

HB0778



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0778

Introduced 2/10/2021, by Rep. Tim Butler

SYNOPSIS AS INTRODUCED:

720 ILCS 675/1
720 ILCS 675/2

from Ch. 23, par. 2357
from Ch. 23, par. 2358

Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that a person under 21 years of age may not possess any tobacco product, electronic cigarette, or alternative nicotine product. Provides that a violation is a Class A misdemeanor.

LRB102 11993 KMF 17329 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Prevention of Tobacco Use by Persons under
5 21 Years of Age and Sale and Distribution of Tobacco Products
6 Act is amended by changing Sections 1 and 2 as follows:

7 (720 ILCS 675/1) (from Ch. 23, par. 2357)

8 Sec. 1. Prohibition on sale of tobacco products,
9 electronic cigarettes, and alternative nicotine products to
10 persons under 21 years of age; prohibition on the distribution
11 of tobacco product samples, electronic cigarette samples, and
12 alternative nicotine product samples to any person; use of
13 identification cards; vending machines; lunch wagons;
14 out-of-package sales.

15 (a) No person under 21 years of age shall buy any tobacco
16 product, electronic cigarette, or alternative nicotine
17 product. No person shall sell, buy for, distribute samples of
18 or furnish any tobacco product, electronic cigarette, or any
19 alternative nicotine product to any person under 21 years of
20 age.

21 (a-5) No person under 16 years of age may sell any tobacco
22 product, electronic cigarette, or alternative nicotine product
23 at a retail establishment selling tobacco products, electronic

1 cigarettes, or alternative nicotine products. This subsection
2 does not apply to a sales clerk in a family-owned business
3 which can prove that the sales clerk is in fact a son or
4 daughter of the owner.

5 (a-5.1) Before selling, offering for sale, giving, or
6 furnishing a tobacco product, electronic cigarette, or
7 alternative nicotine product to another person, the person
8 selling, offering for sale, giving, or furnishing the tobacco
9 product, electronic cigarette, or alternative nicotine product
10 shall verify that the person is at least 21 years of age by:

11 (1) examining from any person that appears to be under
12 30 years of age a government-issued photographic
13 identification that establishes the person to be 21 years
14 of age or older; or

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

23 (a-6) No person under 21 years of age in the furtherance or
24 facilitation of obtaining any tobacco product, electronic
25 cigarette, or alternative nicotine product shall display or
26 use a false or forged identification card or transfer, alter,

1 or deface an identification card.

2 (a-7) (Blank).

3 (a-7.5) A person under 21 years of age may not possess any
4 tobacco product, electronic cigarette, or alternative nicotine
5 product.

6 (a-8) A person shall not distribute without charge samples
7 of any tobacco product to any other person, regardless of age,
8 except for smokeless tobacco in an adult-only facility.

9 This subsection (a-8) does not apply to the distribution
10 of a tobacco product, electronic cigarette, or alternative
11 nicotine product sample in any adult-only facility.

12 (a-9) For the purpose of this Section:

13 "Adult-only facility" means a facility or restricted
14 area (whether open-air or enclosed) where the operator
15 ensures or has a reasonable basis to believe (such as by
16 checking identification as required under State law, or by
17 checking the identification of any person appearing to be
18 under the age of 30) that no person under legal age is
19 present. A facility or restricted area need not be
20 permanently restricted to persons under 21 years of age to
21 constitute an adult-only facility, provided that the
22 operator ensures or has a reasonable basis to believe that
23 no person under 21 years of age is present during the event
24 or time period in question.

25 "Alternative nicotine product" means a product or
26 device not consisting of or containing tobacco that

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

14 "Electronic cigarette" means:

15 (1) any device that employs a battery or other
16 mechanism to heat a solution or substance to produce a
17 vapor or aerosol intended for inhalation;

18 (2) any cartridge or container of a solution or
19 substance intended to be used with or in the device or
20 to refill the device; or

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

23 "Electronic cigarette" includes, but is not limited
24 to, any electronic nicotine delivery system, electronic
25 cigar, electronic cigarillo, electronic pipe, electronic
26 hookah, vape pen, or similar product or device, and any

1 components or parts that can be used to build the product
2 or device. "Electronic cigarette" does not include:
3 cigarettes as defined in Section 1 of the Cigarette Tax
4 Act and tobacco products as defined in Section 10-5 of the
5 Tobacco Products Tax Act of 1995; tobacco product and
6 alternative nicotine product as defined in this Section;
7 any product approved by the United States Food and Drug
8 Administration for sale as a tobacco cessation product, as
9 a tobacco dependence product, or for other medical
10 purposes, and is being marketed and sold solely for that
11 approved purpose; any asthma inhaler prescribed by a
12 physician for that condition and is being marketed and
13 sold solely for that approved purpose; or any therapeutic
14 product approved for use under the Compassionate Use of
15 Medical Cannabis Pilot Program Act.

16 "Lunch wagon" means a mobile vehicle designed and
17 constructed to transport food and from which food is sold
18 to the general public.

19 "Nicotine" means any form of the chemical nicotine,
20 including any salt or complex, regardless of whether the
21 chemical is naturally or synthetically derived.

22 "Tobacco product" means any product containing or made
23 from tobacco that is intended for human consumption,
24 whether smoked, heated, chewed, absorbed, dissolved,
25 inhaled, snorted, sniffed, or ingested by any other means,
26 including, but not limited to, cigarettes, cigars, little

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

14 (b) Tobacco products, electronic cigarettes, and
15 alternative nicotine products may be sold through a vending
16 machine only if such tobacco products, electronic cigarettes,
17 and alternative nicotine products are not placed together with
18 any non-tobacco product, other than matches, in the vending
19 machine and the vending machine is in any of the following
20 locations:

21 (1) (Blank).

