

SB2338



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB2338

Introduced 2/7/2025, by Sen. Javier L. Cervantes

SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5
35 ILCS 143/10-10
35 ILCS 143/10-21
35 ILCS 143/10-30

Amends the Tobacco Products Act. Defines "electronic cigarette", "nicotine", and "tobacco products". Imposes a tax on any person engaged in business as a distributor of tobacco products at the rate of (i) 18% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State before July 1, 2012; (ii) 36% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State prior to July 1, 2025; and (iii) 45% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State beginning on July 1, 2025. Makes the changes made to the definition of "electronic cigarette" by this amendatory Act of the 104th General Assembly apply on and after June 30, 2025, but no claim for credit or refund is allowed on or after the effective date of this amendatory Act of the 104th General Assembly for such taxes paid during the period beginning June 30, 2025 and the effective date of this amendatory Act of the 104th General Assembly.

LRB104 09804 HLH 19870 b

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Tobacco Products Tax Act of 1995 is amended
5 by changing Sections 10-5, 10-10, 10-21, and 10-30 as follows:

6 (35 ILCS 143/10-5)

7 Sec. 10-5. Definitions. For purposes of this Act:

8 "Business" means any trade, occupation, activity, or
9 enterprise engaged in, at any location whatsoever, for the
10 purpose of selling tobacco products.

11 "Cigarette" has the meaning ascribed to the term in
12 Section 1 of the Cigarette Tax Act.

13 "Contraband little cigar" means:

14 (1) packages of little cigars containing 20 or 25
15 little cigars that do not bear a required tax stamp under
16 this Act;

17 (2) packages of little cigars containing 20 or 25
18 little cigars that bear a fraudulent, imitation, or
19 counterfeit tax stamp;

20 (3) packages of little cigars containing 20 or 25
21 little cigars that are improperly tax stamped, including
22 packages of little cigars that bear only a tax stamp of
23 another state or taxing jurisdiction; or

(4) packages of little cigars containing other than 20 or 25 little cigars in the possession of a distributor, retailer or wholesaler, unless the distributor, retailer, or wholesaler possesses, or produces within the time frame provided in Section 10-27 or 10-28 of this Act, an invoice from a stamping distributor, distributor, or wholesaler showing that the tax on the packages has been or will be paid.

"Correctional Industries program" means a program run by a State penal institution in which residents of the penal institution produce tobacco products for sale to persons incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Department" means the Illinois Department of Revenue.

"Distributor" means any of the following:

(1) Any manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State.

(2) Any manufacturer or wholesaler engaged in the business of selling tobacco products from without this State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, so long as that manufacturer or wholesaler has or maintains within this State, directly or by subsidiary, an office, sales house, or other place of

1 business, or any agent or other representative operating
2 within this State under the authority of the person or
3 subsidiary, irrespective of whether the place of business
4 or agent or other representative is located here
5 permanently or temporarily.

6 (3) Any retailer who receives tobacco products on
7 which the tax has not been or will not be paid by another
8 distributor.

9 "Distributor" does not include any person, wherever
10 resident or located, who makes, manufactures, or fabricates
11 tobacco products as part of a Correctional Industries program
12 for sale to residents incarcerated in penal institutions or
13 resident patients of a State operated mental health facility.

14 "Electronic cigarette" means:

15 (1) any device that can be used to deliver aerosolized
16 or vaporized nicotine to the person inhaling from the
17 device, including, but not limited to, an e-cigarette,
18 e-cigar, e-pipe, vape pen or e-hookah. Electronic
19 cigarette includes any component, part, or accessory of
20 such a device, whether sold separately, and includes any
21 substance intended to be aerosolized or vaporized during
22 the use of the device. Electronic cigarette does not
23 include any battery or battery charger when sold
24 separately. In addition, electronic cigarette does not
25 include (A) drugs, devices, or combination products
26 authorized for sale by the U.S. Food and Drug

