



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0604

Introduced 2/6/2009, by Rep. Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

235 ILCS 5/3-12	from Ch. 43, par. 108
235 ILCS 5/6-16.1	
720 ILCS 675/Act title	
720 ILCS 675/0.01	from Ch. 23, par. 2356.9
720 ILCS 675/1	from Ch. 23, par. 2357
720 ILCS 677/15	

Amends the Sale of Tobacco to Minors Act. Changes the title of the Act to the Sale and Distribution of Tobacco Products Act. Provides that a person shall not distribute without charge samples of any tobacco product to any other person, regardless of age: (1) at a retail establishment selling tobacco products; (2) from a lunch wagon; or (3) on a public way as a promotion or advertisement of a tobacco manufacturer or tobacco product. Provides that the prohibition applies even if the person who is intended to receive the tobacco product purchased another product from the person intending to distribute the tobacco product. Retains the same penalties as the penalties for distribution of tobacco products to minors. Amends the Liquor Control Act of 1934 and the Display of Tobacco Products Act to make conforming changes.

LRB096 07343 RLC 17429 b

1 AN ACT concerning tobacco.

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

4 Section 5. The Liquor Control Act of 1934 is amended by
5 changing Sections 3-12 and 6-16.1 as follows:

6 (235 ILCS 5/3-12) (from Ch. 43, par. 108)

7 Sec. 3-12. Powers and duties of State Commission.

8 (a) The State commission shall have the following powers,
9 functions and duties:

10 (1) To receive applications and to issue licenses to
11 manufacturers, foreign importers, importing distributors,
12 distributors, non-resident dealers, on premise consumption
13 retailers, off premise sale retailers, special event
14 retailer licensees, special use permit licenses, auction
15 liquor licenses, brew pubs, caterer retailers,
16 non-beverage users, railroads, including owners and
17 lessees of sleeping, dining and cafe cars, airplanes,
18 boats, brokers, and wine maker's premises licensees in
19 accordance with the provisions of this Act, and to suspend
20 or revoke such licenses upon the State commission's
21 determination, upon notice after hearing, that a licensee
22 has violated any provision of this Act or any rule or
23 regulation issued pursuant thereto and in effect for 30

1 days prior to such violation. Except in the case of an
2 action taken pursuant to a violation of Section 6-3, 6-5,
3 or 6-9, any action by the State Commission to suspend or
4 revoke a licensee's license may be limited to the license
5 for the specific premises where the violation occurred.

6 In lieu of suspending or revoking a license, the
7 commission may impose a fine, upon the State commission's
8 determination and notice after hearing, that a licensee has
9 violated any provision of this Act or any rule or
10 regulation issued pursuant thereto and in effect for 30
11 days prior to such violation. The fine imposed under this
12 paragraph may not exceed \$500 for each violation. Each day
13 that the activity, which gave rise to the original fine,
14 continues is a separate violation. The maximum fine that
15 may be levied against any licensee, for the period of the
16 license, shall not exceed \$20,000. The maximum penalty that
17 may be imposed on a licensee for selling a bottle of
18 alcoholic liquor with a foreign object in it or serving
19 from a bottle of alcoholic liquor with a foreign object in
20 it shall be the destruction of that bottle of alcoholic
21 liquor for the first 10 bottles so sold or served from by
22 the licensee. For the eleventh bottle of alcoholic liquor
23 and for each third bottle thereafter sold or served from by
24 the licensee with a foreign object in it, the maximum
25 penalty that may be imposed on the licensee is the
26 destruction of the bottle of alcoholic liquor and a fine of

1 up to \$50.

2 (2) To adopt such rules and regulations consistent with
3 the provisions of this Act which shall be necessary to
4 carry on its functions and duties to the end that the
5 health, safety and welfare of the People of the State of
6 Illinois shall be protected and temperance in the
7 consumption of alcoholic liquors shall be fostered and
8 promoted and to distribute copies of such rules and
9 regulations to all licensees affected thereby.

10 (3) To call upon other administrative departments of
11 the State, county and municipal governments, county and
12 city police departments and upon prosecuting officers for
13 such information and assistance as it deems necessary in
14 the performance of its duties.