22 (2) Places to which persons under 21 years of age are
23 not permitted access at any time.

24 (3) Places where alcoholic beverages are sold and
25 consumed on the premises and vending machine operation is
26 under the direct supervision of the owner or manager.

1 (4) (Blank).

2 (5) (Blank).

3 (c) (Blank).

4 (d) The sale or distribution by any person of a tobacco
5 product as defined in this Section, including but not limited
6 to a single or loose cigarette, that is not contained within a
7 sealed container, pack, or package as provided by the
8 manufacturer, which container, pack, or package bears the
9 health warning required by federal law, is prohibited.

10 (e) It is not a violation of this Act for a person under 21
11 years of age to purchase a tobacco product, electronic
12 cigarette, or alternative nicotine product if the person under
13 the age of 21 purchases or is given the tobacco product,
14 electronic cigarette, or alternative nicotine product in any
15 of its forms from a retail seller of tobacco products,
16 electronic cigarettes, or alternative nicotine products or an
17 employee of the retail seller pursuant to a plan or action to
18 investigate, patrol, or otherwise conduct a "sting operation"
19 or enforcement action against a retail seller of tobacco
20 products, electronic cigarettes, or alternative nicotine
21 products or a person employed by the retail seller of tobacco
22 products, electronic cigarettes, or alternative nicotine
23 products or on any premises authorized to sell tobacco
24 products, electronic cigarettes, or alternative nicotine
25 products to determine if tobacco products, electronic
26 cigarettes, or alternative nicotine products are being sold or

1 given to persons under 21 years of age if the "sting operation"
2 or enforcement action is approved by, conducted by, or
3 conducted on behalf of the Department of State Police, the
4 county sheriff, a municipal police department, the Department
5 of Revenue, the Department of Public Health, or a local health
6 department. The results of any sting operation or enforcement
7 action, including the name of the clerk, shall be provided to
8 the retail seller within 7 business days.

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

10 (720 ILCS 675/2) (from Ch. 23, par. 2358)

11 Sec. 2. Penalties.

12 (a) Any person who violates subsection (a), (a-5),
13 (a-5.1), (a-8), (b), or (d) of Section 1 of this Act is guilty
14 of a petty offense. For the first offense in a 24-month period,
15 the person shall be fined \$200 if his or her employer has a
16 training program that facilitates compliance with minimum-age
17 tobacco laws. For the second offense in a 24-month period, the
18 person shall be fined \$400 if his or her employer has a
19 training program that facilitates compliance with minimum-age
20 tobacco laws. For the third offense in a 24-month period, the
21 person shall be fined \$600 if his or her employer has a
22 training program that facilitates compliance with minimum-age
23 tobacco laws. For the fourth or subsequent offense in a
24 24-month period, the person shall be fined \$800 if his or her
25 employer has a training program that facilitates compliance

1 with minimum-age tobacco laws. For the purposes of this
2 subsection, the 24-month period shall begin with the person's
3 first violation of the Act. The penalties in this subsection
4 are in addition to any other penalties prescribed under the
5 Cigarette Tax Act and the Tobacco Products Tax Act of 1995.

6 (a-1) Any person under 21 years of age who violates
7 subsection (a-7.5) of Section 1 is guilty of a Class A
8 misdemeanor.

9 (a-5) Any retailer who violates subsection (a), (a-5),
10 (a-5.1), (a-8), (b), or (d) of Section 1 of this Act is guilty
11 of a petty offense. For the first offense in a 24-month period,
12 the retailer shall be fined \$200 if it does not have a training
13 program that facilitates compliance with minimum-age tobacco
14 laws. For the second offense in a 24-month period, the
15 retailer shall be fined \$400 if it does not have a training
16 program that facilitates compliance with minimum-age tobacco
17 laws. For the third offense within a 24-month period, the
18 retailer shall be fined \$600 if it does not have a training
19 program that facilitates compliance with minimum-age tobacco
20 laws. For the fourth or subsequent offense in a 24-month
21 period, the retailer shall be fined \$800 if it does not have a
22 training program that facilitates compliance with minimum-age
23 tobacco laws. For the purposes of this subsection, the
24 24-month period shall begin with the person's first violation
25 of the Act. The penalties in this subsection are in addition to
26 any other penalties prescribed under the Cigarette Tax Act and

1 the Tobacco Products Tax Act of 1995.

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

16 (b) ~~(Blank).~~ If a person under 21 years of age violates
17 subsection (a-6) of Section 1, he or she is guilty of a Class A
18 misdemeanor.

19 (c) (Blank).

20 (d) (Blank).

21 (e) (Blank).

22 (f) (Blank).

23 (g) (Blank).

24 (h) All moneys collected as fines for violations of
25 subsection (a), (a-5), (a-5.1), (a-6), (a-7.5), (a-8), (b), or
26 (d) ~~or (a-7)~~ of Section 1 shall be distributed in the following

1 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 enforcing this Act.

7 Any violation of subsection (a) or (a-5) of Section 1
8 shall be reported to the Department of Revenue within 7
9 business days.

10 (Source: P.A. 100-201, eff. 8-18-17; 101-2, eff. 7-1-19;
11 revised 4-29-19.)