



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4316

Introduced 1/29/2020, by Rep. Mike Murphy - Jeff Keicher

SYNOPSIS AS INTRODUCED:

See Index

Creates the Electronic Cigarette Youth Protection Act. Provides that a person who sells an electronic cigarette without a proper license under the Tobacco Products Tax Act of 1995 shall be subject to specified additional civil penalties. Prohibits manufacturers, distributors, or retailers of electronic cigarettes from selling, offering for sale, or distributing any electronic cigarette with labeling or packaging intended to be attractive to persons under 21 years of age and provides criteria to determine whether packaging or labeling is attractive to such persons. Requires all labeling and packaging of electronic cigarettes to include nicotine warning statements. Provides that manufacturers, distributors, or retailers of electronic cigarettes shall not sell, advertise, or market an electronic cigarette unless specified conditions have been met. Prohibits: (1) electronic cigarettes from containing more than 25 milligrams per milliliter of nicotine; and (2) vitamin E acetate from being added to a flavored solution or substance intended for use with an electronic cigarette. Prohibits a retailer serving persons under 21 years of age from selling a flavored solution or substance intended for use with an electronic cigarette. Requires a retailer to perform age verification. Provides that failure to comply with the Act's requirements or prohibitions is punishable by a civil penalty. Provides that specified provisions do not apply to any noncommercial speech. Requires moneys collected from civil penalties to be deposited into the Common School Fund. Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that no person under 21 years of age shall possess any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms. Effective immediately.

LRB101 16815 CPF 67546 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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 Electronic Cigarette Youth Protection Act.

6 Section 5. Definitions. In this Act:

7 "Adult-only retail location" means a facility that is
8 licensed to sell electronic cigarettes as a retailer under the
9 Tobacco Products Tax Act of 1995 and that does not allow a
10 minor to enter the premises.

11 "Advertise" means the publication or dissemination of an
12 advertisement.

13 "Advertisement" means any written or verbal statement,
14 illustration, or depiction that is calculated to induce sales
15 of electronic cigarettes, including any written, printed,
16 graphic, or other material, billboard, sign, or other outdoor
17 display, public transit card, other periodical literature,
18 publication, or in a radio or television broadcast, or in any
19 other media. "Advertisement" does not include:

20 (1) Any label affixed to any electronic cigarette, or
21 any individual covering, carton, or other wrapper of such
22 container that constitutes a part of the labeling.

23 (2) Any editorial or other reading material, such as a

1 news release, in any periodical, publication, or newspaper
2 for the publication of which no money or valuable
3 consideration is paid or promised, directly or indirectly,
4 by any licensee under the Tobacco Products Tax Act of 1995,
5 and which is not written by or at the direction of the
6 licensee.

7 "Advertising sign" means any sign, poster, display,
8 billboard, or any other stationary or permanently affixed
9 advertisement promoting the sale of electronic cigarettes
10 which are not manufactured, distributed, or sold on the same
11 lot.

12 "Alternative nicotine product" means a product or device
13 not consisting of or containing tobacco that provides for the
14 ingestion into the body of nicotine, whether by chewing,
15 smoking, absorbing, dissolving, inhaling, snorting, sniffing,
16 or by any other means. "Alternative nicotine product" does not
17 include: a cigarette as defined in Section 1 of the Cigarette
18 Tax Act or a tobacco product as defined in Section 10-5 of the
19 Tobacco Products Tax Act of 1995; a tobacco product or
20 electronic cigarette as defined in this Section; or any product
21 approved by the United States Food and Drug Administration for
22 sale as a tobacco cessation product, as a tobacco dependence
23 product, or for other medical purposes, and marketed and sold
24 solely for that approved purpose.

25 "Characterizing flavor" means a distinguishable taste or
26 aroma, other than the taste or aroma of tobacco, including, but

1 not limited to, any fruit, chocolate, vanilla, honey, candy,
2 cocoa, dessert, alcoholic beverage, herb, or spice flavoring. A
3 tobacco product, related tobacco product, alternative nicotine
4 product, or solution or substance intended for use with
5 electronic cigarettes or any component part of a tobacco
6 product, related tobacco product, alternative nicotine
7 product, or solution or substance intended for use with
8 electronic cigarettes shall not be construed as having a
9 characterizing flavor based solely on the use of trace
10 additives or flavorings or the provision of ingredient
11 information.

12 "Department" means the Department of Human Services.

13 "Distributor" has the same meaning ascribed to it in
14 Section 10-5 of the Tobacco Products Tax Act of 1995.

