



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3877

by Rep. Kathleen Willis

SYNOPSIS AS INTRODUCED:

New Act
720 ILCS 675/1.5
30 ILCS 105/5.878 new

Creates the Vapor Products Regulatory Act. Provides for the licensing and regulation of retail sellers of vapor pens and vapor products by the Department of Revenue. Sets requirements for licensure, including qualifications and disqualifications, and sets annual licensing fee of \$75. Provides the Department of Revenue with regulatory authority, provides for licensing and appeals from licensing decisions made by the Department of Revenue. Provides that persons licensed as retailers under the Cigarette Tax Act need not obtain a license under this act to sell vapor products. Defines terms. Amends the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act to exclude vapor products from the definition of "alternative nicotine product". Amends the State Finance Act to create the Vapor Products Compliance Fund. Effective January 1, 2018.

LRB100 06224 HLH 21407 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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 Vapor
5 Products Regulatory Act.

6 Section 5. Definitions. For purposes of this Act:

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

18 "Age restricted area" means a signed designated area in a
19 retail establishment to which minors under 18 years of age are
20 not permitted access unless accompanied by a parent or legal
21 guardian.

22 "Business" means any trade, occupation, activity, or
23 enterprise engaged in, at any location whatsoever, for the

1 purpose of e-liquids or vapor products.

2 "Department" means the Department of Revenue.

3 "E-liquid" means a substance that contains nicotine and
4 flavoring, substances, or other additives and is intended for
5 use in a vapor product.

6 "Person" means any natural individual, firm, partnership,
7 association, joint stock company, joint adventure, or public or
8 private corporation, however formed, limited liability
9 company, or a receiver, executor, administrator, trustee,
10 conservator, or other representative appointed by order of any
11 court.

12 "Place of business" means and includes any place where
13 e-liquids or vapor products are sold.

14 "Records" means all data maintained by the retailer,
15 including data on paper, microfilm, microfiche, or any type of
16 machine sensible data compilation.

17 "Retailer" means any person in this State engaged in the
18 business of selling e-liquids or vapor products to consumers in
19 this State for use or consumption and not for resale in any
20 form, for valuable consideration, regardless of amount,
21 quantity, or number of sales.

22 "Sale" means any transfer, exchange, or barter in any
23 manner or by any means whatsoever for a consideration and
24 includes all sales made by persons.

25 "Vapor pen" means a powered vaporizer, and any component
26 parts thereof intended to be used in the powered vaporizer,

1 that converts e-liquid into vapor which is intended for
2 inhalation.

3 "Vapor product" means an e-liquid or vapor pen as defined
4 under this Act.

5 Section 10. Retailer's license; fee.

6 (a) On or after January 1, 2018, no person may engage in
7 business as a retailer vapor products in this State without
8 first having obtained a vapor products retail license from the
9 Department. Applications for a license shall be made to the
10 Department, by electronic means, in a form prescribed by the
11 Department. Each applicant for a license under this Section
12 shall furnish to the Department, in an electronic format
13 established by the Department, the following information:

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

15 (2) the address of the location at which the applicant
16 proposes to engage in business as a retailer of vapor
17 products in this State;

18 (3) whether the applicant will engage in the sale of
19 e-liquids, vapor pens, or both; and

20 (4) such other additional information as the
21 Department may lawfully require by its rules.

22 (b) The annual license fee payable to the Department for
23 each retailer's license shall be \$75. The fee shall be
24 deposited into the Vapor Products Compliance Fund and shall be
25 used for the cost of enforcement of this Act.

1 If a person obtains a cigarette retailer's license under
2 Section 4g of the Cigarette Tax Act, that person need not
3 obtain a separate license under this Section for the purpose of
4 engaging in business as a retailer of vapor products. However,
5 the cigarette retail license shall be subject to revocation or
6 suspension for violations of this Act.

7 An applicant for a license shall pay such fee to the
8 Department at the time of submitting its application for
9 license to the Department. The Department shall require an
10 applicant for a license under this Section to electronically
11 file and pay the fee.

