



Rep. La Shawn K. Ford

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LRB100 04161 RLC 20575 a

1 AMENDMENT TO HOUSE BILL 235

2 AMENDMENT NO. _____. Amend House Bill 235 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Cigarette Tax Act is amended by changing
5 Section 24 as follows:

6 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

7 Sec. 24. Punishment for sale or possession of packages of
8 contraband cigarettes.

9 (a) Possession or sale of 100 or less packages of
10 contraband cigarettes. With the exception of licensed
11 distributors, licensed secondary distributors, or licensed
12 transporters, as defined in Section 9c of this Act, any person
13 who has in his or her possession or sells 100 or less original
14 packages of contraband cigarettes is guilty of a Class A
15 misdemeanor and a Class 4 felony for each subsequent offense
16 occurring within 12 months of a prior offense.

1 (b) Possession or sale of more than 100 but less than 251
2 packages of contraband cigarettes. With the exception of
3 licensed distributors, licensed secondary distributors, or
4 licensed transporters, as defined in Section 9c of this Act,
5 any person who has in his or her possession or sells more than
6 100 but less than 251 original packages of contraband
7 cigarettes is guilty of a Class A misdemeanor for a first
8 offense and a Class 4 felony for each subsequent offense.

9 (c) Possession or sale of more than 250 but less than 1,001
10 packages of contraband cigarettes. With the exception of
11 licensed distributors, licensed secondary distributors, or
12 licensed transporters, as defined in Section 9c of this Act,
13 any person who has in his or her possession or sells more than
14 250 but less than 1,001 original packages of contraband
15 cigarettes is guilty of a Class 4 felony.

16 (d) Possession or sale of more than 1,000 packages of
17 contraband cigarettes. With the exception of licensed
18 distributors, licensed secondary distributors, or licensed
19 transporters, as defined in Section 9c of this Act, any person
20 who has in his or her possession or sells more than 1,000
21 original packages of contraband cigarettes is guilty of a Class
22 3 felony.

23 (e) Any person licensed as a distributor, secondary
24 distributor, or transporter, as defined in Section 9c of this
25 Act, who has in his or her possession or sells 100 or less
26 original packages of contraband cigarettes is guilty of a Class

1 A misdemeanor and a Class 4 felony for each subsequent offense
2 occurring within 12 months of a prior offense.

3 (f) Any person licensed as a distributor, secondary
4 distributor, or transporter, as defined in Section 9c of this
5 Act, who has in his or her possession or sells more than 100
6 original packages of contraband cigarettes is guilty of a Class
7 4 felony.

8 (g) Notwithstanding subsections (e) through (f), licensed
9 distributors and transporters, as defined in Section 9c of this
10 Act, may possess unstamped packages of cigarettes.
11 Notwithstanding subsections (e) through (f), licensed
12 distributors may possess cigarettes that bear a tax stamp of
13 another state or taxing jurisdiction. Notwithstanding
14 subsections (e) through (f), a licensed distributor or licensed
15 secondary distributor may possess contraband cigarettes
16 returned to the distributor or licensed secondary distributor
17 by a retailer if the distributor or licensed secondary
18 distributor immediately conducts an inventory of the
19 cigarettes being returned, the distributor or licensed
20 secondary distributor and the retailer returning the
21 contraband cigarettes sign the inventory, the distributor or
22 licensed secondary distributor provides a copy of the signed
23 inventory to the retailer, and the distributor retains the
24 inventory in its books and records and promptly notifies the
25 Department of Revenue.

26 (h) Notwithstanding subsections (a) through (d) of this

1 Section, a retailer unknowingly possessing contraband
2 cigarettes obtained from a licensed distributor or licensed
3 secondary distributor or knowingly possessing contraband
4 cigarettes obtained from a licensed distributor is not subject
5 to penalties under this Section if the retailer, within 48
6 hours after discovering that the cigarettes are contraband
7 cigarettes, excluding Saturdays, Sundays, and holidays: (i)
8 notifies the Department and the licensed distributor or
9 licensed secondary distributor from whom the cigarettes were
10 obtained, orally and in writing, that he or she possesses
11 contraband cigarettes obtained from a licensed distributor or
12 licensed secondary distributor; (ii) places the contraband
13 cigarettes in one or more containers and seals those
14 containers; and (iii) places on the containers the following or
15 similar language: "Contraband Cigarettes. Not For Sale." All
16 contraband cigarettes in the possession of a retailer remain
17 subject to forfeiture under the provisions of this Act.

