



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4050

Introduced 3/17/2021, by Rep. Sonya M. Harper

SYNOPSIS AS INTRODUCED:

New Act

35 ILCS 130/6

from Ch. 120, par. 453.6

35 ILCS 135/6

from Ch. 120, par. 453.36

35 ILCS 143/10-25

720 ILCS 678/2

720 ILCS 678/5

Creates the Flavored Electronic Cigarette Ban Act. Prohibits the sale, offering for sale, or possession with intent to sell of any flavored electronic cigarette or related flavor product. Provides an exception for products that have obtained a tobacco product clearance order. Prohibits the ordering or purchasing or shipping of a flavored electronic cigarette or related flavor product to any person in this State. Provides that the Department of Human Services shall enforce the Act and may adopt rules or guidelines for the implementation and enforcement of the Act. Amends the Cigarette Tax Act, the Cigarette Use Tax Act, and the Tobacco Products Tax Act of 1995. Permits the Department of Revenue to suspend the licenses of entities licensed under those Acts that violate the Flavored Electronic Cigarette Ban Act. Amends the Prevention of Cigarette Sales to Persons under 21 Years of Age Act. Refers to cigarettes, electronic cigarettes, and related flavor products (instead of only cigarettes) in various defined terms. Includes electronic cigarettes and related flavor products in provisions regarding unlawful shipment or transportation of cigarettes. Effective June 1, 2021.

LRB102 17549 CPF 23191 b

FISCAL NOTE ACT
MAY APPLY

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 Electronic Cigarette Ban Act.

6 Section 5. Definitions. In this Act:

7 "Characterizing flavor" means a distinguishable taste or
8 aroma, other than the taste or aroma of tobacco or menthol,
9 imparted by an electronic cigarette or related flavor product,
10 or any by-product produced by the electronic cigarette or
11 related flavor product. "Characterizing flavor" includes, but
12 is not limited to, tastes or aromas relating to any fruit,
13 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
14 beverage, mint, wintergreen, herb, or spice. An electronic
15 cigarette or related flavor product does not have a
16 characterizing flavor solely because of the use of additives
17 or flavorings or the provision of ingredient information.

18 "Constituent" means any ingredient, substance, chemical,
19 or compound, other than water, that is added to an electronic
20 cigarette or related flavor product.

21 "Department" means the Department of Human Services.

22 "Distinguishable" means perceivable by either the sense of
23 smell or taste.

1 "Distributor" means a person who sells, offers for sale,
2 or transfers any tobacco, tobacco products, flavored
3 electronic cigarette, or related flavor product for resale and
4 not for use or consumption. "Distributor" includes a
5 distributor as defined in Section 1 of the Cigarette Tax Act,
6 Section 1 of the Cigarette Use Tax Act, and Section 10-5 of the
7 Tobacco Products Tax Act of 1995.

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,
18 any 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. "Electronic
22 cigarette" does not include: any smokeless nicotine product; a
23 cigarette, as defined in Section 1 of the Cigarette Tax Act;
24 any tobacco product as defined in this Section; any product
25 approved by the United States Food and Drug Administration for
26 sale as a tobacco cessation product or a tobacco dependence

1 product, or for other medical purposes that is marketed and
2 sold solely for that approved purpose; any asthma inhaler
3 prescribed by a physician for that condition that is marketed
4 and sold solely for that approved purpose; any therapeutic
5 product approved for use under the Compassionate Use of
6 Medical Cannabis Program Act; or cannabis as defined in
7 Section 1-10 of the Cannabis Regulation and Tax Act.

8 "Flavored electronic cigarette" means any electronic
9 cigarette containing a constituent that imparts a
10 characterizing flavor.

11 "Labeling" means written, printed, pictorial, or graphic
12 matter upon any electronic cigarette or related flavor product
13 or any packaging of an electronic cigarette or related flavor
14 product.

15 "Packaging" means a pack, box, carton, or container of any
16 kind or, if no other container, any wrapping or cellophane in
17 which an electronic cigarette or related flavor product is
18 sold or offered for sale to a consumer.

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

1 "Retailer" means a person who engages in this State in the
2 sale, or offering for sale, of flavored electronic cigarettes
3 or related flavor products for use or consumption and not for
4 resale in any form. "Retailer" includes a retailer as that
5 term is defined in Section 1 of the Cigarette Tax Act and
6 Section 10-5 of the Tobacco Products Tax Act of 1995.

7 "Secondary distributor" means a secondary distributor as
8 that term is defined in Section 1 of the Cigarette Tax Act or
9 Section 1 of the Cigarette Use Tax Act.