12 (c) The following are ineligible to receive a retailer's
13 license under this Act:

14 (1) a person who has been convicted of a felony related
15 to the illegal transportation, sale, or distribution of any
16 age-restricted product or item, under any federal or State
17 law, if the Department, after investigation and a hearing
18 if requested by the applicant, determines that the person
19 has not been sufficiently rehabilitated to warrant the
20 public trust; or

21 (2) a corporation, if any officer, manager, or director
22 thereof, or any stockholder or stockholders owning in the
23 aggregate more than 5% of the stock of such corporation,
24 would not be eligible to receive a license under this Act
25 for any reason.

26 (d) The Department, upon receipt of an application and

1 license fee, in proper form, from a person who is eligible to
2 receive a retailer's license under this Act, shall issue to the
3 applicant a license in form as prescribed by the Department,
4 which license shall permit the applicant to which it is issued
5 to engage in business as a retailer under this Act at the place
6 shown in his application. All licenses issued by the Department
7 under this Section shall be valid for a period not to exceed
8 one year after issuance unless sooner revoked, canceled, or
9 suspended as provided in this Act. No license issued under this
10 Section is transferable or assignable. The license shall be
11 conspicuously displayed in the place of business conducted by
12 the licensee in Illinois under the license. A person who
13 obtains a license as a retailer who ceases to do business as
14 specified in the license, or who never commenced business, or
15 whose license is suspended or revoked, shall immediately
16 surrender the license to the Department. The Department shall
17 not issue a license to a retailer unless the retailer is also
18 validly registered under the Retailers' Occupation Tax Act. A
19 person who obtains a license as a retailer who ceases to do
20 business as specified in the license, or who never commenced
21 business, or whose license is suspended or revoked, shall
22 immediately surrender the license to the Department.

23 (e) Any person aggrieved by any decision of the Department
24 under this Section may, within 30 days after notice of the
25 decision, protest and request a hearing. Upon receiving a
26 request for hearing, the Department shall give written notice

1 to the person requesting the hearing of the time and place
2 fixed for the hearing and shall hold a hearing in conformity
3 with the provisions of this Act and then issue its final
4 administrative decision in the matter to that person. In
5 absence of protest and request for a hearing within 30 days,
6 the Department's decision shall become final without any
7 further determination being made or notice given.

8 Section 15. Training program. A retailer must have a
9 training program that facilitates compliance with minimum-age
10 vapor product laws. The training program must, at a minimum,
11 include the following:

12 (1) an explanation that only individuals displaying
13 valid identification demonstrating that they are 18 years
14 of age or older shall be eligible to purchase vapor
15 products;

16 (2) an explanation of where an employee can check
17 identification for a date of birth; and

18 (3) an explanation of the penalties to which an
19 employee and retailer are subject for violations of this
20 Act.

21 Section 20. Acting as a retailer of vapor products without
22 a license; penalty. A person who knowingly acts as a retailer
23 of vapor products in this State without first having obtained a
24 license to do so in compliance with this Act or Section 4g of

1 the Cigarette Tax Act is guilty of a Class A misdemeanor for
2 the first offense and a Class 4 felony for a second or
3 subsequent offense. Each day such person operates as a retailer
4 without a license constitutes a separate offense. The
5 Department may, by application to any circuit court, obtain an
6 injunction restraining any person who engages in business as a
7 retailer of vapor products without a license (either because
8 his or her license has been revoked, canceled, or suspended or
9 because of a failure to obtain a license in the first instance)
10 from engaging in that business until that person, as if that
11 person were a new applicant for a license, complies with all of
12 the conditions, restrictions, and requirements of this Act and
13 qualifies for and obtains a license.

14 Section 25. Revocation, cancellation, or suspension of a
15 retail license.

16 (a) The Department may, after notice and hearing, revoke,
17 cancel, or suspend the license of any vapor products retailer
18 for the violation of any provision of this Act, or for
19 noncompliance with any provision herein contained, or for any
20 noncompliance with any lawful rule adopted by the Department,
21 or because the licensee is determined to be ineligible for a
22 license for any one or more of the reasons provided in this
23 Section.

