



Sen. John J. Cullerton

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1 AMENDMENT TO SENATE BILL 668

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 668 as follows:

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

5 Section 5. Definitions. In this Act:

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

1 product, or for other medical purposes, and is being marketed  
2 and sold solely for that approved purpose.

3 "Characterizing flavor" means a distinguishable taste or  
4 aroma, other than the taste or aroma of tobacco, including, but  
5 not limited to, any fruit, chocolate, vanilla, honey, candy,  
6 cocoa, dessert, alcoholic beverage, mint, menthol,  
7 wintergreen, herb, or spice flavoring. In no event shall 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 be construed to have a characterizing  
14 flavor based solely on the use of trace additives or flavorings  
15 or the provision of ingredient information.

16 "Department" means the Department of Human Services.

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

19 "Distributor" means a person who sells, offers for sale, or  
20 transfers any flavored cigarettes, flavored tobacco products,  
21 or tobacco products for resale and not for use or consumption.

22 "Distributor" includes a "distributor" as defined in Section 1  
23 of the Cigarette Tax Act, Section 1 of the Cigarette Use Tax  
24 Act, and Section 10-5 of the Tobacco Products Tax Act of 1995.

25 "Electronic cigarette" means:

26 (1) any device that employs a battery or other

1 mechanism to heat a solution or substance to produce a  
2 vapor or aerosol intended for inhalation;

3 (2) any cartridge or container of a solution or  
4 substance intended to be used with or in the device or to  
5 refill the device; or

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

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

25 "Flavored alternative nicotine product" means any  
26 alternative nicotine product that contains a natural or

1 artificial constituent or additive that imparts a  
2 characterizing flavor.

3 "Flavored related tobacco product" means any related  
4 tobacco product that contains a natural or artificial  
5 constituent or additive that imparts a characterizing flavor.

6 "Flavored solution or substance intended for use with  
7 electronic cigarettes" means any solution or substance  
8 intended for use with electronic cigarettes that contains a  
9 natural or artificial constituent or additive that imparts a  
10 characterizing flavor.

11 "Flavored tobacco product" means any tobacco product that  
12 contains a natural or artificial constituent or additive that  
13 imparts a characterizing flavor.

14 "Labeling" means written, printed, pictorial, or graphic  
15 matter upon any tobacco product, related tobacco product,  
16 alternative nicotine product, or solution or substance  
17 intended for use with electronic cigarettes or any of its  
18 packaging.

19 "Packaging" means a pack, box, carton, or container of any  
20 kind or, if no other container, any wrapping, including  
21 cellophane, in which a tobacco product, related tobacco  
22 product, alternative nicotine product, or solution or  
23 substance intended for use with electronic cigarettes is sold  
24 or offered for sale to a consumer.

25 "Related tobacco product" means any product intended for or  
26 traditionally used with tobacco, including, but not limited to,

1 papers, wraps, tubes, or filters. A product of a type that has  
2 in the past been used in conjunction with tobacco or nicotine  
3 use will be deemed a "related tobacco product" regardless of  
4 any labeling or descriptive language on such product stating  
5 that the product is not intended for use with tobacco or for  
6 non-tobacco use only or other similar language.

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

12 "Retailer" means a person who engages in this State in the  
13 sale of tobacco products, related tobacco products,  
14 alternative nicotine products, or solutions or substances  
15 intended for use with electronic cigarettes directly to the  
16 public from a retail location, including a person who operates  
17 vending machines from which tobacco products, related tobacco  
18 products, alternative nicotine products, or solutions or  
19 substances intended for use with electronic cigarettes are sold  
20 in this State. "Retailer" includes a "retailer" as defined in  
21 Section 1 of the Cigarette Tax Act and Section 10-5 of the  
22 Tobacco Products Tax Act of 1995.

23 "Secondary distributor" has the meanings provided in  
24 Section 1 of the Cigarette Tax Act and in Section 1 of the  
25 Cigarette Use Tax Act.

26 "Tobacco product" means any product containing or made from

1 tobacco that is intended for human consumption, whether smoked,  
2 heated, chewed, absorbed, dissolved, inhaled, snorted,  
3 sniffed, or ingested by any other means, including, but not  
4 limited to, cigarettes, cigars, little cigars, chewing  
5 tobacco, pipe tobacco, snuff, snus, and any other smokeless  
6 tobacco product that contains tobacco that is finely cut,  
7 ground, powdered, or leaf and intended to be placed in the oral  
8 cavity. "Tobacco product" includes any component, part, or  
9 accessory of a tobacco product, whether or not sold separately.  
10 "Tobacco product" does not include: an electronic cigarette and  
11 alternative nicotine product as defined in this Section; or any  
12 product that has been approved by the United States Food and  
13 Drug Administration for sale as a tobacco cessation product, as  
14 a tobacco dependence product, or for other medical purposes,  
15 and is being marketed and sold solely for that approved  
16 purpose.