1 Administration, as those terms are defined in the Federal
2 Food, Drug and Cosmetic Act, (B) employs a battery or
3 other mechanism to heat a solution or substance to produce
4 a vapor or aerosol intended for inhalation, except for (A)
5 any device designed solely for use with cannabis that
6 contains a statement on the retail packaging that the
7 device is designed solely for use with cannabis and not
8 for use with tobacco or (C) (B) any device that contains a
9 solution or substance that contains cannabis subject to
10 tax under the Compassionate Use of Medical Cannabis
11 Program Act or the Cannabis Regulation and Tax Act;

12 (2) any cartridge or container of a solution or
13 substance intended to be used with or in the device or to
14 refill the device, except for any cartridge or container
15 of a solution or substance that contains cannabis subject
16 to tax under the Compassionate Use of Medical Cannabis
17 Program Act or the Cannabis Regulation and Tax Act; or

18 (3) any solution or substance, whether or not it
19 contains nicotine, intended for use in the device, except
20 for any solution or substance that contains cannabis
21 subject to tax under the Compassionate Use of Medical
22 Cannabis Program Act or the Cannabis Regulation and Tax
23 Act.

24 The changes made to the definition of "electronic
25 cigarette" by this amendatory Act of the 102nd General
26 Assembly apply on and after June 28, 2019, but no claim for

1 credit or refund is allowed on or after the effective date of
2 this amendatory Act of the 102nd General Assembly for such
3 taxes paid during the period beginning June 28, 2019 and the
4 effective date of this amendatory Act of the 102nd General
5 Assembly. The changes made to the definition of "electronic
6 cigarette" by this amendatory Act of the 104th General
7 Assembly apply on and after June 30, 2025, but no claim for
8 credit or refund is allowed on or after the effective date of
9 this amendatory Act of the 104th General Assembly for such
10 taxes paid during the period beginning June 30, 2025 and the
11 effective date of this amendatory Act of the 104th General
12 Assembly.

13 "Electronic cigarette" includes, but is not limited to,
14 any electronic nicotine delivery system, electronic cigar,
15 electronic cigarillo, electronic pipe, electronic hookah, vape
16 pen, or similar product or device, and any component or part
17 that can be used to build the product or device. "Electronic
18 cigarette" does not include: cigarettes, as defined in Section
19 1 of the Cigarette Tax Act; any product approved by the United
20 States Food and Drug Administration for sale as a tobacco
21 cessation product, a tobacco dependence product, or for other
22 medical purposes that is marketed and sold solely for that
23 approved purpose; any asthma inhaler prescribed by a physician
24 for that condition that is marketed and sold solely for that
25 approved purpose; or any therapeutic product approved for use
26 under the Compassionate Use of Medical Cannabis Program Act.

1 "Little cigar" means and includes any roll, made wholly or
2 in part of tobacco, where such roll has an integrated
3 cellulose acetate filter and weighs less than 4 pounds per
4 thousand and the wrapper or cover of which is made in whole or
5 in part of tobacco.

6 "Manufacturer" means any person, wherever resident or
7 located, who manufactures and sells tobacco products, except a
8 person who makes, manufactures, or fabricates tobacco products
9 as a part of a Correctional Industries program for sale to
10 persons incarcerated in penal institutions or resident
11 patients of a State operated mental health facility.

12 "Nicotine" means any form of the chemical nicotine,
13 including any salt or complex, regardless of whether the
14 chemical is naturally or synthetically derived, and includes
15 nicotinic alkaloids and nicotine analogs.

16 Beginning on January 1, 2013, "~~moist snuff~~" means any
17 ~~finely cut, ground, or powdered tobacco that is not intended~~
18 ~~to be smoked, but shall not include any finely cut, ground, or~~
19 ~~powdered tobacco that is intended to be placed in the nasal~~
20 ~~cavity.~~

21 "Person" means any natural individual, firm, partnership,
22 association, joint stock company, joint venture, limited
23 liability company, or public or private corporation, however
24 formed, or a receiver, executor, administrator, trustee,
25 conservator, or other representative appointed by order of any
26 court.

