



Rep. Deb Conroy

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LRB101 14174 RPS 63902 a

1 AMENDMENT TO HOUSE BILL 3883

2 AMENDMENT NO. _____. Amend House Bill 3883 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Flavored Tobacco Ban Act.

6 Section 5. Definitions. In this Act:

7 "Alternative nicotine product" means a product or device
8 not consisting of or containing tobacco that provides for the
9 ingestion into the body of nicotine, whether by chewing,
10 smoking, absorbing, dissolving, inhaling, snorting, sniffing,
11 or by any other means. "Alternative nicotine product" does not
12 include: a cigarette as defined in Section 1 of the Cigarette
13 Tax Act or a tobacco product as defined in Section 10-5 of the
14 Tobacco Products Tax Act of 1995; a tobacco product or
15 electronic cigarette as defined in this Section; or any product
16 approved by the United States Food and Drug Administration for

1 sale as a tobacco cessation product, as a tobacco dependence
2 product, or for other medical purposes, and marketed and sold
3 solely for that approved purpose.

4 "Characterizing flavor" means a distinguishable taste or
5 aroma, other than the taste or aroma of tobacco, including, but
6 not limited to, any fruit, chocolate, vanilla, honey, candy,
7 cocoa, dessert, alcoholic beverage, herb, or spice flavoring. A
8 tobacco product, related tobacco product, alternative nicotine
9 product, or solution or substance intended for use with
10 electronic cigarettes or any component part of a tobacco
11 product, related tobacco product, alternative nicotine
12 product, or solution or substance intended for use with
13 electronic cigarettes shall not be construed as having a
14 characterizing flavor based solely on the use of trace
15 additives or flavorings or the provision of ingredient
16 information.

17 "Department" means the Department of Human Services.

18 "Distinguishable" means perceivable by either the sense of
19 smell or taste.

20 "Electronic cigarette" means:

21 (1) any device that employs a battery or other
22 mechanism to heat a solution or substance to produce a
23 vapor or aerosol intended for inhalation;

24 (2) any cartridge or container of a solution or
25 substance intended to be used with or in the device or to
26 refill the device; or

1 (3) any solution or substance, whether or not it
2 contains nicotine, intended for use in the device.

3 "Electronic cigarette" includes, but is not limited to, any
4 electronic nicotine delivery system, electronic cigar,
5 electronic cigarillo, electronic pipe, electronic hookah, vape
6 pen, or similar product or device, and any components or parts
7 that can be used to build the product or device. "Electronic
8 cigarette" does not include: a cigarette as defined in Section
9 1 of the Cigarette Tax Act; a tobacco product, related tobacco
10 product, and alternative nicotine product as defined in this
11 Section; any product approved by the United States Food and
12 Drug Administration for sale as a tobacco cessation product, as
13 a tobacco dependence product, or for other medical purposes,
14 and marketed and sold solely for that approved purpose; any
15 asthma inhaler prescribed by a physician for that condition and
16 marketed and sold solely for that approved purpose; or any
17 therapeutic product approved for use under the Compassionate
18 Use of Medical Cannabis Program Act.

19 "Flavored alternative nicotine product" means any
20 alternative nicotine product that contains a natural or
21 artificial constituent or additive that imparts a
22 characterizing flavor.

23 "Flavored related tobacco product" means any related
24 tobacco product that contains a natural or artificial
25 constituent or additive that imparts a characterizing flavor.

26 "Flavored solution or substance intended for use with

1 electronic cigarettes" means any solution or substance
2 intended for use with electronic cigarettes that contains a
3 natural or artificial constituent or additive that imparts a
4 characterizing flavor.

5 "Flavored tobacco product" means any tobacco product that
6 contains a natural or artificial constituent or additive that
7 imparts a characterizing flavor.

8 "Labeling" means written, printed, pictorial, or graphic
9 matter upon any tobacco product, related tobacco product,
10 alternative nicotine product, or solution or substance
11 intended for use with electronic cigarettes or any of its
12 packaging.

13 "Packaging" means a pack, box, carton, or container of any
14 kind or, if there is no other container, any wrapping,
15 including cellophane, in which a tobacco product, related
16 tobacco product, alternative nicotine product, or solution or
17 substance intended for use with electronic cigarettes is sold
18 or offered for sale to a consumer.