10 "Smokeless nicotine product" means nicotine that is in the
11 form of a solid, gel, gum, or paste that is intended for human
12 consumption, placement in the oral or nasal cavity, or
13 absorption into the human body by any other means. "Smokeless
14 nicotine product" does not include any tobacco product or
15 cigarette.

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

1 cigarette, a smokeless nicotine product, an alternative
2 nicotine product, or any product that has been approved by the
3 United States Food and Drug Administration for sale as a
4 tobacco cessation product, as a tobacco dependence product, or
5 for other medical purposes, and is being marketed and sold
6 solely for that approved purpose.

7 Section 10. Prohibitions.

8 (a) A retailer, or any of a retailer's agents or
9 employees, may not sell, offer for sale, or possess with the
10 intent to sell or offer for sale a flavored electronic
11 cigarette or related flavor product.

12 (b) A distributor or secondary distributor may not sell,
13 offer for sale, or possess with intent to sell or offer for
14 sale a flavored electronic cigarette or related flavor product
15 in this State. There is a rebuttable presumption that a
16 distributor or secondary distributor possesses a flavored
17 electronic cigarette or related flavor product with the intent
18 to sell in the State if the distributor or secondary
19 distributor cannot provide, upon request, evidence that the
20 product is intended for order or purchase from without the
21 State.

22 (c) There is a rebuttable presumption that an electronic
23 cigarette or product is a flavored electronic cigarette or
24 related flavor product if a manufacturer or any of a
25 manufacturer's agents or employees, in the course of their

1 agency or employment, has made a statement or claim directed
2 to consumers or to the public that the electronic cigarette or
3 related flavor product has or produces a characterizing
4 flavor, including, but not limited to, text, color, or images
5 on the product's labeling or packaging that are used to
6 explicitly or implicitly communicate or suggest that the
7 electronic cigarette or related flavor product has a
8 characterizing flavor. A product with labeling or packaging
9 that suggests the presence of a characterizing flavor is
10 presumed to be a flavored electronic cigarette or related
11 flavor product.

12 (d) This Section does not apply to any flavored electronic
13 cigarette that has obtained a tobacco product clearance order
14 pursuant to Section 387j of Title 21 of the United States Code.

15 (e) A distributor, secondary distributor, or retailer, or
16 any of a retailer's agents or employees, shall not fulfill an
17 order for, or allow a flavored electronic cigarette or related
18 flavor product to be purchased by, or shipped to, any person in
19 this State. As used in this subsection, "ordered or purchased"
20 includes:

21 (1) a consumer submitting an order for sale by means
22 of:

23 (A) a telephone or other method of voice
24 transmission;

25 (B) the mail; or

26 (C) the Internet or other online service; or

1 (2) situations where the seller is otherwise not in
2 the physical presence of the buyer when the request for
3 purchase or order is made.

4 This subsection (e) applies regardless of whether the
5 retailer is located within the State or not.

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

9 Section 20. Violations. Upon a decision by the Department
10 after notice and hearing that a distributor, secondary
11 distributor, or retailer, or any of a retailer's agents or
12 employees, has engaged in any conduct that violates this Act,
13 the Department of Revenue may suspend: that distributor's
14 license under Section 6 of the Cigarette Tax Act, Section 6 of
15 the Cigarette Use Tax Act, or Section 10-25 of the Tobacco
16 Products Tax Act of 1995; that secondary distributor's license
17 under Section 6 of the Cigarette Tax Act or Section 6 of the
18 Cigarette Use Tax Act; or that retailer's license under
19 Section 6 of the Cigarette Tax Act or Section 10-25 of the
20 Tobacco Products Tax Act of 1995. Any suspension shall be
21 preceded by a notice from the Department of Revenue of the
22 initial determination or violation. A license shall be
23 suspended 3 days for a first violation, 7 days for a second
24 violation, and 30 days for a third and each subsequent

1 violation.

2 The Department of Revenue shall impose a civil penalty not
3 to exceed \$5,000 on any person engaged in the business of
4 selling flavored electronic cigarettes or related flavor
5 products who ships or causes to be shipped any flavored
6 electronic cigarettes or related flavor products to any person
7 in this State in violation of subsection (e) of Section 10.
8 Civil penalties imposed and collected by the Department under
9 this subsection shall be deposited into the Tax Compliance and
10 Administration Fund.

11 Section 25. No conflict with federal or State law. Nothing
12 in this Act shall be interpreted or applied to create any
13 requirement, power, or duty that is preempted by federal or
14 State law.