1 "Place of business" means and includes any place where
2 tobacco products are sold or where tobacco products are
3 manufactured, stored, or kept for the purpose of sale or
4 consumption, including any vessel, vehicle, airplane, train,
5 or vending machine.

6 "Prior continuous compliance taxpayer" means any person
7 who is licensed under this Act and who, having been a licensee
8 for a continuous period of 2 years, is determined by the
9 Department not to have been either delinquent or deficient in
10 the payment of tax liability during that period or otherwise
11 in violation of this Act. "Prior continuous compliance
12 taxpayer" also means any taxpayer who has, as verified by the
13 Department, continuously complied with the condition of his
14 bond or other security under provisions of this Act for a
15 period of 2 consecutive years. In calculating the consecutive
16 period of time described in this definition for qualification
17 as a prior continuous compliance taxpayer, a consecutive
18 period of time of qualifying compliance immediately prior to
19 the effective date of this amendatory Act of the 103rd General
20 Assembly shall be credited to any licensee who became licensed
21 on or before the effective date of this amendatory Act of the
22 103rd General Assembly. A distributor that is a prior
23 continuous compliance taxpayer and becomes a successor to a
24 distributor as the result of an acquisition, merger, or
25 consolidation of that distributor shall be deemed to be a
26 prior continuous compliance taxpayer with respect to the

1 acquired, merged, or consolidated entity.

2 "Retailer" means any person in this State engaged in the
3 business of selling tobacco products to consumers in this
4 State, regardless of quantity or number of sales.

5 "Sale" means any transfer, exchange, or barter in any
6 manner or by any means whatsoever for a consideration and
7 includes all sales made by persons.

8 "Stamp" or "stamps" mean the indicia required to be
9 affixed on a package of little cigars that evidence payment of
10 the tax on packages of little cigars containing 20 or 25 little
11 cigars under Section 10-10 of this Act. These stamps shall be
12 the same stamps used for cigarettes under the Cigarette Tax
13 Act.

14 "Stamping distributor" means a distributor licensed under
15 this Act and also licensed as a distributor under the
16 Cigarette Tax Act or Cigarette Use Tax Act.

17 "Tobacco products" means any any product containing, made
18 of, or derived from tobacco or nicotine, that is intended for
19 human consumption or is likely to be consumed, whether
20 inhaled, absorbed, or ingested by any other means, including,
21 but not limited to, cigars, including little cigars; cheroots;
22 stogies; periques; granulated, plug cut, crimp cut, ready
23 rubbed, and other smoking tobacco; snuff (including moist
24 snuff) or snuff flour; cavendish; plug and twist tobacco;
25 fine-cut and other chewing tobaccos; shorts; refuse scraps,
26 clippings, cuttings, and sweeping of tobacco; and other kinds

1 and forms of tobacco, snus, tobacco for use in waterpipes, and
2 ~~nicotine pouches prepared in such manner as to be suitable for~~
3 ~~chewing or smoking in a pipe or otherwise, or both for chewing~~
4 ~~and smoking~~; but does not include cigarettes as defined in
5 Section 1 of the Cigarette Tax Act or tobacco purchased for the
6 manufacture of cigarettes by cigarette distributors and
7 manufacturers defined in the Cigarette Tax Act and persons who
8 make, manufacture, or fabricate cigarettes as a part of a
9 Correctional Industries program for sale to residents
10 incarcerated in penal institutions or resident patients of a
11 State operated mental health facility.

12 Beginning on July 1, 2019, "tobacco products" also
13 includes electronic cigarettes.

14 "Wholesale price" means the established list price for
15 which a manufacturer sells tobacco products to a distributor,
16 before the allowance of any discount, trade allowance, rebate,
17 or other reduction. In the absence of such an established list
18 price, the manufacturer's invoice price at which the
19 manufacturer sells the tobacco product to unaffiliated
20 distributors, before any discounts, trade allowances, rebates,
21 or other reductions, shall be presumed to be the wholesale
22 price.

