

HB3903



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3903

Introduced 10/17/2019, by Rep. Mary Edly-Allen

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 143/10-25

Creates the Electronic Cigarette Ban Act. Prohibits the sale or distribution by an establishment of any electronic cigarette except by pharmacies or drugstores to individuals with valid prescriptions. Defines "pharmacy" or "drugstore" and "prescription". Provides that the Department of Public Health shall enforce the Act and may adopt rules or guidelines for its implementation and enforcement. Amends the Tobacco Products Tax Act of 1995. Permits the Department of Revenue to suspend the license of any distributor that violates the Electronic Cigarette Ban Act.

LRB101 14272 CPF 63149 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 Electronic Cigarette Ban Act.

6 Section 5. Definitions. In this Act:

7 "Department" means the Department of Public Health.

8 "Electronic cigarette" means:

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

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

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

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

22 "Establishment" means a retailer's place of business open
23 to the general public for the sale of goods or services related

1 to electronic cigarettes or tobacco products.

2 "Pharmacy" or "drugstore" has the same meaning as defined
3 in Section 3 of the Pharmacy Practice Act.

4 "Prescription" means any written, oral, facsimile, or
5 electronically transmitted order for electronic cigarettes
6 issued by a physician licensed to practice medicine in all its
7 branches, dentist, veterinarian, podiatric physician, or
8 optometrist, within the limits of his or her license, by a
9 physician assistant in accordance with subsection (f) of
10 Section 4 of the Pharmacy Practice Act, or by an advanced
11 practice registered nurse in accordance with subsection (g) of
12 Section 4 of the Pharmacy Practice Act, containing the
13 following: (1) the name of the patient; (2) the date when the
14 prescription was issued; (3) the name and strength of the drug
15 or a description of the medical device prescribed; (4) the
16 quantity; (5) directions for use; and (6) the prescriber's
17 name, address, and signature. The prescription may, but is not
18 required to, list the illness, disease, or condition for which
19 the drug or device is being prescribed. A prescription shall be
20 valid for up to 15 months from the date issued for the purpose
21 of refills, unless the prescription states otherwise.

22 "Retailer" means a person who sells or offers for sale
23 electronic cigarettes for use or consumption and not for resale
24 in any form.

25 Section 10. Sale or distribution of electronic cigarettes

1 prohibited.

2 (a) The sale or distribution by an establishment of any
3 electronic cigarette is prohibited.

4 (b) Notwithstanding the provisions of subsection (a),
5 electronic cigarettes may be sold by a pharmacy or drugstore to
6 an individual with a valid prescription.

7 Section 15. Administrative rules; enforcement. The
8 Department shall enforce this Act and may adopt rules for the
9 implementation and enforcement of this Act.

10 Section 20. Violations. Upon a decision by the Department
11 that an establishment or an establishment's agent or employee
12 has engaged in any conduct that violates this Act, the
13 Department of Revenue may suspend that establishment's
14 retailer's license under Section 10-25 of the Tobacco Products
15 Tax Act of 1995. Any suspension shall be preceded by a notice
16 of correction or a notice of initial determination of
17 violation.

18 Section 25. No conflict with federal or State law. Nothing
19 in this Act shall be interpreted or applied to create any
20 requirement, power, or duty that is preempted by federal or
21 State law.

22 Section 90. The Tobacco Products Tax Act of 1995 is amended

1 by changing Section 10-25 as follows:

2 (35 ILCS 143/10-25)

3 Sec. 10-25. License actions.

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

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

18 (b-5) The Department may suspend the license of any
19 distributor for a violation of the Electronic Cigarette Ban Act
20 as provided in Section 20 of that Act.

21 (c) If the retailer has a training program that facilitates
22 compliance with minimum-age tobacco laws, the Department shall
23 suspend for 3 days the license of that retailer for a fourth or
24 subsequent violation of the Prevention of Tobacco Use by
25 Persons under 21 Years of Age and Sale and Distribution of

1 Tobacco Products Act, as provided in subsection (a) of Section
2 of that Act. For the purposes of this Section, any violation
3 of subsection (a) of Section 2 of the Prevention of Tobacco Use
4 by Persons under 21 Years of Age and Sale and Distribution of
5 Tobacco Products Act occurring at the retailer's licensed
6 location, during a 24-month period, shall be counted as a
7 violation against the retailer.

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

15 If the retailer does not have a training program that
16 facilitates compliance with minimum-age tobacco laws, the
17 Department shall suspend for 7 days the license of that
18 retailer for a third violation of the Prevention of Tobacco Use
19 by Persons under 21 Years of Age and Sale and Distribution of
20 Tobacco Products Act, as provided in subsection (a-5) of
21 Section 2 of that Act.

22 If the retailer does not have a training program that
23 facilitates compliance with minimum-age tobacco laws, the
24 Department shall suspend for 30 days the license of a retailer
25 for a fourth or subsequent violation of the Prevention of
26 Tobacco Use by Persons under 21 Years of Age and Sale and

1 Distribution of Tobacco Products Act, as provided in subsection
2 (a-5) of Section 2 of that Act.

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

15 (d) The Department may, by application to any circuit
16 court, obtain an injunction restraining any person who engages
17 in business as a distributor of tobacco products without a
18 license (either because his or her license has been revoked,
19 canceled, or suspended or because of a failure to obtain a
20 license in the first instance) from engaging in that business
21 until that person, as if that person were a new applicant for a
22 license, complies with all of the conditions, restrictions, and
23 requirements of Section 10-20 of this Act and qualifies for and
24 obtains a license. Refusal or neglect to obey the order of the
25 court may result in punishment for contempt.

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

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