17 Section 10. Prohibition.

18 (a) A distributor, secondary distributor, retailer, or any  
19 of the retailer's agents or employees may not sell, offer for  
20 sale, or possess with the intent to sell or offer for sale, a  
21 flavored tobacco product, flavored related tobacco product,  
22 flavored alternative nicotine product, or flavored solution or  
23 substance intended for use with electronic cigarettes.

24 (a-1) A distributor may temporarily possess or store in  
25 this State, flavored tobacco products, related tobacco

1 products, flavored alternative nicotine products, or flavored  
2 solutions or substances intended for use with electronic  
3 cigarettes, acquired by the distributor outside this State  
4 that, after being brought into this State and possessed or  
5 stored here temporarily, are shipped by the distributor outside  
6 this State.

7 (b) There is a rebuttable presumption that a tobacco  
8 product, related tobacco product, alternative nicotine  
9 product, or solution or substance intended for use with  
10 electronic cigarettes is a flavored tobacco product, flavored  
11 related tobacco product, flavored alternative nicotine  
12 product, or flavored solution or substance intended for use  
13 with electronic cigarettes if the tobacco product, related  
14 tobacco product, alternative nicotine product, or solution or  
15 substance intended for use with electronic cigarettes has or  
16 produces a characterizing flavor or, if a manufacturer or any  
17 of a manufacturer's agents or employees, in the course of their  
18 agency or employment, has made a statement or claim directed to  
19 consumers or to the public that the tobacco product,  
20 alternative nicotine product, or solution or substance  
21 intended for use with electronic cigarettes has or produces a  
22 characterizing flavor, including, but not limited to, text,  
23 color, or images on the product's labeling or packaging that  
24 are used to explicitly or implicitly communicate or suggest  
25 that the tobacco product, related tobacco product, alternative  
26 nicotine product, or solution or substance intended for use

1 with electronic cigarettes has a characterizing flavor. A  
2 product with labeling or packaging that suggests the presence  
3 of a characterizing flavor or uses a concept flavor is presumed  
4 to be a flavored tobacco product, flavored related tobacco  
5 product, flavored alternative nicotine product, or flavored  
6 solution or substance intended for use with electronic  
7 cigarettes.

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

11 Section 20. Violations. Upon a decision by the Department,  
12 after notice and hearing, that a distributor, secondary  
13 distributor, or retailer, or their agent or employee, has  
14 engaged in any conduct that violates this Act, the Department  
15 of Revenue may suspend that distributor's license under Section  
16 6 of the Cigarette Tax Act, Section 6 of the Cigarette Use Tax  
17 Act, and Section 10-25 of the Tobacco Products Tax Act of 1995;  
18 that secondary distributor's license under Section 6 of the  
19 Cigarette Tax Act and Section 6 of the Cigarette Use Tax Act;  
20 or that retailer's license under Section 6 of the Cigarette Tax  
21 Act and Section 10-25 of the Tobacco Products Tax Act of 1995.  
22 Any suspension shall be preceded by a notice from the  
23 Department of Revenue of the initial determination of violation  
24 made by the Department. A license shall be suspended 3 days for



1 a first violation, 7 days for a second violation, and 30 days  
2 for a third and each subsequent violation.

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

7 Section 30. Severability. The provisions of this Act are  
8 severable under Section 1.31 of the Statute on Statutes.

9 Section 80. The Cigarette Tax Act is amended by changing  
10 Section 6 as follows:

11 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

12 Sec. 6. Revocation, cancellation, or suspension of  
13 license. The Department may, after notice and hearing as  
14 provided for by this Act, revoke, cancel or suspend the license  
15 of any distributor, secondary distributor, or retailer for the  
16 violation of any provision of this Act, or for noncompliance  
17 with any provision herein contained, or for any noncompliance  
18 with any lawful rule or regulation promulgated by the  
19 Department under Section 8 of this Act, or because the licensee  
20 is determined to be ineligible for a distributor's license for  
21 any one or more of the reasons provided for in Section 4 of  
22 this Act, or because the licensee is determined to be

1 ineligible for a secondary distributor's license for any one or  
2 more of the reasons provided for in Section 4c of this Act, or  
3 because the licensee is determined to be ineligible for a  
4 retailer's license for any one or more of the reasons provided  
5 for in Section 4g of this Act. However, no such license shall  
6 be revoked, cancelled or suspended, except after a hearing by  
7 the Department with notice to the distributor, secondary  
8 distributor, or retailer, as aforesaid, and affording such  
9 distributor, secondary distributor, or retailer a reasonable  
10 opportunity to appear and defend, and any distributor,  
11 secondary distributor, or retailer aggrieved by any decision of  
12 the Department with respect thereto may have the determination  
13 of the Department judicially reviewed, as herein provided.