23 "Wholesaler" means any person, wherever resident or
24 located, engaged in the business of selling tobacco products
25 to others for the purpose of resale. "Wholesaler", when used
26 in this Act, does not include a person licensed as a

1 distributor under Section 10-20 of this Act unless expressly
2 stated in this Act.

3 (Source: P.A. 102-40, eff. 6-25-21; 103-1001, eff. 8-9-24.)

4 (35 ILCS 143/10-10)

5 Sec. 10-10. Tax imposed.

6 (a) Except as otherwise provided in this Section with
7 respect to little cigars, on the first day of the third month
8 after the month in which this Act becomes law, a tax is imposed
9 on any person engaged in business as a distributor of tobacco
10 products, as defined in Section 10-5, at the rate of (i) 18% of
11 the wholesale price of tobacco products sold or otherwise
12 disposed of to retailers or consumers located in this State
13 prior to July 1, 2012; and (ii) 36% of the wholesale price of
14 tobacco products sold or otherwise disposed of to retailers or
15 consumers located in this State before beginning on July 1,
16 2025 2012; and (iii) 45% of the wholesale price of tobacco
17 products sold or otherwise disposed of to retailers or
18 consumers located in this State beginning on July 1, 2025
19 except that, beginning on January 1, 2013, the tax on moist
20 snuff shall be imposed at a rate of \$0.30 per ounce, and a
21 proportionate tax at the like rate on all fractional parts of
22 an ounce, sold or otherwise disposed of to retailers or
23 consumers located in this State; and except that, beginning
24 July 1, 2019, the tax on electronic cigarettes shall be
25 imposed at the rate of 15% of the wholesale price of electronic

1 ~~cigarettes sold or otherwise disposed of to retailers or~~
2 ~~consumers located in this State~~. The tax is in addition to all
3 other occupation or privilege taxes imposed by the State of
4 Illinois, by any political subdivision thereof, or by any
5 municipal corporation. However, the tax is not imposed upon
6 any activity in that business in interstate commerce or
7 otherwise, to the extent to which that activity may not, under
8 the Constitution and Statutes of the United States, be made
9 the subject of taxation by this State, and except that,
10 beginning July 1, 2013, the tax on little cigars shall be
11 imposed at the same rate, and the proceeds shall be
12 distributed in the same manner, as the tax imposed on
13 cigarettes under the Cigarette Tax Act. The tax is also not
14 imposed on sales made to the United States or any entity
15 thereof.

16 (b) Notwithstanding subsection (a) of this Section,
17 stamping distributors of packages of little cigars containing
18 20 or 25 little cigars sold or otherwise disposed of in this
19 State shall remit the tax by purchasing tax stamps from the
20 Department and affixing them to packages of little cigars in
21 the same manner as stamps are purchased and affixed to
22 cigarettes under the Cigarette Tax Act, unless the stamping
23 distributor sells or otherwise disposes of those packages of
24 little cigars to another stamping distributor. Only persons
25 meeting the definition of "stamping distributor" contained in
26 Section 10-5 of this Act may affix stamps to packages of little

1 cigars containing 20 or 25 little cigars. Stamping
2 distributors may not sell or dispose of little cigars at
3 retail to consumers or users at locations where stamping
4 distributors affix stamps to packages of little cigars
5 containing 20 or 25 little cigars.

6 (c) The impact of the tax levied by this Act is imposed
7 upon distributors engaged in the business of selling tobacco
8 products to retailers or consumers in this State. Whenever a
9 stamping distributor brings or causes to be brought into this
10 State from without this State, or purchases from without or
11 within this State, any packages of little cigars containing 20
12 or 25 little cigars upon which there are no tax stamps affixed
13 as required by this Act, for purposes of resale or disposal in
14 this State to a person not a stamping distributor, then such
15 stamping distributor shall pay the tax to the Department and
16 add the amount of the tax to the price of such packages sold by
17 such stamping distributor. Payment of the tax shall be
18 evidenced by a stamp or stamps affixed to each package of
19 little cigars containing 20 or 25 little cigars.