15 "Electronic cigarette" means:

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

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

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

24 "Electronic cigarette" includes, but is not limited to, any
25 electronic nicotine delivery system, electronic cigar,
26 electronic cigarillo, electronic pipe, electronic hookah, vape

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

14 "Flavored alternative nicotine product" means any
15 alternative nicotine product that contains a natural or
16 artificial constituent or additive that imparts a
17 characterizing flavor.

18 "Flavored related tobacco product" means any related
19 tobacco product that contains a natural or artificial
20 constituent or additive that imparts a characterizing flavor.

21 "Flavored solution or substance intended for use with
22 electronic cigarettes" means any solution or substance
23 intended for use with electronic cigarettes that contains a
24 natural or artificial constituent or additive that imparts a
25 characterizing flavor.

26 "Health-related statement" means any statement related to

1 health, and includes statements of a curative or therapeutic
2 nature that, expressly or by implication, suggest a
3 relationship between the consumption of electronic cigarettes
4 and health benefits or effects on health.

5 "Manufacturer" has the same meaning ascribed to it in
6 Section 10-5 of the Tobacco Products Tax Act of 1995.

7 "Market" or "marketing" means any act or process of
8 promoting or selling electronic cigarettes, including, but not
9 limited to, sponsorship of sporting events, point-of-sale
10 advertising, and development of products specifically designed
11 to appeal to persons under 21 years of age.

12 "Related tobacco product" means any product intended for or
13 traditionally used with tobacco, including, but not limited to,
14 papers, wraps, tubes, or filters. A product of a type that has
15 in the past been used in conjunction with tobacco or nicotine
16 use will be deemed a "related tobacco product" regardless of
17 any labeling or descriptive language on such product stating
18 that the product is not intended for use with tobacco or for
19 non-tobacco use only or other similar language.

20 "Retailer" has the same meaning ascribed to it in Section
21 10-5 of the Tobacco Products Tax Act of 1995.

22 Section 10. Sale of electronic cigarettes without a
23 license.

24 (a) Any person who sells an electronic cigarette without a
25 proper license under the Tobacco Products Tax Act of 1995 shall

1 be subject to the following penalties:

2 (1) For a first violation, a civil penalty of not less
3 than \$2,500 and not to exceed \$5,000.

4 (2) For a second violation, a civil penalty of more
5 than \$5,000 and not to exceed \$10,000.

6 (3) For a third or subsequent violation, a civil
7 penalty of \$10,000.

8 (b) Any violation of this Section that occurs on school
9 property shall be considered an aggravating factor and shall,
10 at a minimum, double the penalties provided under paragraphs
11 (1) through (3) of subsection (a) of this Section.

12 (c) The penalties under this Section are in addition to any
13 other penalty imposed under Illinois law. Moneys collected from
14 the civil penalties imposed under this Section shall be
15 deposited into the Common School Fund.

16 Section 15. Marketing, labeling, and advertisement of
17 electronic cigarettes.

18 (a) A manufacturer, distributor, or retailer of electronic
19 cigarettes shall not sell, offer for sale, or distribute any
20 electronic cigarette with labeling or packaging intended to be
21 attractive to persons under 21 years of age. Labeling or
22 packaging of an electronic cigarette is attractive to persons
23 under 21 years of age if it uses packaging or labeling that:

24 (1) is false or misleading;

25 (2) promotes overconsumption of electronic cigarettes;

1 (3) depicts the actual consumption of an electronic
2 cigarette by a person 21 years of age or older

3 (4) depicts a person under 21 years of age consuming an
4 electronic cigarette;

5 (5) makes any health, medicinal, or therapeutic claims
6 about electronic cigarettes;

7 (6) includes an image of an electronic cigarette;

8 (7) depicts an image designed or likely to appeal to
9 minors, including cartoons, toys, superheroes, or
10 children, or any other likeness to images, characters, or
11 phrases, including, but not limited to, unicorns, designed
12 in any manner to make consumption of electronic cigarettes
13 appealing to or encourage consumption of electronic
14 cigarettes by persons under 21 years of age;

15 (8) imitates or mimics trademark or trade dress of food
16 products, including, but not limited to, candy, juice
17 boxes, or soft drinks, or celebrity images that are or have
18 primarily been marketed towards persons under 21 years of
19 age;

20 (9) contains images of food products primarily
21 targeted to minors, including, but not limited to, juice
22 boxes, soft drinks, pop, cereal, candy, or dessert; or

23 (10) contains the terms "candy", "candies", "kandy",
24 "kandeez", "bubble gum", "cotton candy", "gummy bear",
25 "cupcake", "milkshake", or any variants in the spelling of
26 those terms.

1 (b) All labeling and packaging of electronic cigarettes
2 shall include proper nicotine warning statements required
3 under federal law or by administrative rule.

