



Rep. Kathleen Willis

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1 AMENDMENT TO HOUSE BILL 3877

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3877, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 1. Short title. This Act may be cited as the Vapor  
6 Products Regulatory Act.

7 Section 5. Definitions. As used in this Act:

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

1 that no person under legal age is present during the event or  
2 time period in question.

3 "Age restricted area" means a signed designated area in a  
4 retail establishment to which minors are not permitted access  
5 unless accompanied by a parent or legal guardian.

6 "Department" means the Department of Revenue.

7 "Electronic nicotine delivery system" means a powered  
8 vaporizer, and any component parts of a powered vaporizer  
9 intended to be used in the powered vaporizer, that converts  
10 e-liquid into vapor which is intended for inhalation.

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

14 "Minor" means a person who has not reached the minimum  
15 legal age for the purchase of alternative nicotine products.

16 "Person" means any natural individual, firm, partnership,  
17 association, joint stock company, joint adventure, or public or  
18 private corporation, however formed, limited liability  
19 company, or a receiver, executor, administrator, trustee,  
20 conservator, or other representative appointed by order of any  
21 court.

22 "Records" means all data maintained by the retailer of  
23 vapor products, including data on paper, microfilm,  
24 microfiche, or any type of machine sensible data compilation.

25 "Retailer of vapor products" means any person engaged in  
26 the business of selling e-liquids or vapor products to

1 consumers in this State for use or consumption and not for  
2 resale in any form, for valuable consideration, regardless of  
3 amount, quantity, or number of sales. "Retailer of vapor  
4 products" does not include any person or business subject to  
5 the Cigarette Tax Act, the Tobacco Products Tax Act of 1995,  
6 the Prevention of Tobacco Use By Minors and Sale and  
7 Distribution of Tobacco Products Act, the Display of Tobacco  
8 Products Act, or the Compassionate Use of Medical Cannabis  
9 Pilot Program Act.

10 "Sale" means any transfer, exchange, or barter in any  
11 manner or by any means whatsoever for a consideration and  
12 includes all sales made by persons.

13 "Vapor product" means an e-liquid or electronic nicotine  
14 delivery system as defined under this Act.

15 Section 10. Retailer's license; fee.

16 (a) On or after January 1, 2019, no person may engage in  
17 business as a retailer of vapor products in this State without  
18 first having obtained a vapor products retail license from the  
19 Department. Applications for a license shall be made to the  
20 Department, by electronic means, in a form prescribed by the  
21 Department. Each applicant for a license under this Section  
22 shall furnish to the Department, in an electronic format  
23 established by the Department, the following information:

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

25 (2) the address of the location at which the applicant

1 proposes to engage in business as a retailer of vapor  
2 products in this State; and

3 (3) any other additional information as the Department  
4 may lawfully require by its rules.

5 (b) The annual license fee payable to the Department for  
6 each retailer's license shall be \$150. Seventy-five dollars of  
7 the fee shall be deposited into the Vapor Products Compliance  
8 Fund and shall be used for the cost of enforcement of this Act.  
9 Seventy-five dollars of the fee shall be used by the Department  
10 of Human Services for unannounced investigations of retailers  
11 licensed under this Act.

12 An applicant for a license shall pay the fee to the  
13 Department at the time of submitting its application for  
14 license to the Department. The Department shall require an  
15 applicant for a license under this Section to electronically  
16 file and pay the fee.

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

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

26 (2) a corporation, if any officer, manager, or director

1 of the corporation, or any stockholder or stockholders  
2 owning in the aggregate more than 5% of the stock of the  
3 corporation, would not be eligible to receive a license  
4 under this Act for any reason; or

5 (3) a person who has been convicted of a violation of  
6 the federal Trademark Act of 1946 related to the sale of  
7 vapor products in the United States.

