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LRB094 07517 LJB 42595 a

1 AMENDMENT TO HOUSE BILL 1296

2 AMENDMENT NO. _____. Amend House Bill 1296 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Tobacco Control Act.

6 Section 5. Definitions. The following words and phrases,
7 whenever used in this Act, have the meanings defined in this
8 Section unless the context clearly requires otherwise:

9 "Commission" means the Illinois Liquor Control Commission.

10 "Person" means any natural person, partnership,
11 cooperative association, private corporation, personal
12 representative, receiver, trustee, assignee, or any other
13 legal entity.

14 "Retailer" means any person who sells tobacco products to
15 individuals for personal consumption or who operates a facility
16 containing vending machines that dispense tobacco products or
17 self-service displays of tobacco products.

18 "Smoking" means possessing a lighted tobacco product,
19 tobacco paraphernalia, or any other weed or plant, including,
20 but not limited to, a lighted pipe, lighted cigar, or lighted
21 cigarette of any kind, or the lighting of a tobacco product,
22 tobacco paraphernalia, or any other weed or plant, including,
23 but not limited to, a pipe, cigar, or cigarette of any kind.

24 "Tobacco paraphernalia" means cigarette papers or

1 wrappers, pipes, holders of smoking materials of all types,
2 cigarette rolling machines, and any other item designed for the
3 smoking, preparation, storing, or consumption of tobacco
4 products.

5 "Tobacco product" means (i) any substance containing
6 tobacco leaf, including, but not limited to, cigarettes,
7 cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco,
8 bidis, or any other preparation of tobacco and (ii) any product
9 or formulation of matter containing biologically active
10 amounts of nicotine that is manufactured, sold, offered for
11 sale, or otherwise distributed with the expectation that the
12 product or matter will be introduced into the human body, but
13 does not include any product specifically approved by the
14 federal Food and Drug Administration for use in treating
15 nicotine or tobacco product dependence.

16 "Vending machine" means a machine, appliance, or other
17 mechanical device operated by currency, token, debit card, or
18 credit card that is designed or used for vending purposes,
19 including, but not limited to, machines or devices that use
20 remote control locking mechanisms.

21 Section 10. Tobacco retailer license required.

22 (a) It shall be unlawful for any person to act as a tobacco
23 retailer without first obtaining and maintaining a valid
24 tobacco retailer's license pursuant to this Act for each
25 location at which that retail activity is to occur.

26 (b) A retailer without a valid tobacco retailer's license,
27 including, but not limited to, a revoked license, shall:

28 (1) keep all tobacco products and tobacco
29 paraphernalia from public view; and

30 (2) not display any advertisement relating to tobacco
31 products or tobacco paraphernalia that promotes the sale or
32 distribution of the products from the retailer's location
33 or that would lead a reasonable consumer to believe that

1 the products can be obtained at the retailer's location.

2 (c) Nothing in this Act shall be construed to grant any
3 person obtaining and maintaining a tobacco retailer's license
4 any status or right other than the right to act as a retailer
5 at the location identified on the face of the license.

6 (d) Any retailer that sells tobacco products without a
7 tobacco retailer's license shall be subject to the fines and
8 penalties in Section 50 of this Act.

9 Section 15. Prohibitions concerning sales of tobacco
10 products.

11 (a) No license may be issued to authorize retailing at
12 other than a fixed location.

13 (b) No retailer may sell or distribute tobacco products to
14 any person under 18 years of age. Violations of this subsection
15 (b) are subject to the penalties contained in the Sale of
16 Tobacco to Minors Act.

17 (c) No retailer may break or otherwise open any cigarette
18 or smokeless tobacco package to sell or distribute individual
19 cigarettes or a number of unpackaged cigarettes that is smaller
20 than the minimum cigarette package size of 20 cigarettes or any
21 quantity of cigarette tobacco or smokeless tobacco that is
22 smaller than the smallest package distributed by the
23 manufacturer for individual consumer use.

24 (d) No person shall give away, barter, exchange, distribute
25 or in any way dispense free of charge or at nominal cost any
26 tobacco product samples or any coupon redeemable for any
27 tobacco products on any public street, alley, or sidewalk, in
28 any public park, ground, or playground, in areas open to the
29 public, in any publicly owned or operated building, or at any
30 place located within 100 feet of any building or other location
31 used primarily as a school, child care facility, or for the
32 education or recreation of children under 18 years of age.