20 Stamping distributors paying the tax to the Department on
21 packages of little cigars containing 20 or 25 little cigars
22 sold to other distributors, wholesalers or retailers shall add
23 the amount of the tax to the price of the packages of little
24 cigars containing 20 or 25 little cigars sold by such stamping
25 distributors.

26 (d) (Blank). Beginning on January 1, 2013, the tax rate

1 ~~imposed per ounce of moist snuff may not exceed 15% of the tax~~
2 ~~imposed upon a package of 20 cigarettes pursuant to the~~
3 ~~Cigarette Tax Act.~~

4 (e) All moneys received by the Department under this Act
5 from sales occurring prior to July 1, 2012 shall be paid into
6 the Long-Term Care Provider Fund of the State Treasury. Of the
7 moneys received by the Department from sales occurring on or
8 after July 1, 2012, except for moneys received from the tax
9 imposed on the sale of little cigars, 50% shall be paid into
10 the Long-Term Care Provider Fund and 50% shall be paid into the
11 Healthcare Provider Relief Fund. Beginning July 1, 2013, all
12 moneys received by the Department under this Act from the tax
13 imposed on little cigars shall be distributed as provided in
14 Section 2 of the Cigarette Tax Act. Of the moneys received by
15 the Department from sales occurring on or after July 1, 2025,
16 except for moneys received from the tax imposed on the sale of
17 little cigars, 35% shall be paid into the Long-Term Care
18 Provider Fund, 35% shall be paid into the Healthcare Provider
19 Relief Fund, and 30% shall be paid to the State Tobacco Control
20 Program for health promotion, health communication activities
21 and evaluation, and tobacco use surveillance to reduce tobacco
22 and nicotine use, tobacco-related disease rates, and
23 tobacco-related health disparities.

24 (Source: P.A. 101-31, eff. 6-28-19.)

1 Sec. 10-21. Retailer's license. Beginning on January 1,
2 2016, no person may engage in business as a retailer of tobacco
3 products in this State without first having obtained a license
4 from the Department. Application for license shall be made to
5 the Department, by electronic means, in a form prescribed by
6 the Department. Each applicant for a license under this
7 Section shall furnish to the Department, in an electronic
8 format established by the Department, the following
9 information:

10 (1) the name and address of the applicant;

11 (2) the address of the location at which the applicant
12 proposes to engage in business as a retailer of tobacco
13 products in this State;

14 (3) such other additional information as the
15 Department may lawfully require by its rules and
16 regulations.

17 The annual license fee payable to the Department for each
18 retailer's license shall be \$150 ~~\$75~~. The fee will be
19 deposited into the Tax Compliance and Administration Fund and
20 shall be used for the cost of tobacco retail inspection and
21 contraband tobacco and tobacco smuggling with at least
22 two-thirds of the money being used for contraband tobacco and
23 tobacco smuggling operations and enforcement.

24 Each applicant for license shall pay such fee to the
25 Department at the time of submitting its application for
26 license to the Department. The Department shall require an

1 applicant for a license under this Section to electronically
2 file and pay the fee.

3 A separate annual license fee shall be paid for each place
4 of business at which a person who is required to procure a
5 retailer's license under this Section proposes to engage in
6 business as a retailer in Illinois under this Act.

7 The following are ineligible to receive a retailer's
8 license under this Act:

9 (1) a person who has been convicted of a felony under
10 any federal or State law for smuggling cigarettes or
11 tobacco products or tobacco tax evasion, if the
12 Department, after investigation and a hearing if requested
13 by the applicant, determines that such person has not been
14 sufficiently rehabilitated to warrant the public trust;
15 and

16 (2) a corporation, if any officer, manager or director
17 thereof, or any stockholder or stockholders owning in the
18 aggregate more than 5% of the stock of such corporation,
19 would not be eligible to receive a license under this Act
20 for any reason.