15 (4) To recommend to local commissioners rules and
16 regulations, not inconsistent with the law, for the
17 distribution and sale of alcoholic liquors throughout the
18 State.

19 (5) To inspect, or cause to be inspected, any premises
20 in this State where alcoholic liquors are manufactured,
21 distributed, warehoused, or sold.

22 (5.1) Upon receipt of a complaint or upon having
23 knowledge that any person is engaged in business as a
24 manufacturer, importing distributor, distributor, or
25 retailer without a license or valid license, to notify the
26 local liquor authority, file a complaint with the State's

1 Attorney's Office of the county where the incident
2 occurred, or initiate an investigation with the
3 appropriate law enforcement officials.

4 (5.2) To issue a cease and desist notice to persons
5 shipping alcoholic liquor into this State from a point
6 outside of this State if the shipment is in violation of
7 this Act.

8 (5.3) To receive complaints from licensees, local
9 officials, law enforcement agencies, organizations, and
10 persons stating that any licensee has been or is violating
11 any provision of this Act or the rules and regulations
12 issued pursuant to this Act. Such complaints shall be in
13 writing, signed and sworn to by the person making the
14 complaint, and shall state with specificity the facts in
15 relation to the alleged violation. If the Commission has
16 reasonable grounds to believe that the complaint
17 substantially alleges a violation of this Act or rules and
18 regulations adopted pursuant to this Act, it shall conduct
19 an investigation. If, after conducting an investigation,
20 the Commission is satisfied that the alleged violation did
21 occur, it shall proceed with disciplinary action against
22 the licensee as provided in this Act.

23 (6) To hear and determine appeals from orders of a
24 local commission in accordance with the provisions of this
25 Act, as hereinafter set forth. Hearings under this
26 subsection shall be held in Springfield or Chicago, at

1 whichever location is the more convenient for the majority
2 of persons who are parties to the hearing.

3 (7) The commission shall establish uniform systems of
4 accounts to be kept by all retail licensees having more
5 than 4 employees, and for this purpose the commission may
6 classify all retail licensees having more than 4 employees
7 and establish a uniform system of accounts for each class
8 and prescribe the manner in which such accounts shall be
9 kept. The commission may also prescribe the forms of
10 accounts to be kept by all retail licensees having more
11 than 4 employees, including but not limited to accounts of
12 earnings and expenses and any distribution, payment, or
13 other distribution of earnings or assets, and any other
14 forms, records and memoranda which in the judgment of the
15 commission may be necessary or appropriate to carry out any
16 of the provisions of this Act, including but not limited to
17 such forms, records and memoranda as will readily and
18 accurately disclose at all times the beneficial ownership
19 of such retail licensed business. The accounts, forms,
20 records and memoranda shall be available at all reasonable
21 times for inspection by authorized representatives of the
22 State commission or by any local liquor control
23 commissioner or his or her authorized representative. The
24 commission, may, from time to time, alter, amend or repeal,
25 in whole or in part, any uniform system of accounts, or the
26 form and manner of keeping accounts.

1 (8) In the conduct of any hearing authorized to be held
2 by the commission, to appoint, at the commission's
3 discretion, hearing officers to conduct hearings involving
4 complex issues or issues that will require a protracted
5 period of time to resolve, to examine, or cause to be
6 examined, under oath, any licensee, and to examine or cause
7 to be examined the books and records of such licensee; to
8 hear testimony and take proof material for its information
9 in the discharge of its duties hereunder; to administer or
10 cause to be administered oaths; for any such purpose to
11 issue subpoena or subpoenas to require the attendance of
12 witnesses and the production of books, which shall be
13 effective in any part of this State, and to adopt rules to
14 implement its powers under this paragraph (8).

15 Any Circuit Court may by order duly entered, require
16 the attendance of witnesses and the production of relevant
17 books subpoenaed by the State commission and the court may
18 compel obedience to its order by proceedings for contempt.

19 (9) To investigate the administration of laws in
20 relation to alcoholic liquors in this and other states and
21 any foreign countries, and to recommend from time to time
22 to the Governor and through him or her to the legislature
23 of this State, such amendments to this Act, if any, as it
24 may think desirable and as will serve to further the
25 general broad purposes contained in Section 1-2 hereof.