15 Section 90. The Cigarette Tax Act is amended by changing
16 Section 6 as follows:

17 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

18 Sec. 6. Revocation, cancellation, or suspension of
19 license. The Department may, after notice and hearing as
20 provided for by this Act, revoke, cancel or suspend the
21 license of any distributor, secondary distributor, or retailer
22 for the violation of any provision of this Act, or for
23 noncompliance with any provision herein contained, or for any

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

20 The Department may revoke, cancel, or suspend the license
21 of any distributor for a violation of the Tobacco Product
22 Manufacturers' Escrow Enforcement Act as provided in Section
23 30 of that Act. The Department may revoke, cancel, or suspend
24 the license of any secondary distributor for a violation of
25 subsection (e) of Section 15 of the Tobacco Product
26 Manufacturers' Escrow Enforcement Act.

1 The Department may suspend the license of any distributor,
2 secondary distributor, or retailer for a violation of the
3 Flavored Electronic Cigarette Ban Act as provided in Section
4 20 of that Act.

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

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 3 days the license of that
20 retailer for a second violation of the Prevention of Tobacco
21 Use by Persons under 21 Years of Age and Sale and Distribution
22 of 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 7 days the license of that

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

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

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

25 Any distributor, secondary distributor, or retailer
26 aggrieved by any decision of the Department under this Section

1 may, within 20 days after notice of the decision, protest and
2 request a hearing. Upon receiving a request for a hearing, the
3 Department shall give notice in writing to the distributor,
4 secondary distributor, or retailer requesting the hearing that
5 contains a statement of the charges preferred against the
6 distributor, secondary distributor, or retailer and that
7 states the time and place fixed for the hearing. The
8 Department shall hold the hearing in conformity with the
9 provisions of this Act and then issue its final administrative
10 decision in the matter to the distributor, secondary
11 distributor, or retailer. In the absence of a protest and
12 request for a hearing within 20 days, the Department's
13 decision shall become final without any further determination
14 being made or notice given.

15 No license so revoked, as aforesaid, shall be reissued to
16 any such distributor, secondary distributor, or retailer
17 within a period of 6 months after the date of the final
18 determination of such revocation. No such license shall be
19 reissued at all so long as the person who would receive the
20 license is ineligible to receive a distributor's license under
21 this Act for any one or more of the reasons provided for in
22 Section 4 of this Act, is ineligible to receive a secondary
23 distributor's license under this Act for any one or more of the
24 reasons provided for in Section 4c of this Act, or is
25 determined to be ineligible for a retailer's license under the
26 Act for any one or more of the reasons provided for in Section

1 4g of this Act.

2 The Department upon complaint filed in the circuit court
3 may by injunction restrain any person who fails, or refuses,
4 to comply with any of the provisions of this Act from acting as
5 a distributor, secondary distributor, or retailer of
6 cigarettes in this State.

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

8 Section 95. The Cigarette Use Tax Act is amended by
9 changing Section 6 as follows:

10 (35 ILCS 135/6) (from Ch. 120, par. 453.36)

11 Sec. 6. Revocation, cancellation, or suspension of
12 license. The Department may, after notice and hearing as
13 provided for by this Act, revoke, cancel or suspend the
14 license of any distributor or secondary distributor for the
15 violation of any provision of this Act, or for non-compliance
16 with any provision herein contained, or for any non-compliance
17 with any lawful rule or regulation promulgated by the
18 Department under Section 21 of this Act, or because the
19 licensee is determined to be ineligible for a distributor's
20 license for any one or more of the reasons provided for in
21 Section 4 of this Act, or because the licensee is determined to
22 be ineligible for a secondary distributor's license for any
23 one or more of the reasons provided for in Section 4b or
24 Section 7a of this Act. However, no such license shall be

1 revoked, canceled or suspended, except after a hearing by the
2 Department with notice to the distributor or secondary
3 distributor, as aforesaid, and affording such distributor or
4 secondary distributor a reasonable opportunity to appear and
5 defend, and any distributor or secondary distributor aggrieved
6 by any decision of the Department with respect thereto may
7 have the determination of the Department judicially reviewed,
8 as herein provided.

9 The Department may revoke, cancel, or suspend the license
10 of any distributor for a violation of the Tobacco Product
11 Manufacturers' Escrow Enforcement Act as provided in Section
12 30 of that Act. The Department may revoke, cancel, or suspend
13 the license of any secondary distributor for a violation of
14 subsection (e) of Section 15 of the Tobacco Product
15 Manufacturers' Escrow Enforcement Act.

16 The Department may suspend the license of any distributor
17 or secondary distributor for a violation of the Flavored
18 Electronic Cigarette Ban Act as provided in Section 20 of that
19 Act.