18 Any retailer who knowingly possesses packages of
19 cigarettes with a counterfeit stamp with intent to sell is
20 guilty of a Class 2 felony. Any retailer who knowingly
21 possesses unstamped packages of cigarettes with intent to sell
22 is guilty of a Class 4 felony. A retailer shall not be liable
23 for unknowingly possessing, selling, or distributing to
24 consumers cigarettes that contain an old stamp if the correct
25 tax was collected at the point of sale and the cigarettes were
26 obtained from a distributor licensed under this Act.

1 (i) Notwithstanding any other provision of law, violations
2 relating to the sale or distribution by any person of a tobacco
3 product in this Section, including, but not limited to, a
4 single or loose cigarette, that is not contained within a
5 sealed container, pack, or package as provided by the
6 manufacturer, which container, pack, or package bears the
7 health warning required by federal law, other than violations
8 involving the sale or distribution of a tobacco product to a
9 minor under the age of 18, shall be subject only to the
10 penalties provided in an ordinance of the unit of local
11 government where the violation is committed.

12 (Source: P.A. 98-1055, eff. 1-1-16.)

13 Section 10. The Cigarette Use Tax Act is amended by
14 changing Section 30 as follows:

15 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

16 Sec. 30. Punishment for sale or possession of unstamped
17 packages of cigarettes, other than by a licensed distributor or
18 transporter.

19 (a) Possession or sale of more than 9 but less than 101
20 unstamped packages of cigarettes. With the exception of
21 licensed distributors, licensed secondary distributors, or
22 licensed transporters, as defined in Section 9c of the
23 Cigarette Tax Act, any person who has in his or her possession
24 or sells more than 9 but less than 101 original packages of

1 contraband cigarettes is guilty of a Class A misdemeanor and a
2 Class 4 felony for each subsequent offense occurring within 12
3 months of a prior offense.

4 (b) Possession or sale of more than 100 but less than 251
5 unstamped packages of cigarettes. With the exception of
6 licensed distributors, licensed secondary distributors, or
7 licensed transporters, as defined in Section 9c of the
8 Cigarette Tax Act, any person who has in his or her possession
9 or sells more than 100 but less than 251 original packages of
10 contraband cigarettes is guilty of a Class A misdemeanor for
11 the first offense and a Class 4 felony for each subsequent
12 offense.

13 (c) Possession or sale of more than 250 but less than 1,001
14 unstamped packages of cigarettes. With the exception of
15 licensed distributors, licensed secondary distributors, or
16 licensed transporters, as defined in Section 9c of the
17 Cigarette Tax Act, any person who has in his or her possession
18 or sells more than 250 but less than 1,001 original packages of
19 contraband cigarettes is guilty of a Class 4 felony.

20 (d) Possession or sale of more than 1,000 contraband
21 packages of cigarettes. With the exception of licensed
22 distributors, licensed secondary distributors, or licensed
23 transporters, as defined in Section 9c of the Cigarette Tax
24 Act, any person who has in his or her possession or sells, more
25 than 1,000 original packages of contraband cigarettes is guilty
26 of a Class 3 felony.

1 (e) Any person licensed as a distributor, secondary
2 distributor, or transporter, as defined in Section 9c of the
3 Cigarette Tax Act, who has in his or her possession or sells
4 100 or less original packages of contraband cigarettes is
5 guilty of a Class A misdemeanor and a Class 4 felony for each
6 subsequent offense occurring within 12 months of a prior
7 offense.