26 (10) To adopt such rules and regulations consistent

1 with the provisions of this Act which shall be necessary
2 for the control, sale or disposition of alcoholic liquor
3 damaged as a result of an accident, wreck, flood, fire or
4 other similar occurrence.

5 (11) To develop industry educational programs related
6 to responsible serving and selling, particularly in the
7 areas of overserving consumers and illegal underage
8 purchasing and consumption of alcoholic beverages.

9 (11.1) To license persons providing education and
10 training to alcohol beverage sellers and servers under the
11 Beverage Alcohol Sellers and Servers Education and
12 Training (BASSET) programs and to develop and administer a
13 public awareness program in Illinois to reduce or eliminate
14 the illegal purchase and consumption of alcoholic beverage
15 products by persons under the age of 21. Application for a
16 license shall be made on forms provided by the State
17 Commission.

18 (12) To develop and maintain a repository of license
19 and regulatory information.

20 (13) On or before January 15, 1994, the Commission
21 shall issue a written report to the Governor and General
22 Assembly that is to be based on a comprehensive study of
23 the impact on and implications for the State of Illinois of
24 Section 1926 of the Federal ADAMHA Reorganization Act of
25 1992 (Public Law 102-321). This study shall address the
26 extent to which Illinois currently complies with the

1 provisions of P.L. 102-321 and the rules promulgated
2 pursuant thereto.

3 As part of its report, the Commission shall provide the
4 following essential information:

5 (i) the number of retail distributors of tobacco
6 products, by type and geographic area, in the State;

7 (ii) the number of reported citations and
8 successful convictions, categorized by type and
9 location of retail distributor, for violation of the
10 Sale and Distribution of Tobacco Products ~~to Minors~~ Act
11 and the Smokeless Tobacco Limitation Act;

12 (iii) the extent and nature of organized
13 educational and governmental activities that are
14 intended to promote, encourage or otherwise secure
15 compliance with any Illinois laws that prohibit the
16 sale or distribution of tobacco products to minors; and

17 (iv) the level of access and availability of
18 tobacco products to individuals under the age of 18.

19 To obtain the data necessary to comply with the
20 provisions of P.L. 102-321 and the requirements of this
21 report, the Commission shall conduct random, unannounced
22 inspections of a geographically and scientifically
23 representative sample of the State's retail tobacco
24 distributors.

25 The Commission shall consult with the Department of
26 Public Health, the Department of Human Services, the

1 Illinois State Police and any other executive branch
2 agency, and private organizations that may have
3 information relevant to this report.

4 The Commission may contract with the Food and Drug
5 Administration of the U.S. Department of Health and Human
6 Services to conduct unannounced investigations of Illinois
7 tobacco vendors to determine compliance with federal laws
8 relating to the illegal sale of cigarettes and smokeless
9 tobacco products to persons under the age of 18.

10 (14) On or before April 30, 2008 and every 2 years
11 thereafter, the Commission shall present a written report
12 to the Governor and the General Assembly that shall be
13 based on a study of the impact of this amendatory Act of
14 the 95th General Assembly on the business of soliciting,
15 selling, and shipping wine from inside and outside of this
16 State directly to residents of this State. As part of its
17 report, the Commission shall provide all of the following
18 information:

19 (A) The amount of State excise and sales tax
20 revenues generated.

21 (B) The amount of licensing fees received.

22 (C) The number of cases of wine shipped from inside
23 and outside of this State directly to residents of this
24 State.

25 (D) The number of alcohol compliance operations
26 conducted.

1 (E) The number of winery shipper's licenses
2 issued.

3 (F) The number of each of the following: reported
4 violations; cease and desist notices issued by the
5 Commission; notices of violations issued by the
6 Commission and to the Department of Revenue; and
7 notices and complaints of violations to law
8 enforcement officials, including, without limitation,
9 the Illinois Attorney General and the U.S. Department
10 of Treasury's Alcohol and Tobacco Tax and Trade Bureau.