24 (b) A person aggrieved by any decision of the Department
25 under this Section may, within 30 days after notice of the

1 decision, protest and request a hearing. Upon receiving a
2 request for a hearing, the Department shall give notice to the
3 person requesting the hearing of the time and place fixed for
4 the hearing and shall hold a hearing in conformity with the
5 provisions of this Act and then issue its final administrative
6 decision in the matter to that person. In the absence of a
7 protest and request for a hearing within 30 days, the
8 Department's decision shall become final without any further
9 determination being made or notice given. The final decisions
10 of the Department shall be subject to judicial review according
11 to the provisions of the Administrative Review Law.

12 (c) If the retailer has a training program that facilitates
13 compliance with minimum-age vapor products laws, the
14 Department shall suspend for 3 days the license of that
15 retailer for a fourth or subsequent violation of subsection (a)
16 or (b) of Section 50. For the purposes of this Section, any
17 violation of Section 50 occurring at the retailer's licensed
18 location during a 24-month period shall be counted as a
19 violation against the retailer.

20 If the retailer does not have a training program that
21 facilitates compliance with minimum-age vapor products laws,
22 the Department shall suspend for 3 days the license of that
23 retailer for a second violation of Section 50.

24 If the retailer does not have a training program that
25 facilitates compliance with minimum-age vapor products laws,
26 the Department shall suspend for 7 days the license of that

1 retailer for a third violation of subsection (a) or (b) of
2 Section 50.

3 If the retailer does not have a training program that
4 facilitates compliance with minimum-age vapor products laws,
5 the Department shall suspend for 30 days the license of a
6 retailer for a fourth or subsequent violation of subsection (a)
7 or (b) of Section 50.

8 Section 30. Arrest; search and seizure without warrant.

9 (a) Any duly authorized employee of the Department may:

10 (1) arrest without warrant any person committing in his
11 or her presence a violation of any of the provisions of
12 this Act; and

13 (2) may seize any vapor products in accordance with the
14 provisions of this Act.

15 The vapor products so seized are subject to confiscation
16 and forfeiture.

17 (b) After seizing any vapor products or vending devices,
18 the Department must hold a hearing and determine whether the
19 retailer was properly licensed to sell the vapor products at
20 the time of their seizure by the Department. The Department
21 shall give not less than 20 days' notice of the time and place
22 of the hearing to the owner of the property, if the owner is
23 known, and also to the person in whose possession the property
24 was found, if that person is known and if the person in
25 possession is not the owner of the property. If neither the

1 owner nor the person in possession of the property is known,
2 the Department must cause publication of the time and place of
3 the hearing to be made at least once in each week for 3 weeks
4 successively in a newspaper of general circulation in the
5 county where the hearing is to be held.

6 If, as the result of the hearing, the Department determines
7 that the retailer was not properly licensed at the time the
8 vapor products were seized, the Department must enter an order
9 declaring the vapor products or vending devices confiscated and
10 forfeited to the State, to be held by the Department for
11 disposal by it as provided in Section 40. The Department must
12 give notice of the order to the owner of the property, if the
13 owner is known, and also to the person in whose possession the
14 property was found, if that person is known and if the person
15 in possession is not the owner of the property. If neither the
16 owner nor the person in possession of the property is known,
17 the Department must cause publication of the order to be made
18 at least once in each week for 3 weeks successively in a
19 newspaper of general circulation in the county where the
20 hearing was held.

21 Section 35. Peace officer investigation.

22 (a) Whenever any peace officer of the State or any duly
23 authorized officer or employee of the Department shall have
24 reason to believe that any violation of this Act has occurred
25 and that the person so violating the Act has in his, hers, or

1 its possession any vapor product, or any vending device
2 containing such vapor products, he may file or cause to be
3 filed his complaint in writing, verified by affidavit, with any
4 court within whose jurisdiction the premises to be searched are
5 situated, stating the facts upon which such belief is founded,
6 the premises to be searched, and the property to be seized, and
7 procure a search warrant and execute the same.