14 The Department may revoke, cancel, or suspend the license  
15 of any distributor for a violation of the Tobacco Product  
16 Manufacturers' Escrow Enforcement Act as provided in Section 30  
17 of that Act. The Department may revoke, cancel, or suspend the  
18 license of any secondary distributor for a violation of  
19 subsection (e) of Section 15 of the Tobacco Product  
20 Manufacturers' Escrow Enforcement Act.

21 The Department may suspend the license of any distributor  
22 or retailer for a violation of the Flavored Tobacco Ban Act as  
23 provided in Section 20 of that Act.

24 If the retailer has a training program that facilitates  
25 compliance with minimum-age tobacco laws, the Department shall  
26 suspend for 3 days the license of that retailer for a fourth or

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

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

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

24 If the retailer does not have a training program that  
25 facilitates compliance with minimum-age tobacco laws, the  
26 Department shall suspend for 30 days the license of a retailer

1 for a fourth or subsequent violation of the Prevention of  
2 Tobacco Use by Persons under 21 Years of Age and Sale and  
3 Distribution of Tobacco Products Act, as provided in subsection  
4 (a-5) of Section 2 of that Act.

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

17 Any distributor, secondary distributor, or retailer  
18 aggrieved by any decision of the Department under this Section  
19 may, within 20 days after notice of the decision, protest and  
20 request a hearing. Upon receiving a request for a hearing, the  
21 Department shall give notice in writing to the distributor,  
22 secondary distributor, or retailer requesting the hearing that  
23 contains a statement of the charges preferred against the  
24 distributor, secondary distributor, or retailer and that  
25 states the time and place fixed for the hearing. The Department  
26 shall hold the hearing in conformity with the provisions of

1 this Act and then issue its final administrative decision in  
2 the matter to the distributor, secondary distributor, or  
3 retailer. In the absence of a protest and request for a hearing  
4 within 20 days, the Department's decision shall become final  
5 without any further determination being made or notice given.

6 No license so revoked, as aforesaid, shall be reissued to  
7 any such distributor, secondary distributor, or retailer  
8 within a period of 6 months after the date of the final  
9 determination of such revocation. No such license shall be  
10 reissued at all so long as the person who would receive the  
11 license is ineligible to receive a distributor's license under  
12 this Act for any one or more of the reasons provided for in  
13 Section 4 of this Act, is ineligible to receive a secondary  
14 distributor's license under this Act for any one or more of the  
15 reasons provided for in Section 4c of this Act, or is  
16 determined to be ineligible for a retailer's license under the  
17 Act for any one or more of the reasons provided for in Section  
18 4g of this Act.

19 The Department upon complaint filed in the circuit court  
20 may by injunction restrain any person who fails, or refuses, to  
21 comply with any of the provisions of this Act from acting as a  
22 distributor, secondary distributor, or retailer of cigarettes  
23 in this State.

24 (Source: P.A. 101-2, eff. 7-1-19.)

25 Section 85. The Cigarette Use Tax Act is amended by

1 changing Section 6 as follows:

2 (35 ILCS 135/6) (from Ch. 120, par. 453.36)

3 Sec. 6. Revocation, cancellation, or suspension of  
4 license. The Department may, after notice and hearing as  
5 provided for by this Act, revoke, cancel or suspend the license  
6 of any distributor or secondary distributor for the violation  
7 of any provision of this Act, or for non-compliance with any  
8 provision herein contained, or for any non-compliance with any  
9 lawful rule or regulation promulgated by the Department under  
10 Section 21 of this Act, or because the licensee is determined  
11 to be ineligible for a distributor's license for any one or  
12 more of the reasons provided for in Section 4 of this Act, or  
13 because the licensee is determined to be ineligible for a  
14 secondary distributor's license for any one or more of the  
15 reasons provided for in Section 4b or Section 7a of this Act.  
16 However, no such license shall be revoked, canceled or  
17 suspended, except after a hearing by the Department with notice  
18 to the distributor or secondary distributor, as aforesaid, and  
19 affording such distributor or secondary distributor a  
20 reasonable opportunity to appear and defend, and any  
21 distributor or secondary distributor aggrieved by any decision  
22 of the Department with respect thereto may have the  
23 determination of the Department judicially reviewed, as herein  
24 provided.

25 The Department may revoke, cancel, or suspend the license

1 of any distributor for a violation of the Tobacco Product  
2 Manufacturers' Escrow Enforcement Act as provided in Section 30  
3 of that Act. The Department may revoke, cancel, or suspend the  
4 license of any secondary distributor for a violation of  
5 subsection (e) of Section 15 of the Tobacco Product  
6 Manufacturers' Escrow Enforcement Act.