11 (15) As a means to reduce the underage consumption of
12 alcoholic liquors, the Commission shall conduct alcohol
13 compliance operations to investigate whether businesses
14 that are soliciting, selling, and shipping wine from inside
15 or outside of this State directly to residents of this
16 State are licensed by this State or are selling or
17 attempting to sell wine to persons under 21 years of age in
18 violation of this Act.

19 (16) The Commission shall, in addition to notifying any
20 appropriate law enforcement agency, submit notices of
21 complaints or violations of Sections 6-29 and 6-29.1 by
22 persons who do not hold a winery shipper's license under
23 this amendatory Act to the Illinois Attorney General and to
24 the U.S. Department of Treasury's Alcohol and Tobacco Tax
25 and Trade Bureau.

26 (17) (A) A person licensed to make wine under the laws

1 of another state who has a winery shipper's license under
2 this amendatory Act and annually produces less than 25,000
3 gallons of wine or a person who has a first-class or
4 second-class wine manufacturer's license, a first-class or
5 second-class wine-maker's license, or a limited wine
6 manufacturer's license under this Act and annually
7 produces less than 25,000 gallons of wine may make
8 application to the Commission for a self-distribution
9 exemption to allow the sale of not more than 5,000 gallons
10 of the exemption holder's wine to retail licensees per
11 year.

12 (B) In the application, which shall be sworn under
13 penalty of perjury, such person shall state (1) the
14 date it was established; (2) its volume of production
15 and sales for each year since its establishment; (3)
16 its efforts to establish distributor relationships;
17 (4) that a self-distribution exemption is necessary to
18 facilitate the marketing of its wine; and (5) that it
19 will comply with the liquor and revenue laws of the
20 United States, this State, and any other state where it
21 is licensed.

22 (C) The Commission shall approve the application
23 for a self-distribution exemption if such person: (1)
24 is in compliance with State revenue and liquor laws;
25 (2) is not a member of any affiliated group that
26 produces more than 25,000 gallons of wine per annum or

1 produces any other alcoholic liquor; (3) will not
2 annually produce for sale more than 25,000 gallons of
3 wine; and (4) will not annually sell more than 5,000
4 gallons of its wine to retail licensees.

5 (D) A self-distribution exemption holder shall
6 annually certify to the Commission its production of
7 wine in the previous 12 months and its anticipated
8 production and sales for the next 12 months. The
9 Commission may fine, suspend, or revoke a
10 self-distribution exemption after a hearing if it
11 finds that the exemption holder has made a material
12 misrepresentation in its application, violated a
13 revenue or liquor law of Illinois, exceeded production
14 of 25,000 gallons of wine in any calendar year, or
15 become part of an affiliated group producing more than
16 25,000 gallons of wine or any other alcoholic liquor.

17 (E) Except in hearings for violations of this Act
18 or amendatory Act or a bona fide investigation by duly
19 sworn law enforcement officials, the Commission, or
20 its agents, the Commission shall maintain the
21 production and sales information of a
22 self-distribution exemption holder as confidential and
23 shall not release such information to any person.

24 (F) The Commission shall issue regulations
25 governing self-distribution exemptions consistent with
26 this Section and this Act.

1 (G) Nothing in this subsection (17) shall prohibit
2 a self-distribution exemption holder from entering
3 into or simultaneously having a distribution agreement
4 with a licensed Illinois distributor.

5 (H) It is the intent of this subsection (17) to
6 promote and continue orderly markets. The General
7 Assembly finds that in order to preserve Illinois'
8 regulatory distribution system it is necessary to
9 create an exception for smaller makers of wine as their
10 wines are frequently adjusted in varietals, mixes,
11 vintages, and taste to find and create market niches
12 sometimes too small for distributor or importing
13 distributor business strategies. Limited
14 self-distribution rights will afford and allow smaller
15 makers of wine access to the marketplace in order to
16 develop a customer base without impairing the
17 integrity of the 3-tier system.

18 (b) On or before April 30, 1999, the Commission shall
19 present a written report to the Governor and the General
20 Assembly that shall be based on a study of the impact of this
21 amendatory Act of 1998 on the business of soliciting, selling,
22 and shipping alcoholic liquor from outside of this State
23 directly to residents of this State.