8 (d) The Department, upon receipt of an application and  
9 license fee, in proper form, from a person who is eligible to  
10 receive a retailer's license under this Act, shall issue to the  
11 applicant a license in form as prescribed by the Department,  
12 which license shall permit the applicant to which it is issued  
13 to engage in business as a retailer of vapor products under  
14 this Act at the place shown in his or her application. All  
15 licenses issued by the Department under this Section shall be  
16 valid for a period not to exceed one year after issuance unless  
17 sooner revoked, canceled, or suspended as provided in this Act.  
18 No license issued under this Section is transferable or  
19 assignable. The license shall be conspicuously displayed in the  
20 place of business conducted by the licensee in this State under  
21 the license. A person who obtains a license as a retailer of  
22 vapor products who ceases to do business as specified in the  
23 license, or who never commenced business, or whose license is  
24 suspended or revoked, shall immediately surrender the license  
25 to the Department. The Department shall not issue a license to  
26 a retailer of vapor products unless the retailer of vapor

1 products is also validly registered under the Retailers'  
2 Occupation Tax Act. A person who obtains a license as a  
3 retailer of vapor products who ceases to do business as  
4 specified in the license, or who never commenced business, or  
5 whose license is suspended or revoked, shall immediately  
6 surrender the license to the Department.

7 (e) Any person aggrieved by any decision of the Department  
8 under this Section may, within 30 days after notice of the  
9 decision, protest and request a hearing. Upon receiving a  
10 request for hearing, the Department shall give written notice  
11 to the person requesting the hearing of the time and place  
12 fixed for the hearing and shall hold a hearing in conformity  
13 with the provisions of this Act and then issue its final  
14 administrative decision in the matter to that person. In  
15 absence of protest and request for a hearing within 30 days,  
16 the Department's decision shall become final without any  
17 further determination being made or notice given.

18 Section 20. Acting as a retailer of vapor products without  
19 a license; penalty. A person who knowingly acts as a retailer  
20 of vapor products in this State without first having obtained a  
21 license to do so in compliance with this Act is guilty of a  
22 Class A misdemeanor for the first offense and a Class 4 felony  
23 for a second or subsequent offense. Each day the person  
24 operates as a retailer of vapor products without a license  
25 constitutes a separate offense. The Department may, by

1 application to any circuit court, obtain an injunction  
2 restraining any person who engages in business as a retailer of  
3 vapor products without a license (either because his or her  
4 license has been revoked, canceled, or suspended or because of  
5 a failure to obtain a license in the first instance) from  
6 engaging in that business until that person, as if that person  
7 were a new applicant for a license, complies with all of the  
8 conditions, restrictions, and requirements of this Act and  
9 qualifies for and obtains a license.

10 Section 25. Revocation, cancellation, or suspension of a  
11 retail license.

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

20 (b) A person aggrieved by any decision of the Department  
21 under this Section may, within 30 days after notice of the  
22 decision, protest and request a hearing. Upon receiving a  
23 request for a hearing, the Department shall give notice to the  
24 person requesting the hearing of the time and place fixed for  
25 the hearing and shall hold a hearing in conformity with the

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

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

17 If the retailer of vapor products does not have a training  
18 program that facilitates compliance with minimum-age vapor  
19 products laws, the Department shall suspend for 3 days the  
20 license of that retailer of vapor products for a second  
21 violation of subsection (a) or (b) of Section 50.

22 If the retailer of vapor products does not have a training  
23 program that facilitates compliance with minimum-age vapor  
24 products laws, the Department shall suspend for 7 days the  
25 license of that retailer of vapor products for a third  
26 violation of subsection (a) or (b) of Section 50.



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

6           Section 30. Vapor product labeling and safety. Any e-liquid  
7 container sold by a retailer in this State shall:

8           (1) use childproof caps that have the child-resistant  
9 effectiveness set forth in the federal prevention  
10 packaging standards at 16 C.F.R. 1700.15(b) (1); and

11           (2) contain a label that meets the requirements set  
12 forth in 21 C.F.R. 1143.3.

13           Section 35. Peace officer investigation.

14           (a) Whenever any peace officer of the State shall have  
15 reason to believe that any violation of this Act has occurred  
16 and that the person so violating the Act has in his, hers, or  
17 its possession any vapor product, or any vending device  
18 containing the vapor products, he or she may file or cause to  
19 be filed his or her complaint in writing, verified by  
20 affidavit, with any court within whose jurisdiction the  
21 premises to be searched are situated, stating the facts upon  
22 which the belief is founded, the premises to be searched, and  
23 the property to be seized, and procure a search warrant and  
24 execute the warrant.