8 (b) Upon the execution of such search warrant, the peace
9 officer, or officer or employee of the Department, executing
10 such search warrant shall make due return thereof to the court
11 issuing the same, together with an inventory of the property
12 taken thereunder. The court shall thereupon issue process
13 against the owner of such property if he is known; otherwise,
14 such process shall be issued against the person in whose
15 possession the property so taken is found, if such person is
16 known. In case of inability to serve such process upon the
17 owner or the person in possession of the property at the time
18 of its seizure, as hereinbefore provided, notice of the
19 proceedings before the court shall be given as required by the
20 statutes of the State governing cases of Attachment. Upon the
21 return of the process duly served or upon the posting or
22 publishing of notice made, as hereinabove provided, the court
23 or jury, if a jury shall be demanded, shall proceed to
24 determine whether or not such property so seized was held or
25 possessed in violation of this Act, or whether, if a vending
26 device has been so seized, it contained at the time of its

1 seizure any vapor products held or possessed in violation of
2 this Act.

3 Section 40. Destruction or use of forfeited property. When
4 any vapor product or any vending device shall have been
5 declared forfeited to the State and all proceedings for the
6 judicial review of the Department's decision have terminated,
7 the Department shall, to the extent that its decision is
8 sustained on review, destroy or maintain and use such property
9 in an undercover capacity.

10 Section 45. Retailers; records.

11 (a) A retailer who is required to procure a license under
12 this Act shall keep within Illinois complete and accurate
13 records of vapor products purchased, sold, or otherwise
14 disposed of. It is the duty of a retail licensee to make sales
15 records, copies of bills of sale, and inventory at the close of
16 each 90-day period during which vapor products are being sold
17 available upon reasonable notice for the purpose of
18 investigation and control by the Department. The records need
19 not be maintained on the licensed premises, but must be
20 maintained in the State of Illinois; however, if access is
21 available electronically, the records may be maintained
22 out-of-State. However, all original invoices or copies thereof
23 covering purchases of vapor products must be retained on the
24 licensed premises for a period of 90 days after such purchase,

1 unless the Department has granted a waiver in response to a
2 written request in cases where records are kept at a central
3 business location within the State of Illinois or in cases
4 where records that are available electronically are maintained
5 out of state. The Department may adopt rules that establish
6 requirements, including record forms and formats, for records
7 required to be kept and maintained by the retailer.

8 (b) Records shall be preserved for a period of at least 3
9 years after the later of the date of the records or the date of
10 the entries appearing in the records, unless the Department, in
11 writing, authorizes their destruction or disposal at an earlier
12 date. At all times during the usual business hours of the day,
13 any duly authorized agent or employee of the Department may
14 enter any place of business of the retailer without a search
15 warrant and may inspect the premises to determine whether any
16 of the provisions of this Act are being violated. If such agent
17 or employee is denied free access or is hindered or interfered
18 with in making such examination as herein provided, the license
19 of the retailer shall be subject to suspension or revocation by
20 the Department.

21 Section 50. Distribution of vapor products to, and
22 possession by, persons under 18 years of age prohibited.

23 (a) A person, either directly or indirectly by an agent or
24 employee, or by a vending machine owned by the person or
25 located in the person's establishment, may not sell, offer for

1 sale, give, or furnish any vapor product to a person under 18
2 years of age.

3 (b) Before selling, offering for sale, giving, or
4 furnishing an vapor product to another person, the person
5 selling, offering for sale, giving, or furnishing the vapor
6 product shall verify that the person is at least 18 years of
7 age by:

8 (1) examining from any person that appears to be under
9 27 years of age a government-issued photographic
10 identification that establishes the person is at least 18
11 years of age; or

12 (2) for sales made though the Internet or other remote
13 sales methods, performing an age verification through an
14 independent, third-party age verification service that
15 compares information available from public records to the
16 personal information entered by the person during the
17 ordering process that establishes the person is 18 years of
18 age or older.

19 (c) A person under 18 years of age shall not possess a
20 vapor product.