24 As part of its report, the Commission shall provide the
25 following information:

26 (i) the amount of State excise and sales tax revenues

1 generated as a result of this amendatory Act of 1998;

2 (ii) the amount of licensing fees received as a result
3 of this amendatory Act of 1998;

4 (iii) the number of reported violations, the number of
5 cease and desist notices issued by the Commission, the
6 number of notices of violations issued to the Department of
7 Revenue, and the number of notices and complaints of
8 violations to law enforcement officials.

9 (Source: P.A. 95-634, eff. 6-1-08.)

10 (235 ILCS 5/6-16.1)

11 Sec. 6-16.1. Enforcement actions.

12 (a) A licensee or an officer, associate, member,
13 representative, agent, or employee of a licensee may sell,
14 give, or deliver alcoholic liquor to a person under the age of
15 21 years or authorize the sale, gift, or delivery of alcoholic
16 liquor to a person under the age of 21 years pursuant to a plan
17 or action to investigate, patrol, or otherwise conduct a "sting
18 operation" or enforcement action against a person employed by
19 the licensee or on any licensed premises if the licensee or
20 officer, associate, member, representative, agent, or employee
21 of the licensee provides written notice, at least 14 days
22 before the "sting operation" or enforcement action, unless
23 governing body of the municipality or county having
24 jurisdiction sets a shorter period by ordinance, to the law
25 enforcement agency having jurisdiction, the local liquor

1 control commissioner, or both. Notice provided under this
2 Section shall be valid for a "sting operation" or enforcement
3 action conducted within 60 days of the provision of that
4 notice, unless the governing body of the municipality or county
5 having jurisdiction sets a shorter period by ordinance.

6 (b) A local liquor control commission or unit of local
7 government that conducts alcohol and tobacco compliance
8 operations shall establish a policy and standards for alcohol
9 and tobacco compliance operations to investigate whether a
10 licensee is furnishing (1) alcoholic liquor to persons under 21
11 years of age in violation of this Act or (2) tobacco to persons
12 in violation of the Sale and Distribution of Tobacco Products
13 ~~to Minors~~ Act.

14 (c) The Illinois Law Enforcement Training Standards Board
15 shall develop a model policy and guidelines for the operation
16 of alcohol and tobacco compliance checks by local law
17 enforcement officers. The Illinois Law Enforcement Training
18 Standards Board shall also require the supervising officers of
19 such compliance checks to have met a minimum training standard
20 as determined by the Board. The Board shall have the right to
21 waive any training based on current written policies and
22 procedures for alcohol and tobacco compliance check operations
23 and in-service training already administered by the local law
24 enforcement agency, department, or office.

25 (d) The provisions of subsections (b) and (c) do not apply
26 to a home rule unit with more than 2,000,000 inhabitants.

1 (e) A home rule unit, other than a home rule unit with more
2 than 2,000,000 inhabitants, may not regulate enforcement
3 actions in a manner inconsistent with the regulation of
4 enforcement actions under this Section. This subsection (e) is
5 a limitation under subsection (i) of Section 6 of Article VII
6 of the Illinois Constitution on the concurrent exercise by home
7 rule units of powers and functions exercised by the State.

8 (f) A licensee who is the subject of an enforcement action
9 or "sting operation" under this Section and is found, pursuant
10 to the enforcement action, to be in compliance with this Act
11 shall be notified by the enforcement agency action that no
12 violation was found within 30 days after the finding.

13 (Source: P.A. 92-503, eff. 1-1-02; 93-1057, eff. 12-2-04.)

14 Section 10. The Sale of Tobacco to Minors Act is amended by
15 changing the title of the Act and Sections 0.01 and 1 as
16 follows:

17 (720 ILCS 675/Act title)

18 An Act to prohibit minors from buying or selling tobacco in
19 any of its forms, to prohibit selling, giving or furnishing
20 tobacco, in any of its forms, to minors, and to prohibit the
21 distribution of tobacco samples and providing penalties
22 therefor.