8 (f) Any person licensed as a distributor, secondary
9 distributor, or transporter, as defined in Section 9c of the
10 Cigarette Tax Act, who has in his or her possession or sells
11 more than 100 original packages of contraband cigarettes is
12 guilty of a Class 4 felony.

13 (g) Notwithstanding subsections (e) through (f), licensed
14 distributors and transporters, as defined in Section 9c of the
15 Cigarette Tax Act, may possess unstamped packages of
16 cigarettes. Notwithstanding subsections (e) through (f),
17 licensed distributors may possess cigarettes that bear a tax
18 stamp of another state or taxing jurisdiction. Notwithstanding
19 subsections (e) through (f), a licensed distributor or licensed
20 secondary distributor may possess contraband cigarettes
21 returned to the distributor or licensed secondary distributor
22 by a retailer if the distributor or licensed secondary
23 distributor immediately conducts an inventory of the
24 cigarettes being returned, the distributor or licensed
25 secondary distributor and the retailer returning the
26 contraband cigarettes sign the inventory, the distributor or

1 licensed secondary distributor provides a copy of the signed
2 inventory to the retailer, and the distributor or licensed
3 secondary distributor retains the inventory in its books and
4 records and promptly notifies the Department of Revenue.

5 (h) Notwithstanding subsections (a) through (d) of this
6 Section, a retailer unknowingly possessing contraband
7 cigarettes obtained from a licensed distributor or licensed
8 secondary distributor or knowingly possessing contraband
9 cigarettes obtained from a licensed distributor or licensed
10 secondary distributor is not subject to penalties under this
11 Section if the retailer, within 48 hours after discovering that
12 the cigarettes are contraband cigarettes, excluding Saturdays,
13 Sundays, and holidays: (i) notifies the Department and the
14 licensed distributor or licensed secondary distributor from
15 whom the cigarettes were obtained, orally and in writing, that
16 he or she possesses contraband cigarettes obtained from a
17 licensed distributor or licensed secondary distributor; (ii)
18 places the contraband cigarettes in one or more containers and
19 seals those containers; and (iii) places on the containers the
20 following or similar language: "Contraband Cigarettes. Not For
21 Sale." All contraband cigarettes in the possession of a
22 retailer remain subject to forfeiture under the provisions of
23 this Act.

24 Any retailer who knowingly possesses packages of
25 cigarettes with a counterfeit stamp with intent to sell is
26 guilty of a Class 2 felony. Any retailer who knowingly

1 possesses unstamped packages of cigarettes with intent to sell
2 is guilty of a Class 4 felony. A retailer shall not be liable
3 for unknowingly possessing, selling, or distributing to
4 consumers cigarettes that contain an old stamp if the correct
5 tax was collected at the point of sale and the cigarettes were
6 obtained from a distributor licensed under this Act.

7 Notwithstanding any other provision of law, violations
8 relating to the sale or distribution by any person of a tobacco
9 product in this Section, including, but not limited to, a
10 single or loose cigarette, that is not contained within a
11 sealed container, pack, or package as provided by the
12 manufacturer, which container, pack, or package bears the
13 health warning required by federal law, other than violations
14 involving the sale or distribution of a tobacco product to a
15 minor under the age of 18, shall be subject only to the
16 penalties provided in an ordinance of the unit of local
17 government where the violation is committed.

18 (Source: P.A. 98-1055, eff. 1-1-16.)

19 Section 15. The Prevention of Tobacco Use by Minors and
20 Sale and Distribution of Tobacco Products Act is amended by
21 changing Section 1 as follows:

22 (720 ILCS 675/1) (from Ch. 23, par. 2357)

23 Sec. 1. Prohibition on sale to and possession of tobacco by
24 minors; prohibition on the distribution of tobacco samples to

1 any person; use of identification cards; vending machines;
2 lunch wagons; out-of-package sales.

3 (a) No minor under 18 years of age shall buy any tobacco
4 product. No person shall sell, buy for, distribute samples of
5 or furnish any tobacco product to any minor under 18 years of
6 age.