21 Section 55. Penalties for distribution of vapor products
22 to, and possession by, persons under 18 years of age.

23 (a) Any person who violates section (a) or (b) of Section
24 50 is guilty of a petty offense. For the first offense in a
25 24-month period, the person shall be fined \$200 if his or her

1 employer has a training program that facilitates compliance
2 with minimum-age vapor product laws. For the second offense in
3 a 24-month period, the person shall be fined \$400 if his or her
4 employer has a training program that facilitates compliance
5 with minimum-age vapor products laws. For the third offense in
6 a 24-month period, the person shall be fined \$600 dollars if
7 his or her employer has a training program that facilitates
8 compliance with minimum-age vapor product laws. For the fourth
9 or subsequent offense in a 24-month period, the person shall be
10 fined \$800 if his or her employer has a training program that
11 facilitates compliance with minimum-age vapor products laws.
12 For the purposes of this subsection, the 24-month period shall
13 begin with the person's first violation of the Act. The
14 penalties in this subsection are in addition to any other
15 penalties provided by law.

16 (a-5) Any retailer who violates section (a) or (b) of
17 Section 50 is guilty of a petty offense. For the first offense
18 in a 24-month period, the retailer shall be fined \$200 if it does
19 not have a training program that facilitates compliance with
20 minimum-age vapor product laws. For the second offense in a
21 24-month period, the retailer shall be fined \$400 if it does
22 not have a training program that facilitates compliance with
23 minimum-age vapor products laws. For the third offense in a
24 24-month period, the retailer shall be fined \$600 dollars if it
25 does not have a training program that facilitates compliance
26 with minimum-age vapor product laws. For the fourth or

1 subsequent offense in a 24-month period, the retailer shall be
2 fined \$800 if it does not have a training program that
3 facilitates compliance with minimum-wage vapor products laws.
4 For the purposes of this subsection, the 24-month period shall
5 begin with the person's first violation of the Act. The
6 penalties in this subsection are in addition to any other
7 penalties provided by law.

8 (a-10) A training program that facilitates compliance with
9 minimum-age vapor products laws must include at least the
10 following elements: (i) it must explain that only individuals
11 displaying valid identification demonstrating that they are 18
12 years of age or older shall be eligible to purchase alternative
13 nicotine products; (ii) it must explain where a clerk can check
14 identification for a date of birth; and (iii) it must explain
15 the penalties that a clerk and retailer are subject to for
16 violations of this Act.

17 (b) If a minor violates subsection (c) of Section 50, he or
18 she is guilty of a petty offense and the court may impose a
19 sentence of 25 hours of community service and a fine of \$50 for
20 a first violation.

21 (c) A second violation by a minor of subsection (c) of
22 Section 50 that occurs within 12 months after the first
23 violation is punishable by a fine of \$75 and 50 hours of
24 community service.

25 (d) A third or subsequent violation by a minor of
26 subsection (c) of Section 50 that occurs within 12 months after

1 the first violation is punishable by a \$200 fine and 50 hours
2 of community service.

3 (e) Any second or subsequent violation not within the
4 12-month time period after the first violation is punishable as
5 provided for a first violation.

6 (f) If a minor is convicted of or placed on supervision for
7 a violation of subsection (c) of Section 50, the court may, in
8 its discretion, and upon recommendation by the State's Attorney
9 order that minor and his or her parents or legal guardian to
10 attend a youth diversion program if that program is available
11 in the jurisdiction where the offender resides. Attendance at a
12 youth diversion program shall be time-credited against any
13 community service time imposed for any first violation of
14 subsection (c) of Section 50. In addition to any other penalty
15 that the court may impose for a violation of subsection (c) of
16 Section 50, the court, upon request by the State's Attorney,
17 may in its discretion require the offender to remit a fee for
18 his or her attendance at a youth diversion program.

19 For the purposes of this Section, a "youth diversion
20 program" includes, but is not limited to, a seminar designed to
21 educate a person on the physical and psychological effects of
22 using nicotine products and the health consequences of using
23 nicotine products that can be conducted with a locality's youth
24 diversion program.