23 (720 ILCS 675/0.01) (from Ch. 23, par. 2356.9)

1 Sec. 0.01. Short title. This Act may be cited as the Sale
2 and Distribution of Tobacco Products ~~to Minors~~ Act.

3 (Source: P.A. 86-1324.)

4 (720 ILCS 675/1) (from Ch. 23, par. 2357)

5 Sec. 1. Prohibition on sale of tobacco to minors;
6 prohibition on the distribution of tobacco samples to any
7 person; use of identification cards; vending machines; lunch
8 wagons; out-of-package sales.

9 (a) No minor under 18 years of age shall buy any tobacco
10 product ~~cigar, cigarette, smokeless tobacco or tobacco in any~~
11 ~~of its forms~~. No person shall sell, buy for, distribute samples
12 of or furnish any tobacco product ~~cigar, cigarette, smokeless~~
13 ~~tobacco or tobacco in any of its forms~~, to any minor under 18
14 years of age.

15 (a-5) No minor under 16 years of age may sell any tobacco
16 product ~~cigar, cigarette, smokeless tobacco, or tobacco in any~~
17 ~~of its forms~~ at a retail establishment selling tobacco
18 products. This subsection does not apply to a sales clerk in a
19 family-owned business which can prove that the sales clerk is
20 in fact a son or daughter of the owner.

21 (a-6) No minor under 18 years of age in the furtherance or
22 facilitation of obtaining any tobacco product ~~cigar,~~
23 ~~cigarette, smokeless tobacco, or tobacco in any of its forms~~
24 shall display or use a false or forged identification card or
25 transfer, alter, or deface an identification card.

1 (a-7) A person shall not distribute without charge samples
2 of any tobacco product to any other person, regardless of age:

3 (1) at a retail establishment selling tobacco
4 products;

5 (2) from a lunch wagon; or

6 (3) on a public way as a promotion or advertisement of
7 a tobacco manufacturer or tobacco product.

8 This subsection (a-7) applies even if the person who is
9 intended to receive the tobacco product purchased another
10 product from the person intending to distribute the tobacco
11 product.

12 For the purpose of this Section:7

13 "Lunch wagon" means a mobile vehicle designed and
14 constructed to transport food and from which food is sold
15 to the general public.

16 "Smokeless ~~smokeless~~ tobacco" means any tobacco
17 products that are suitable for dipping or chewing.

18 "Tobacco product" means any cigar, cigarette,
19 smokeless tobacco, or tobacco in any of its forms.

20 (b) Tobacco products listed above may be sold through a
21 vending machine only if such tobacco products are not placed
22 together with any non-tobacco product, other than matches, in
23 the vending machine and the vending machine is in any of the
24 following locations:

25 (1) (Blank).

26 (2) Places to which minors under 18 years of age are

1 not permitted access.

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

5 (4) (Blank).

6 (5) Places where the vending machine can only be
7 operated by the owner or an employee over age 18 either
8 directly or through a remote control device if the device
9 is inaccessible to all customers.

10 (c) (Blank) ~~The sale or distribution at no charge of~~
11 ~~cigarettes from a lunch wagon engaging in any sales activity~~
12 ~~within 1,000 feet of any public or private elementary or~~
13 ~~secondary school grounds is prohibited.~~

14 ~~For the purpose of this Section, "lunch wagon" means a~~
15 ~~mobile vehicle designed and constructed to transport food and~~
16 ~~from which food is sold to the general public.~~

17 (d) The sale or distribution by any person of a tobacco
18 product listed above, including but not limited to a single or
19 loose cigarette, that is not contained within a sealed
20 container, pack, or package as provided by the manufacturer,
21 which container, pack, or package bears the health warning
22 required by federal law, is prohibited.

23 (Source: P.A. 95-905, eff. 1-1-09.)

24 Section 15. The Display of Tobacco Products Act is amended
25 by changing Section 15 as follows:

1 (720 ILCS 677/15)

2 Sec. 15. Vending machines. This Act does not prohibit the
3 sale of tobacco products from vending machines if the location
4 of the vending machines are in compliance with the provisions
5 of Section 1 of the Sale and Distribution of Tobacco Products
6 ~~to Minors~~ Act.

7 (Source: P.A. 93-886, eff. 1-1-05.)