7 (a-5) No minor under 16 years of age may sell any tobacco
8 product at a retail establishment selling tobacco products.
9 This subsection does not apply to a sales clerk in a
10 family-owned business which can prove that the sales clerk is
11 in fact a son or daughter of the owner.

12 (a-6) No minor under 18 years of age in the furtherance or
13 facilitation of obtaining any tobacco product shall display or
14 use a false or forged identification card or transfer, alter,
15 or deface an identification card.

16 (a-7) No minor under 18 years of age shall possess any
17 cigar, cigarette, smokeless tobacco, or tobacco in any of its
18 forms.

19 (a-8) A person shall not distribute without charge samples
20 of any tobacco product to any other person, regardless of age:

21 (1) within a retail establishment selling tobacco
22 products, unless the retailer has verified the purchaser's
23 age with a government issued identification;

24 (2) from a lunch wagon; or

25 (3) on a public way as a promotion or advertisement of
26 a tobacco manufacturer or tobacco product.

1 This subsection (a-8) does not apply to the distribution of
2 a tobacco product sample in any adult-only facility.

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

4 "Adult-only facility means a facility or restricted
5 area (whether open-air or enclosed) where the operator
6 ensures or has a reasonable basis to believe (such as by
7 checking identification as required under State law, or by
8 checking the identification of any person appearing to be
9 under the age of 27) that no person under legal age is
10 present. A facility or restricted area need not be
11 permanently restricted to persons under legal age to
12 constitute an adult-only facility, provided that the
13 operator ensures or has a reasonable basis to believe that
14 no person under legal age is present during the event or
15 time period in question.

16 "Lunch wagon" means a mobile vehicle designed and
17 constructed to transport food and from which food is sold
18 to the general public.

19 "Smokeless tobacco" means any tobacco products that
20 are suitable for dipping or chewing.

21 "Tobacco product" means any cigar, cigarette,
22 smokeless tobacco, or tobacco in any of its forms.

23 (b) Tobacco products listed in this Section may be sold
24 through a vending machine only if such tobacco products are not
25 placed together with any non-tobacco product, other than
26 matches, in the vending machine and the vending machine is in

1 any of the following locations:

2 (1) (Blank).

3 (2) Places to which minors under 18 years of age are
4 not permitted access.

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

8 (4) (Blank).

9 (5) Places where the vending machine can only be
10 operated by the owner or an employee over age 18 either
11 directly or through a remote control device if the device
12 is inaccessible to all customers.

13 (c) (Blank).

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

20 (e) It is not a violation of this Act for a person under 18
21 years of age to purchase or possess a cigar, cigarette,
22 smokeless tobacco or tobacco in any of its forms if the person
23 under the age of 18 purchases or is given the cigar, cigarette,
24 smokeless tobacco or tobacco in any of its forms from a retail
25 seller of tobacco products or an employee of the retail seller
26 pursuant to a plan or action to investigate, patrol, or

1 otherwise conduct a "sting operation" or enforcement action
2 against a retail seller of tobacco products or a person
3 employed by the retail seller of tobacco products or on any
4 premises authorized to sell tobacco products to determine if
5 tobacco products are being sold or given to persons under 18
6 years of age if the "sting operation" or enforcement action is
7 approved by, conducted by, or conducted on behalf of the
8 Department of State Police, the county sheriff, a municipal
9 police department, the Department of Revenue, the Department of
10 Public Health, or a local health department. The results of any
11 sting operation or enforcement action, including the name of
12 the clerk, shall be provided to the retail seller within 7
13 business days.

14 (f) Notwithstanding any other provision of law, a unit of
15 local government, including a home rule unit, may enact an
16 ordinance regulating the sale or distribution by any person of
17 a tobacco product, including, but not limited to, a single or
18 loose cigarette, that is not contained within a sealed
19 container, pack, or package as provided by the manufacturer,
20 which container, pack, or package bears the health warning
21 required by federal law, other than violations involving the
22 sale or distribution of a tobacco product to a minor under the
23 age of 18, and may impose fines for violation as provided in an
24 ordinance of the unit of local government.

25 (Source: P.A. 98-1055, eff. 1-1-16.)"