7 The Department may suspend the license of any distributor  
8 for a violation of the Flavored Tobacco Ban Act as provided in  
9 Section 20 of that Act.

10 Any distributor or secondary distributor aggrieved by any  
11 decision of the Department under this Section may, within 20  
12 days after notice of the decision, protest and request a  
13 hearing. Upon receiving a request for a hearing, the Department  
14 shall give notice in writing to the distributor or secondary  
15 distributor requesting the hearing that contains a statement of  
16 the charges preferred against the distributor or secondary  
17 distributor and that states the time and place fixed for the  
18 hearing. The Department shall hold the hearing in conformity  
19 with the provisions of this Act and then issue its final  
20 administrative decision in the matter to the distributor or  
21 secondary distributor. In the absence of a protest and request  
22 for a hearing within 20 days, the Department's decision shall  
23 become final without any further determination being made or  
24 notice given.

25 No license so revoked, shall be reissued to any such  
26 distributor or secondary distributor within a period of 6

1 months after the date of the final determination of such  
2 revocation. No such license shall be reissued at all so long as  
3 the person who would receive the license is ineligible to  
4 receive a distributor's license under this Act for any one or  
5 more of the reasons provided for in Section 4 of this Act or is  
6 ineligible to receive a secondary distributor's license under  
7 this Act for any one or more of the reasons provided for in  
8 Section 4b and Section 7a of this Act.

9 The Department upon complaint filed in the circuit court  
10 may by injunction restrain any person who fails, or refuses, to  
11 comply with this Act from acting as a distributor or secondary  
12 distributor of cigarettes in this State.

13 (Source: P.A. 96-1027, eff. 7-12-10.)

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

16 (35 ILCS 143/10-25)

17 Sec. 10-25. License actions.

18 (a) The Department may, after notice and a hearing, revoke,  
19 cancel, or suspend the license of any distributor or retailer  
20 who violates any of the provisions of this Act, fails to keep  
21 books and records as required under this Act, fails to make  
22 books and records available for inspection upon demand by a  
23 duly authorized employee of the Department, or violates a rule  
24 or regulation of the Department for the administration and



1 enforcement of this Act. The notice shall specify the alleged  
2 violation or violations upon which the revocation,  
3 cancellation, or suspension proceeding is based.

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

8 (b-5) The Department may suspend the license of any  
9 distributor or retailer for a violation of the Flavored Tobacco  
10 Ban Act as provided in Section 20 of that Act.

11 (c) If the retailer has a training program that facilitates  
12 compliance with minimum-age tobacco laws, the Department shall  
13 suspend for 3 days the license of that retailer for a fourth or  
14 subsequent violation of the Prevention of Tobacco Use by  
15 Persons under 21 Years of Age and Sale and Distribution of  
16 Tobacco Products Act, as provided in subsection (a) of Section  
17 2 of that Act. For the purposes of this Section, any violation  
18 of subsection (a) of Section 2 of the Prevention of Tobacco Use  
19 by Persons under 21 Years of Age and Sale and Distribution of  
20 Tobacco Products Act occurring at the retailer's licensed  
21 location, during a 24-month period, shall be counted as a  
22 violation against the retailer.

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 3 days the license of that  
26 retailer for a second violation of the Prevention of Tobacco

1 Use by Persons under 21 Years of Age and Sale and Distribution  
2 of 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 7 days the license of that  
7 retailer for a third violation of the Prevention of Tobacco Use  
8 by Persons under 21 Years of Age and Sale and Distribution of  
9 Tobacco Products Act, as provided in subsection (a-5) of  
10 Section 2 of that Act.

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

18 A training program that facilitates compliance with  
19 minimum-age tobacco laws must include at least the following  
20 elements: (i) it must explain that only individuals displaying  
21 valid identification demonstrating that they are 21 years of  
22 age or older shall be eligible to purchase cigarettes or  
23 tobacco products and (ii) it must explain where a clerk can  
24 check identification for a date of birth. The training may be  
25 conducted electronically. Each retailer that has a training  
26 program shall require each employee who completes the training

1 program to sign a form attesting that the employee has received  
2 and completed tobacco training. The form shall be kept in the  
3 employee's file and may be used to provide proof of training.

4 (d) The Department may, by application to any circuit  
5 court, obtain an injunction restraining any person who engages  
6 in business as a distributor of tobacco products without a  
7 license (either because his or her license has been revoked,  
8 canceled, or suspended or because of a failure to obtain a  
9 license in the first instance) from engaging in that business  
10 until that person, as if that person were a new applicant for a  
11 license, complies with all of the conditions, restrictions, and  
12 requirements of Section 10-20 of this Act and qualifies for and  
13 obtains a license. Refusal or neglect to obey the order of the  
14 court may result in punishment for contempt.

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

16 Section 99. Effective date. This Act takes effect June 1,  
17 2020."