19 "Related tobacco product" means any product intended for or
20 traditionally used with tobacco, including, but not limited to,
21 papers, wraps, tubes, or filters. A product of a type that has
22 in the past been used in conjunction with tobacco or nicotine
23 use will be deemed a "related tobacco product" regardless of
24 any labeling or descriptive language on such product stating
25 that the product is not intended for use with tobacco or for
26 non-tobacco use only or other similar language.

1 "Retail location" means: (1) a building from which tobacco
2 products, related tobacco products, alternative nicotine
3 products, or solutions or substances intended for use with
4 electronic cigarettes are sold at retail; or (2) a vending
5 machine.

6 "Retailer" means a person who engages in this State in the
7 sale of tobacco products, related tobacco products,
8 alternative nicotine products, or solutions or substances
9 intended for use with electronic cigarettes directly to the
10 public from a retail location, including a person who operates
11 vending machines from which tobacco products, related tobacco
12 products, alternative nicotine products, or solutions or
13 substances intended for use with electronic cigarettes are sold
14 in this State.

15 "Tobacco product" means any product containing or made from
16 tobacco that is intended for human consumption, whether smoked,
17 heated, chewed, absorbed, dissolved, inhaled, snorted,
18 sniffed, or ingested by any other means, including, but not
19 limited to, cigarettes, cigars, little cigars, chewing
20 tobacco, pipe tobacco, snuff, snus, and any other smokeless
21 tobacco product that contains tobacco that is finely cut,
22 ground, powdered, or leaf and intended to be placed in the oral
23 cavity. "Tobacco product" includes any component, part, or
24 accessory of a tobacco product, whether or not sold separately.
25 "Tobacco product" does not include: an electronic cigarette or
26 alternative nicotine product as defined in this Section; or any

1 product that has been approved by the United States Food and
2 Drug Administration for sale as a tobacco cessation product, as
3 a tobacco dependence product, or for other medical purposes,
4 and is marketed and sold solely for that approved purpose.

5 Section 10. Prohibition.

6 (a) A retailer or any of the retailer's agents or employees
7 may not sell, offer for sale, or possess with the intent to
8 sell or offer for sale a flavored tobacco product, flavored
9 related tobacco product, flavored alternative nicotine
10 product, or flavored solution or substance intended for use
11 with electronic cigarettes.

12 (b) There is a rebuttable presumption that a tobacco
13 product, related tobacco product, alternative nicotine
14 product, or solution or substance intended for use with
15 electronic cigarettes is a flavored tobacco product, flavored
16 related tobacco product, flavored alternative nicotine
17 product, or flavored solution or substance intended for use
18 with electronic cigarettes if the tobacco product, related
19 tobacco product, alternative nicotine product, or solution or
20 substance intended for use with electronic cigarettes has or
21 produces a characterizing flavor or, if a manufacturer or any
22 of a manufacturer's agents or employees, in the course of their
23 agency or employment, has made a statement or claim directed to
24 consumers or to the public that the tobacco product,
25 alternative nicotine product, or solution or substance

1 intended for use with electronic cigarettes has or produces a
2 characterizing flavor, including, but not limited to, text,
3 color, or images on the product's labeling or packaging that
4 are used to explicitly or implicitly communicate or suggest
5 that the tobacco product, related tobacco product, alternative
6 nicotine product, or solution or substance intended for use
7 with electronic cigarettes has a characterizing flavor. A
8 product with labeling or packaging that suggests the presence
9 of a characterizing flavor or uses a concept flavor is presumed
10 to be a flavored tobacco product, flavored related tobacco
11 product, flavored alternative nicotine product, or flavored
12 solution or substance intended for use with electronic
13 cigarettes.

14 Section 15. Administrative rules; enforcement. The
15 Department shall enforce this Act and may adopt rules or
16 guidelines for the implementation and enforcement of this Act.

17 Section 20. Violations. Upon a decision by the Department
18 that a retailer or a retailer's agent or employee has engaged
19 in any conduct that violates this Act, the Department of
20 Revenue may suspend that retailer's license under Section 10-25
21 of the Tobacco Products Tax Act of 1995. Any suspension shall
22 be preceded by a notice of correction or a notice of initial
23 determination of violation.

1 Section 25. No conflict with federal or State law. Nothing
2 in this Act shall be interpreted or applied to create any
3 requirement, power, or duty that is preempted by federal or
4 State law.