1           (b) Upon the execution of the search warrant, the peace  
2 officer executing the search warrant shall make due return of  
3 the warrant to the court issuing the warrant, together with an  
4 inventory of the property taken under the warrant. The court  
5 shall then issue process against the owner of the property if  
6 he is known; otherwise, the process shall be issued against the  
7 person in whose possession the property so taken is found, if  
8 the person is known. In case of inability to serve the process  
9 upon the owner or the person in possession of the property at  
10 the time of its seizure, notice of the proceedings before the  
11 court shall be given as required by the statutes of the State  
12 governing cases of attachment. Upon the return of the process  
13 duly served or upon the posting or publishing of notice made,  
14 the court or jury, if a jury shall be demanded, shall proceed  
15 to determine whether or not the property so seized was held or  
16 possessed in violation of this Act, or whether, if a vending  
17 device has been so seized, it contained at the time of its  
18 seizure any vapor products held or possessed in violation of  
19 this Act.

20           Section 40. Destruction or use of forfeited property. When  
21 any vapor product or any vending device shall have been  
22 declared forfeited to the State and all proceedings for  
23 judicial review have terminated, the Department shall destroy  
24 or maintain and allow the use of the property in an undercover  
25 capacity.

1 Section 45. Retailers; records.

2 (a) A retailer of vapor products who is required to procure  
3 a license under this Act shall keep within this State complete  
4 and accurate records of vapor products purchased, sold, or  
5 otherwise disposed of and shall preserve and keep all invoices,  
6 bills of lading, sales records, and copies of bills of sale,  
7 returns, and other pertinent papers and documents relating to  
8 the purchase, sale, or disposition of vapor products. The  
9 records need not be maintained on the licensed premises, but  
10 must be maintained in this State; however, if access is  
11 available electronically, the records may be maintained  
12 out-of-State. However, all original invoices or copies of  
13 invoices covering purchases of vapor products must be retained  
14 on the licensed premises for a period of 90 days after the  
15 purchase, unless the Department has granted a waiver in  
16 response to a written request in cases where records are kept  
17 at a central business location within this State or in cases  
18 where records that are available electronically are maintained  
19 out-of-State. The Department shall adopt rules regarding the  
20 eligibility for a waiver, revocation of a waiver, and  
21 requirements and standards for maintenance and accessibility  
22 of records located at a central location out-of-State under a  
23 waiver provided under this Section.

24 (b) Records shall be preserved for a period of at least 3  
25 years after the later of the date of the records or the date of

1 the entries appearing in the records, unless the Department, in  
2 writing, authorizes their destruction or disposal at an earlier  
3 date. At all times during the usual business hours of the day,  
4 any duly authorized agent or employee of the Department may  
5 enter any place of business of the retailer of vapor products  
6 without a search warrant and may inspect the records required  
7 to be maintained under this Section. If the agent or employee  
8 is denied free access or is hindered or interfered with in  
9 making the examination as provided in this Section, the license  
10 of the retailer of vapor products shall be subject to  
11 suspension or revocation by the Department.

12 Section 50. Distribution of vapor products to, and  
13 possession by, minors prohibited.

14 (a) A person, either directly or indirectly by an agent or  
15 employee, or by a vending machine owned by the person or  
16 located in the person's establishment, may not sell, offer for  
17 sale, give, or furnish any vapor product to a minor.

18 (b) Before selling, offering for sale, giving, or  
19 furnishing a vapor product to another person, the person  
20 selling, offering for sale, giving, or furnishing the vapor  
21 product shall, by doing the following, verify that the person  
22 is not a minor:

23 (1) if the person appears to be under 27 years of age,  
24 examining a government-issued photographic identification  
25 that establishes that the person is not a minor; or

1           (2) for sales made through the Internet or other remote  
2 sales methods, performing an age verification through an  
3 independent, third-party age verification service that  
4 compares information available from public records to the  
5 personal information entered by the person during the  
6 ordering process that establishes that the person is not a  
7 minor.

8           (c) A minor shall not possess a vapor product.