25 (g) All moneys collected as fines for violations of Section
26 (a), (b), or (c) of Section 50 of this Act shall be distributed

1 in the following manner:

2 (1) one-half of each fine shall be distributed to the
3 unit of local government or other entity that successfully
4 prosecuted the offender; and

5 (2) one-half shall be remitted to the State to be
6 deposited in the Vapor Products Compliance Fund to be used
7 for enforcement of this Act.

8 Any violation of subsection (a) or (b) of Section 50 shall
9 be reported to the Department of Revenue within 7 business
10 days.

11 Section 60. Display of vapor products.

12 (a) Vapor product displays. All vapor products must be sold
13 from behind the counter or in an age restricted area or in a
14 sealed display case.

15 (b) The restrictions in this Section do not apply to an
16 adult-only facility.

17 (c) The restrictions in this Section do not apply to a
18 retail store that (i) derives at least 90% of its revenue from
19 tobacco, tobacco related products, or vapor products; (ii) does
20 not permit persons under the age of 18 to enter the premises
21 unless accompanied by a parent or legal guardian; and (iii)
22 posts a sign on the main entrance way stating that persons
23 under the age of 18 are prohibited from entering unless
24 accompanied by a parent or legal guardian.

25 (d) A violation of this Section is a petty offense for

1 which the court shall impose a fine of not less than \$100 nor
2 more than \$1,000.

3 Section 65. The Prevention of Tobacco Use by Minors and
4 Sale and Distribution of Tobacco Products Act is amended by
5 changing Section 1.5 as follows:

6 (720 ILCS 675/1.5)

7 Sec. 1.5. Distribution of alternative nicotine products to
8 persons under 18 years of age prohibited.

9 (a) For the purposes of this Section, "alternative nicotine
10 product" means a product or device not consisting of or
11 containing tobacco that provides for the ingestion into the
12 body of nicotine, whether by chewing, smoking, absorbing,
13 dissolving, inhaling, snorting, sniffing, or by any other
14 means. "Alternative nicotine product" excludes cigarettes,
15 smokeless tobacco, or other tobacco products as these terms are
16 defined in Section 1 of this Act, vapor products as defined
17 under Section 5 of the Vapor Products Regulatory Act, and any
18 product approved by the United States Food and Drug
19 Administration as a non-tobacco product for sale as a tobacco
20 cessation product, as a tobacco dependence product, or for
21 other medical purposes, and is being marketed and sold solely
22 for that approved purpose.

23 (b) A person, either directly or indirectly by an agent or
24 employee, or by a vending machine owned by the person or

1 located in the person's establishment, may not sell, offer for
2 sale, give, or furnish any alternative nicotine product, or any
3 cartridge or component of an alternative nicotine product, to a
4 person under 18 years of age.

5 (c) Before selling, offering for sale, giving, or
6 furnishing an alternative nicotine product, or any cartridge or
7 component of an alternative nicotine product, to another
8 person, the person selling, offering for sale, giving, or
9 furnishing the alternative nicotine product shall verify that
10 the person is at least 18 years of age by:

11 (1) examining from any person that appears to be under
12 27 years of age a government-issued photographic
13 identification that establishes the person is at least 18
14 years of age or

15 (2) for sales made ~~through~~ through the Internet or other
16 remote sales methods, performing an age verification
17 through an independent, third-party age verification
18 service that compares information available from public
19 records to the personal information entered by the person
20 during the ordering process that establishes the person is
21 18 years of age or older.

22 (d) A person under 18 years of age shall not possess an
23 alternative nicotine product.

24 (Source: P.A. 98-350, eff. 1-1-14; 99-496, eff. 6-1-16; revised
25 10-25-16.)

1 Section 70. The State Finance Act is amended by adding
2 Section 5.878 as follows:

3 (30 ILCS 105/5.878 new)

4 Sec. 5.878. The Vapor Products Compliance Fund.

5 Section 99. Effective date. This Act takes effect January
6 1, 2018.