 smoking is allowed in the following areas:

8 (1) Private residences or dwelling places, except when
9 used as a child care, adult day care, or healthcare
10 facility or any other home-based business open to the
11 public.

12 (2) Retail tobacco stores as defined in Section 10 of
13 this Act in operation prior to the effective date of this
14 amendatory Act of the 95th General Assembly. The retail
15 tobacco store shall annually file with the Department by
16 January 31st an affidavit stating the percentage of its
17 gross income during the prior calendar year that was
18 derived from the sale of loose tobacco, plants, or herbs
19 and cigars, cigarettes, pipes, or other smoking devices for
20 smoking tobacco and related smoking accessories. Any
21 retail tobacco store that begins operation after the
22 effective date of this amendatory Act may only qualify for
23 an exemption if located in a freestanding structure
24 occupied solely by the business and smoke from the business
25 does not migrate into an enclosed area where smoking is

1 prohibited.

2 (3) (Blank).

3 (4) Hotel and motel sleeping rooms that are rented to
4 guests and are designated as smoking rooms, provided that
5 all smoking rooms on the same floor must be contiguous and
6 smoke from these rooms must not infiltrate into nonsmoking
7 rooms or other areas where smoking is prohibited. Not more
8 than 25% of the rooms rented to guests in a hotel or motel
9 may be designated as rooms where smoking is allowed. The
10 status of rooms as smoking or nonsmoking may not be
11 changed, except to permanently add additional nonsmoking
12 rooms.

13 (5) Enclosed laboratories that are excluded from the
14 definition of "place of employment" in Section 10 of this
15 Act. Rulemaking authority to implement this amendatory Act
16 of the 95th General Assembly, if any, is conditioned on the
17 rules being adopted in accordance with all provisions of
18 the Illinois Administrative Procedure Act and all rules and
19 procedures of the Joint Committee on Administrative Rules;
20 any purported rule not so adopted, for whatever reason, is
21 unauthorized.

22 (6) Common smoking rooms in long-term care facilities
23 operated under the authority of the Illinois Department of
24 Veterans' Affairs or licensed under the Nursing Home Care
25 Act that are accessible only to residents who are smokers
26 and have requested in writing to have access to the common

1 smoking room where smoking is permitted and the smoke shall
2 not infiltrate other areas of the long-term care facility.
3 Rulemaking authority to implement this amendatory Act of
4 the 95th General Assembly, if any, is conditioned on the
5 rules being adopted in accordance with all provisions of
6 the Illinois Administrative Procedure Act and all rules and
7 procedures of the Joint Committee on Administrative Rules;
8 any purported rule not so adopted, for whatever reason, is
9 unauthorized.

10 (7) A convention hall of the Donald E. Stephens
11 Convention Center where a meeting or trade show for
12 manufacturers and suppliers of tobacco and tobacco
13 products and accessories is being held, during the time the
14 meeting or trade show is occurring, if the meeting or trade
15 show:

16 (i) is a trade-only event and not open to the
17 public;

18 (ii) is limited to attendees and exhibitors that
19 are 21 years of age or older;

20 (iii) is being produced or organized by a business
21 relating to tobacco or a professional association for
22 convenience stores; and

23 (iv) involves the display of tobacco products.

24 Smoking is not allowed in any public area outside of
25 the hall designated for the meeting or trade show.

26 This paragraph (7) is inoperative on and after October

1 1, 2015.

2 (b) Notwithstanding any other provision of this Act, a
3 theater actor may use electronic cigarettes within performance
4 spaces.

5 (Source: P.A. 98-1023, eff. 8-22-14.)