20 Any distributor or secondary distributor aggrieved by any
21 decision of the Department under this Section may, within 20
22 days after notice of the decision, protest and request a
23 hearing. Upon receiving a request for a hearing, the
24 Department shall give notice in writing to the distributor or
25 secondary distributor requesting the hearing that contains a
26 statement of the charges preferred against the distributor or

1 secondary distributor and that states the time and place fixed
2 for the hearing. The Department shall hold the hearing in
3 conformity with the provisions of this Act and then issue its
4 final administrative decision in the matter to the distributor
5 or secondary distributor. In the absence of a protest and
6 request for a hearing within 20 days, the Department's
7 decision shall become final without any further determination
8 being made or notice given.

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

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

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

24 Section 100. The Tobacco Products Tax Act of 1995 is
25 amended by changing Section 10-25 as follows:

1 (35 ILCS 143/10-25)

2 Sec. 10-25. License actions.

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

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

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

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

1 Sale and Distribution of Tobacco Products Act, as provided in
2 subsection (a) of Section 2 of that Act. For the purposes of
3 this Section, any violation of subsection (a) of Section 2 of
4 the Prevention of Tobacco Use by Persons under 21 Years of Age
5 and Sale and Distribution of Tobacco Products Act occurring at
6 the retailer's licensed location, during a 24-month period,
7 shall be counted as a 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
19 Use by Persons under 21 Years of Age and Sale and Distribution
20 of 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
2 subsection (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
13 received and completed tobacco training. The form shall be
14 kept in the employee's file and may be used to provide proof of
15 training.

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

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

2 Section 105. The Prevention of Cigarette Sales to Persons
3 under 21 Years of Age Act is amended by changing Sections 2 and
4 5 as follows:

5 (720 ILCS 678/2)

6 Sec. 2. Definitions. For the purpose of this Act:

7 "Cigarette", when used in this Act, means any roll for
8 smoking made wholly or in part of tobacco irrespective of size
9 or shape and whether or not the tobacco is flavored,
10 adulterated, or mixed with any other ingredient, and the
11 wrapper or cover of which is made of paper or any other
12 substance or material except whole leaf tobacco.

13 "Clear and conspicuous statement" means the statement is
14 of sufficient type size to be clearly readable by the
15 recipient of the communication.

16 "Consumer" means an individual who acquires or seeks to
17 acquire cigarettes, electronic cigarettes, or related flavor
18 products for personal use.

19 "Delivery sale" means any sale of cigarettes, electronic
20 cigarettes, or related flavor products to a consumer if:

21 (a) the consumer submits the order for such sale by
22 means of a telephone or other method of voice
23 transmission, the mails, or the Internet or other online
24 service, or the seller is otherwise not in the physical

1 presence of the buyer when the request for purchase or
2 order is made; or

3 (b) the cigarettes, electronic cigarettes, or related
4 flavor products are delivered by use of a common carrier,
5 private delivery service, or the mails, or the seller is
6 not in the physical presence of the buyer when the buyer
7 obtains possession of the cigarettes, electronic
8 cigarettes, or related flavor products.

9 "Delivery service" means any person (other than a person
10 that makes a delivery sale) who delivers to the consumer the
11 cigarettes, electronic cigarettes, or related flavor products
12 sold in a delivery sale.

13 "Department" means the Department of Revenue.

14 "Government-issued identification" means a State driver's
15 license, State identification card, passport, a military
16 identification or an official naturalization or immigration
17 document, such as an alien registration recipient card
18 (commonly known as a "green card") or an immigrant visa.

19 "Mails" or "mailing" mean the shipment of cigarettes,
20 electronic cigarettes, or related flavor products through the
21 United States Postal Service.

22 "Out-of-state sale" means a sale of cigarettes, electronic
23 cigarettes, or related flavor products to a consumer located
24 outside of this State where the consumer submits the order for
25 such sale by means of a telephonic or other method of voice
26 transmission, the mails or any other delivery service,

1 facsimile transmission, or the Internet or other online
2 service and where the cigarettes, electronic cigarettes, or
3 related flavor products are delivered by use of the mails or
4 other delivery service.

5 "Person" means any individual, corporation, partnership,
6 limited liability company, association, or other organization
7 that engages in any for-profit or not-for-profit activities.

8 "Shipping package" means a container in which packs or
9 cartons of cigarettes, electronic cigarettes, or related
10 flavor products are shipped in connection with a delivery
11 sale.