5 Section 90. The Tobacco Products Tax Act of 1995 is amended
6 by changing Section 10-25 as follows:

7 (35 ILCS 143/10-25)

8 Sec. 10-25. License actions.

9 (a) The Department may, after notice and a hearing, revoke,
10 cancel, or suspend the license of any distributor or retailer
11 who violates any of the provisions of this Act, fails to keep
12 books and records as required under this Act, fails to make
13 books and records available for inspection upon demand by a
14 duly authorized employee of the Department, or violates a rule
15 or regulation of the Department for the administration and
16 enforcement of this Act. The notice shall specify the alleged
17 violation or violations upon which the revocation,
18 cancellation, or suspension proceeding is based.

19 (b) The Department may revoke, cancel, or suspend the
20 license of any distributor for a violation of the Tobacco
21 Product Manufacturers' Escrow Enforcement Act as provided in
22 Section 20 of that Act.

23 (b-5) The Department may suspend the license of any
24 distributor or retailer for a violation of the Flavored Tobacco

1 Ban Act as provided in Section 20 of that Act.

2 (c) If the retailer has a training program that facilitates
3 compliance with minimum-age tobacco laws, the Department shall
4 suspend for 3 days the license of that retailer for a fourth or
5 subsequent violation of the Prevention of Tobacco Use by
6 Persons under 21 Years of Age and Sale and Distribution of
7 Tobacco Products Act, as provided in subsection (a) of Section
8 2 of that Act. For the purposes of this Section, any violation
9 of subsection (a) of Section 2 of the Prevention of Tobacco Use
10 by Persons under 21 Years of Age and Sale and Distribution of
11 Tobacco Products Act occurring at the retailer's licensed
12 location, during a 24-month period, shall be counted as a
13 violation against the retailer.

14 If the retailer does not have a training program that
15 facilitates compliance with minimum-age tobacco laws, the
16 Department shall suspend for 3 days the license of that
17 retailer for a second violation of the Prevention of Tobacco
18 Use by Persons under 21 Years of Age and Sale and Distribution
19 of Tobacco Products Act, as provided in subsection (a-5) of
20 Section 2 of that Act.

21 If the retailer does not have a training program that
22 facilitates compliance with minimum-age tobacco laws, the
23 Department shall suspend for 7 days the license of that
24 retailer for a third violation of the Prevention of Tobacco Use
25 by Persons under 21 Years of Age and Sale and Distribution of
26 Tobacco Products Act, as provided in subsection (a-5) of

1 Section 2 of that Act.

2 If the retailer does not have a training program that
3 facilitates compliance with minimum-age tobacco laws, the
4 Department shall suspend for 30 days the license of a retailer
5 for a fourth or subsequent violation of the Prevention of
6 Tobacco Use by Persons under 21 Years of Age and Sale and
7 Distribution of Tobacco Products Act, as provided in subsection
8 (a-5) of Section 2 of that Act.

9 A training program that facilitates compliance with
10 minimum-age tobacco laws must include at least the following
11 elements: (i) it must explain that only individuals displaying
12 valid identification demonstrating that they are 21 years of
13 age or older shall be eligible to purchase cigarettes or
14 tobacco products and (ii) it must explain where a clerk can
15 check identification for a date of birth. The training may be
16 conducted electronically. Each retailer that has a training
17 program shall require each employee who completes the training
18 program to sign a form attesting that the employee has received
19 and completed tobacco training. The form shall be kept in the
20 employee's file and may be used to provide proof of training.

21 (d) The Department may, by application to any circuit
22 court, obtain an injunction restraining any person who engages
23 in business as a distributor of tobacco products without a
24 license (either because his or her license has been revoked,
25 canceled, or suspended or because of a failure to obtain a
26 license in the first instance) from engaging in that business

1 until that person, as if that person were a new applicant for a
2 license, complies with all of the conditions, restrictions, and
3 requirements of Section 10-20 of this Act and qualifies for and
4 obtains a license. Refusal or neglect to obey the order of the
5 court may result in punishment for contempt.

6 (Source: P.A. 100-940, eff. 8-17-18; 101-2, eff. 7-1-19.)

7 Section 97. Severability. The provisions of this Act are
8 severable under Section 1.31 of the Statute on Statutes."