9           (d) The Department of Human Services shall administer a  
10 program to conduct unannounced investigations of Illinois  
11 retailers licensed under this Act to determine compliance with  
12 State and federal laws relating to the illegal sale of vapor  
13 products to persons who are not of legal age. The results of  
14 the unannounced investigations shall be reported to the  
15 Department of Human Services and the Department of Revenue.

16           Section 55. Penalties for distribution of vapor products  
17 to, and possession by, minors.

18           (a) Any person who violates subsection (a) or (b) of  
19 Section 50 is guilty of a petty offense. For the first offense  
20 in a 24-month period, the person shall be fined \$200 if his or  
21 her employer has a training program that facilitates compliance  
22 with minimum-age vapor product laws. For the second offense in  
23 a 24-month period, the person shall be fined \$400 if his or her  
24 employer has a training program that facilitates compliance  
25 with minimum-age vapor products laws. For the third offense in

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

11 (a-5) Any retailer of vapor products who violates  
12 subsection (a) or (b) of Section 50 is guilty of a petty  
13 offense. For the first offense in a 24-month period, the  
14 retailer of vapor products shall be fined \$200 if it does not have  
15 a training program that facilitates compliance with  
16 minimum-age vapor product laws. For the second offense in a  
17 24-month period, the retailer of vapor products shall be fined  
18 \$400 if it does not have a training program that facilitates  
19 compliance with minimum-age vapor products laws. For the third  
20 offense in a 24-month period, the retailer of vapor products  
21 shall be fined \$600 if it does not have a training program that  
22 facilitates compliance with minimum-age vapor product laws.  
23 For the fourth or subsequent offense in a 24-month period, the  
24 retailer of vapor products shall be fined \$800 if it does not  
25 have a training program that facilitates compliance with  
26 minimum-wage vapor products laws. For the purposes of this

1 subsection, the 24-month period shall begin with the person's  
2 first violation of the Act. The penalties in this subsection  
3 are in addition to any other penalties provided by law.

4 (a-10) A training program that facilitates compliance with  
5 minimum-age vapor products laws must include at least the  
6 following elements: (i) it must explain that only individuals  
7 displaying valid identification demonstrating that they are of  
8 legal age shall be eligible to purchase vapor products; and  
9 (ii) it must explain where a clerk can check identification for  
10 a date of birth. The training may be conducted electronically.  
11 Each retailer of vapor products that has a training program  
12 shall require each employee who completes the training program  
13 to sign a form attesting that the employee has received and  
14 completed the vapor products training. The form shall be kept  
15 in the employee's file and may be used to provide proof of  
16 training.

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 used  
6 for enforcement of this Act.

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

9 Section 60. Display of vapor products.

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

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

15 (c) The restrictions in this Section do not apply to a  
16 retail store that (i) derives at least 90% of its revenue from  
17 tobacco, tobacco related products, or vapor products; (ii) does  
18 not permit persons under the age of 18 to enter the premises  
19 unless accompanied by a parent or legal guardian; (iii) posts a  
20 sign on the main entrance way stating that persons under the  
21 age of 18 are prohibited from entering unless accompanied by a  
22 parent or legal guardian; or (iv) is subject to the Cigarette  
23 Tax Act, the Tobacco Products Tax Act of 1995, the Prevention  
24 of Tobacco Use By Minors and Sale and Distribution of Tobacco  
25 Products Act, or the Display of Tobacco Products Act.

1 (d) A violation of this Section is a petty offense for  
2 which the court shall impose a fine of not less than \$100 nor  
3 more than \$1,000.

4 Section 900. The Prevention of Tobacco Use by Minors and  
5 Sale and Distribution of Tobacco Products Act is amended by  
6 changing Section 1.5 as follows:

7 (720 ILCS 675/1.5)

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

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

24 (b) A person, either directly or indirectly by an agent or

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

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

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

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

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

25 (Source: P.A. 99-496, eff. 6-1-16; 100-201, eff. 8-18-17.)

1           Section 905. The State Finance Act is amended by adding  
2           Section 5.886 as follows:

3           (30 ILCS 105/5.886 new)

4           Sec. 5.886. The Vapor Products Compliance Fund.

5           Section 999. Effective date. This Act takes effect July 1,  
6           2019."