21 The Department, upon receipt of an application and license
22 fee, in proper form, from a person who is eligible to receive a
23 retailer's license under this Act, shall issue to such
24 applicant a license in form as prescribed by the Department,
25 which license shall permit the applicant to which it is issued
26 to engage in business as a retailer under this Act at the place

1 shown in his application. All licenses issued by the
2 Department under this Section shall be valid for a period not
3 to exceed one year after issuance unless sooner revoked,
4 canceled or suspended as provided in this Act. No license
5 issued under this Section is transferable or assignable. Such
6 license shall be conspicuously displayed in the place of
7 business conducted by the licensee in Illinois under such
8 license. A person who obtains a license as a retailer who
9 ceases to do business as specified in the license, or who never
10 commenced business, or whose license is suspended or revoked,
11 shall immediately surrender the license to the Department. The
12 Department shall not issue a license to a retailer unless the
13 retailer is also validly registered under the Retailers
14 Occupation Tax Act.

15 A retailer as defined under this Act need not obtain an
16 additional license under this Act, but shall be deemed to be
17 sufficiently licensed by virtue of his being properly licensed
18 as a retailer under Section 4g of the Cigarette Tax Act.

19 Any person aggrieved by any decision of the Department
20 under this Section may, within 30 days after notice of the
21 decision, protest and request a hearing. Upon receiving a
22 request for a hearing, the Department shall give notice to the
23 person requesting the hearing of the time and place fixed for
24 the hearing and shall hold a hearing in conformity with the
25 provisions of this Act and then issue its final administrative
26 decision in the matter to that person. In the absence of a

1 protest and request for a hearing within 30 days, the
2 Department's decision shall become final without any further
3 determination being made or notice given.

4 (Source: P.A. 98-1055, eff. 1-1-16; 99-78, eff. 7-20-15;
5 99-192, eff. 1-1-16.)

6 (35 ILCS 143/10-30)

7 Sec. 10-30. Returns.

8 (a) Every distributor shall, on or before the 15th day of
9 each month, file a return with the Department covering the
10 preceding calendar month. The return shall disclose the
11 wholesale price for all tobacco products ~~other than moist~~
12 ~~snuff and the quantity in ounces of moist snuff sold or~~
13 otherwise disposed of and other information that the
14 Department may reasonably require. Information that the
15 Department may reasonably require includes information related
16 to the uniform regulation and taxation of tobacco products.
17 The return shall be filed upon a form prescribed and furnished
18 by the Department.

19 (b) In addition to the information required under
20 subsection (a), on or before the 15th day of each month,
21 covering the preceding calendar month, each stamping
22 distributor shall, on forms prescribed and furnished by the
23 Department, report the quantity of little cigars sold or
24 otherwise disposed of, including the number of packages of
25 little cigars sold or disposed of during the month containing

1 20 or 25 little cigars.

2 (c) At the time when any return of any distributor is due
3 to be filed with the Department, the distributor shall also
4 remit to the Department the tax liability that the distributor
5 has incurred for transactions occurring in the preceding
6 calendar month.

7 (d) The Department may adopt rules to require the
8 electronic filing of any return or document required to be
9 filed under this Act. Those rules may provide for exceptions
10 from the filing requirement set forth in this paragraph for
11 persons who demonstrate that they do not have access to the
12 Internet and petition the Department to waive the electronic
13 filing requirement.

14 (e) If any payment provided for in this Section exceeds
15 the distributor's liabilities under this Act, as shown on an
16 original return, the distributor may credit such excess
17 payment against liability subsequently to be remitted to the
18 Department under this Act, in accordance with reasonable rules
19 adopted by the Department.

20 (Source: P.A. 103-592, eff. 1-1-25.)