33 (e) Any retailer that sells or distributes tobacco products

1 through a vending machine pursuant to the Sale of Tobacco to
2 Minors Act shall obtain a tobacco retailer's license from the
3 Commission.

4 Section 20. Application procedure. The Commission shall
5 adopt rules governing the application procedure for retail
6 tobacco licenses and the issuance of a license and any other
7 rules necessary for the administration and enforcement of this
8 Act.

9 Section 25. Fee for licenses. The fee to issue or to renew
10 a tobacco retailer's license shall be established by the
11 Commission. The fee shall be calculated so as to recover the
12 total cost of both license administration and license
13 enforcement. All fees shall be used exclusively to fund the
14 administration and enforcement of licenses. Fees are
15 nonrefundable except as may be required by law.

16 Section 30. License violations; compliance checks.

17 (a) It shall be a violation of a tobacco retailer's license
18 for a licensee, including his or her agent or employee, to
19 violate any of the following laws:

- 20 (1) any local, State, or federal tobacco-related law;
21 (2) any local, State, or federal sign laws; or
22 (3) any local, State, or federal laws restricting the
23 age of purchase for any product.

24 (b) Compliance with this Act may be monitored by any local,
25 State, or federal law enforcement agency. Any unit of local
26 government may enforce the penal provisions of this Act. The
27 law enforcement agency or unit or local government shall
28 compile a record of violations under this Act and forward it to
29 the Commission for administrative review.

30 Compliance checks shall determine, at a minimum, if the
31 retailer is conducting business in a manner that complies with

1 tobacco laws regulating youth access to tobacco. When
2 appropriate, the compliance checks shall determine compliance
3 with other tobacco-related laws.

4 Section 35. Enforcement.

5 (a) The Commission may revoke the license of a licensee for
6 a violation of this Act. A decision of the Commission to revoke
7 a license is appealable to the appropriate circuit court and
8 must be filed with the applicable clerk's office and the
9 Commission within 10 days after mailing of the Commission's
10 decision to the licensee. An appeal shall stay all proceedings
11 in furtherance of the appealed action.

12 (b) The Commission shall impose a fine upon any person who
13 violates the provisions of this Act. Penalties imposed shall
14 include the following:

15 (1) for a first violation, a fine of \$500;

16 (2) for a second violation, occurring after a final
17 determination of liability for a first violation and within
18 a 12 month period after a final determination of liability
19 for a first violation, a fine of \$1,000 and a suspension of
20 the tobacco retailer's license for 30 days; and

21 (3) for a third violation, occurring after a final
22 determination of liability for a second violation and
23 within a 12 month period after the determination of
24 liability for a second violation, a fine of \$1,500 and a
25 revocation of the tobacco retailer's license for one year.

26 Each instance in which Section 15 of this Act is violated
27 shall constitute a separate and distinct offense.

28 The Commission shall impose a \$1,000 fine upon any person
29 who sells tobacco products without a license as required by
30 Section 10 of this Act or after a license issued pursuant to
31 this Act has been suspended. Each instance in which a person
32 sells tobacco products in violation of Section 10 of this Act
33 shall constitute a separate and distinct violation.

1 (c) The Commission shall adopt rules governing license
2 suspension hearings under this Act.

3 (d) In addition to imposing the fines and other penalties
4 provided by this Act, the Commission may, in the name of the
5 People of the State of Illinois, through the Attorney General
6 of the State of Illinois or the State's Attorney of any county
7 in which the action is brought, petition for an order enjoining
8 a violation or for an order enforcing compliance with this Act.
9 Upon the filing of a verified petition in court, the court may
10 issue a temporary restraining order, without notice or bond,
11 and may preliminarily and permanently enjoin the violation, and
12 if it is established that the person has violated or is
13 violating the injunction, the court may punish the offender for
14 contempt of court. Proceedings under this Section shall be in
15 addition to, and not in lieu of, all other remedies and
16 penalties provided by this Act.

17 (e) Causing, permitting, aiding, abetting, or concealing a
18 violation of any provision of this Act shall constitute a
19 violation of this Act subject to the fines and penalties
20 contained in this Act.

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

23 Section 99. Effective date. This Act takes effect July 1,
24 2006."