12 "Shipping documents" means bills of lading, air bills, or
13 any other documents used to evidence the undertaking by a
14 delivery service to deliver letters, packages, or other
15 containers.

16 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

17 (720 ILCS 678/5)

18 Sec. 5. Unlawful shipment or transportation of cigarettes,
19 electronic cigarettes, or related flavor products.

20 (a) It is unlawful for any person engaged in the business
21 of selling cigarettes, electronic cigarettes, or related
22 flavor products to ship or cause to be shipped any cigarettes,
23 electronic cigarettes, or related flavor products unless the
24 person shipping ~~the cigarettes~~:

25 (1) is licensed as a distributor under ~~either~~ the

1 Cigarette Tax Act, ~~or~~ the Cigarette Use Tax Act, or the
2 Tobacco Products Tax Act of 1995; or delivers the
3 cigarettes, electronic cigarettes, or related flavor
4 products to a distributor licensed under ~~either~~ the
5 Cigarette Tax Act, ~~or~~ the Cigarette Use Tax Act, or the
6 Tobacco Products Tax Act of 1995; or

7 (2) ships them to an export warehouse proprietor
8 pursuant to Chapter 52 of the Internal Revenue Code, or an
9 operator of a customs bonded warehouse pursuant to Section
10 1311 or 1555 of Title 19 of the United States Code.

11 For purposes of this subsection (a), a person is a
12 licensed distributor if the person's name appears on a list of
13 licensed distributors published by the Illinois Department of
14 Revenue. The term cigarette has the same meaning as defined in
15 Section 1 of the Cigarette Tax Act and Section 1 of the
16 Cigarette Use Tax Act. The term electronic cigarette has the
17 same meaning as defined in Section 10-5 of the Tobacco
18 Products Tax Act of 1995. The term related flavor product has
19 the same meaning as defined in Section 5 of the Flavored
20 Electronic Cigarette Ban Act. Nothing in this Act prohibits a
21 person licensed as a distributor under the Cigarette Tax Act
22 or the Cigarette Use Tax Act from shipping or causing to be
23 shipped any cigarettes to a registered retailer under the
24 Retailers' Occupation Tax Act provided the cigarette tax or
25 cigarette use tax has been paid.

26 (b) A common or contract carrier may transport cigarettes

1 to any individual person in this State only if the carrier
2 reasonably believes such cigarettes have been received from a
3 person described in paragraph (a)(1). Common or contract
4 carriers may make deliveries of cigarettes to licensed
5 distributors described in paragraph (a)(1) of this Section.
6 Nothing in this subsection (b) shall be construed to prohibit
7 a person other than a common or contract carrier from
8 transporting not more than 1,000 cigarettes at any one time to
9 any person in this State.

10 (c) A common or contract carrier may not complete the
11 delivery of any cigarettes to persons other than those
12 described in paragraph (a)(1) of this Section without first
13 obtaining from the purchaser an official written
14 identification from any state or federal agency that displays
15 the person's date of birth or a birth certificate that
16 includes a reliable confirmation that the purchaser is at
17 least 21 years of age; that the cigarettes purchased are not
18 intended for consumption by an individual who is younger than
19 21 years of age; and a written statement signed by the
20 purchaser that certifies the purchaser's address and that the
21 purchaser is at least 21 years of age. The statement shall also
22 confirm: (1) that the purchaser understands that signing
23 another person's name to the certification is illegal; (2)
24 that the sale of cigarettes to individuals under 21 years of
25 age is illegal; and (3) that the purchase of cigarettes by
26 individuals under 21 years of age is illegal under the laws of

1 Illinois.

2 (d) When a person engaged in the business of selling
3 cigarettes ships or causes to be shipped any cigarettes to any
4 person in this State, other than in the cigarette
5 manufacturer's or tobacco products manufacturer's original
6 container or wrapping, the container or wrapping must be
7 plainly and visibly marked with the word "cigarettes".

8 (e) When a peace officer of this State or any duly
9 authorized officer or employee of the Illinois Department of
10 Public Health or Department of Revenue discovers any
11 cigarettes, electronic cigarettes, or related flavor products
12 which have been or which are being shipped or transported in
13 violation of this Section, he or she shall seize and take
14 possession of the cigarettes, electronic cigarettes, or
15 related flavor products, and the cigarettes shall be subject
16 to a forfeiture action pursuant to the procedures provided
17 under the Cigarette Tax Act or Cigarette Use Tax Act.

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

19 Section 997. Severability. The provisions of this Act are
20 severable under Section 1.31 of the Statute on Statutes.

21 Section 999. Effective date. This Act takes effect June 1,
22 2021.