

HB3883



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3883

Introduced 10/17/2019, by Rep. Deb Conroy - Mary Edly-Allen -
Martin J. Moylan - Joyce Mason - David McSweeney, et al.

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 143/10-25

Creates the Flavored Tobacco Ban Act. Prohibits the sale or distribution by an establishment of any flavored tobacco product. Provides that the Department of Public Health shall enforce the Act and may adopt rules or guidelines for the implementation and enforcement of the Act. Amends the Tobacco Products Tax Act of 1995. Permits the Department of Revenue to suspend the license of any distributor that violates the Flavored Tobacco Ban Act.

LRB101 14174 CPF 63042 b

A BILL FOR

1 AN ACT concerning health.

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
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.

12 "Characterizing flavor" means a distinguishable taste or
13 aroma, other than the taste or aroma of tobacco, imparted by a
14 tobacco product or any byproduct produced by the tobacco
15 product. "Characterizing flavor" includes, but is not limited
16 to, tastes or aromas relating to any fruit, chocolate, vanilla,
17 honey, candy, cocoa, dessert, alcoholic beverage, mint,
18 wintergreen, herb, or spice. "Characterizing flavor" does not
19 include tastes or aromas relating to menthol. A tobacco product
20 does not have a characterizing flavor solely because of the use
21 of additives or flavorings or the provision of ingredient
22 information. Rather, it is the presence of a distinguishable
23 taste or aroma that constitutes a characterizing flavor.

1 "Constituent" means any ingredient, substance, chemical,
2 or compound, other than tobacco, water, or reconstituted
3 tobacco sheet, that is added by a manufacturer to a tobacco
4 product during the processing, manufacture, or packing of the
5 tobacco product.

6 "Department" means the Department of Public Health.

7 "Distinguishable" means perceivable by either the sense of
8 smell or taste.

9 "Electronic cigarette" means:

10 (1) any device that employs a battery or other
11 mechanism to heat a solution or substance to produce a
12 vapor or aerosol intended for inhalation;

13 (2) any cartridge or container of a solution or
14 substance intended to be used with or in the device or to
15 refill the device; or

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

18 "Electronic cigarette" includes, but is not limited to, any
19 electronic nicotine delivery system, electronic cigar,
20 electronic cigarillo, electronic pipe, electronic hookah, vape
21 pen, or similar product or device, and any components or parts
22 that can be used to build the product or device.

23 "Establishment" means a retailer's place of business open
24 to the general public for the sale of goods or services related
25 to tobacco products.

26 "Flavored tobacco product" means any tobacco product that

1 contains a constituent that imparts a characterizing flavor.

2 "Labeling" means written, printed, pictorial, or graphic
3 matter upon any tobacco product or any of its packaging.

4 "Packaging" means a pack, box, carton, or container of any
5 kind or, if no other container, any wrapping or cellophane in
6 which a tobacco product is sold or offered for sale to a
7 consumer.

8 "Retailer" means a person who sells or offers for sale
9 flavored cigarettes, flavored tobacco products, or tobacco
10 products for use or consumption and not for resale in any form.

11 "Tobacco product" means any product containing or made from
12 tobacco that is intended for human consumption, whether smoked,
13 heated, chewed, absorbed, dissolved, inhaled, snorted,
14 sniffed, or ingested by any other means, including, but not
15 limited to, cigarettes, electronic cigarettes, cigars, little
16 cigars, chewing tobacco, pipe tobacco, alternative nicotine
17 products, snuff, snus, and any other smokeless tobacco product
18 which contains tobacco that is finely cut, ground, powdered, or
19 leaf and intended to be placed in the oral cavity. "Tobacco
20 product" includes any component, part, or accessory of a
21 tobacco product, whether or not sold separately. "Tobacco
22 product" does not include any product that has been approved by
23 the United States Food and Drug Administration for sale as a
24 tobacco cessation product, as a tobacco dependence product, or
25 for other medical purposes, and is being marketed and sold
26 solely for that approved purpose.

1 Section 10. Sale or distribution of flavored tobacco
2 products prohibited.

3 (a) The sale or distribution by an establishment of any
4 flavored tobacco product is prohibited.

5 (b) There is a rebuttable presumption that a tobacco
6 product is a flavored tobacco product if a manufacturer or any
7 of a manufacturer's agents or employees, in the course of their
8 agency or employment, has made a statement or claim directed to
9 consumers or to the public that the tobacco product has or
10 produces a characterizing flavor, including, but not limited
11 to, text, color, or images on the product's labeling or
12 packaging that are used to explicitly or implicitly communicate
13 that the tobacco product has a characterizing flavor.

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

1 violation.

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

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

8 (35 ILCS 143/10-25)

9 Sec. 10-25. License actions.

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

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

1 (b-5) The Department may suspend the license of any
2 distributor for a violation of the Flavored Tobacco Ban Act as
3 provided in Section 20 of that Act.

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

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

23 If the retailer does not have a training program that
24 facilitates compliance with minimum-age tobacco laws, the
25 Department shall suspend for 7 days the license of that
26 retailer for a third violation of the Prevention of Tobacco Use

1 by Persons under 21 Years of Age and Sale and Distribution of
2 Tobacco Products Act, as provided in subsection (a-5) of
3 Section 2 of that Act.

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

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

23 (d) The Department may, by application to any circuit
24 court, obtain an injunction restraining any person who engages
25 in business as a distributor of tobacco products without a
26 license (either because his or her license has been revoked,

1 canceled, or suspended or because of a failure to obtain a
2 license in the first instance) from engaging in that business
3 until that person, as if that person were a new applicant for a
4 license, complies with all of the conditions, restrictions, and
5 requirements of Section 10-20 of this Act and qualifies for and
6 obtains a license. Refusal or neglect to obey the order of the
7 court may result in punishment for contempt.

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

9 Section 97. Severability. The provisions of this Act are
10 severable under Section 1.31 of the Statute on Statutes.