4 (c) A manufacturer, distributor, or retailer of electronic
5 cigarettes shall not sell, advertise, or market an electronic
6 cigarette unless all of the following conditions have been met:

7 (1) All advertisements and marketing must accurately
8 and legibly identify the person or entity paying for the
9 publication of the advertisement or marketing.

10 (2) Any advertising or marketing in broadcast, cable,
11 radio, print, or digital communications, or any event
12 marketing or sponsorship, must only be made where at least
13 71.6% of the audience is reasonably expected to be 21 years
14 of age or older, as determined by reliable, up-to-date
15 audience composition data.

16 (3) All advertising must be truthful and appropriately
17 substantiated.

18 (4) Advertising or marketing must not be presented in a
19 manner that is false or untrue in any material matter, or
20 that, irrespective of falsity, directly or by ambiguity,
21 omission, or inference, or by the addition of irrelevant
22 scientific or technical matter, tends to create a
23 misleading impression.

24 (5) Publishing or disseminating advertising or
25 marketing containing any statement concerning a brand or
26 product must not be inconsistent with any statement on the

1 labeling thereof.

2 (6) Advertising or marketing of electronic cigarettes
3 must not be presented in a manner intended to encourage
4 persons under the age of 21 to consume electronic
5 cigarettes.

6 (7) Publishing or disseminating advertising or
7 marketing containing symbols, language, music, gestures,
8 cartoon characters, or other content elements must not be
9 known to appeal primarily to persons under 21 years of age.

10 (8) Advertising or marketing electronic cigarettes
11 must not be on an advertising sign within 1,000 feet of a
12 daycare center, a school offering instruction in grades
13 kindergarten through 12, a playground, or a youth center.
14 This condition shall not apply to the placement of
15 advertising signs inside a premises licensed under the
16 Tobacco Products Tax Act of 1995 and that are not visible
17 by normal unaided vision from a public place, provided that
18 such advertising signs do not advertise electronic
19 cigarettes in a manner intended to encourage persons under
20 the age of 21 to consume electronic cigarettes.

21 (9) Publishing or disseminating advertising or
22 marketing must not contain any health-related statement
23 that is untrue in any particular manner or tends to create
24 a misleading impression as to the health benefits of
25 consumption of electronic cigarettes.

26 (10) Advertising must not contain any reference to an

1 electronic cigarette as a smoking cessation device or as a
2 product that may be helpful to quit smoking.

3 (11) Advertising must not use a health care
4 professional or a person who appears to be under 25 years
5 of age to advertise an electronic cigarette.

6 (d) Violations of this Section shall be punishable by the
7 following civil penalties, and moneys collected from the civil
8 penalties under this Section shall be deposited into the Common
9 School Fund:

10 (1) For a first violation, a civil penalty of not less
11 than \$2,500 and not to exceed \$5,000.

12 (2) For a second violation, a civil penalty of more
13 than \$5,000 and not to exceed \$10,000.

14 (3) For a third or subsequent violation, a civil
15 penalty of \$10,000.

16 (e) This Section does not apply to any noncommercial
17 speech.

18 (f) This Section does not apply to electronic cigarettes
19 that are in the possession of a manufacturer, distributor, or
20 retailer on the effective date of this Act. Any product that is
21 in the possession of a manufacturer, distributor, or retailer
22 on the effective date of this Act must be sold to a final
23 consumer no later than 180 days after the effective date of
24 this Act unless otherwise exempt under subsection (g).

25 (g) This Section does not apply to any electronic
26 cigarettes that are in the possession of a manufacturer,

1 distributor, or retailer and that are not intended to be sold
2 to a final consumer in the State of Illinois.

3 Section 20. Limitations on sales of electronic cigarettes.

4 (a) An electronic cigarette or flavored solution or
5 substance intended for use with an electronic cigarette may not
6 be sold in this State under any of the following conditions:

7 (1) If it contains more than 25 milligrams per
8 milliliter of nicotine.

9 (2) If vitamin E acetate is added to a flavored
10 solution or substance intended for use with an electronic
11 cigarette.

12 (b) A retailer who serves persons under 21 years of age may
13 not sell a flavored solution or substance intended for use with
14 an electronic cigarette.

15 (c) In a sale of an electronic cigarette by a retailer, the
16 retailer must perform an age verification through an
17 independent, third-party age verification service that
18 compares information available from public records to the
19 personal information entered by the buyer during the ordering
20 process and that establishes the buyer is of legal age or
21 older.

22 (d) This Section does not apply to electronic cigarettes or
23 flavored solutions or substances intended for use with an
24 electronic cigarette that are in the possession of a
25 manufacturer, distributor, or retailer on the effective date of

1 this Act. Any product that is in the possession of a
2 manufacturer, distributor, or retailer on the effective date of
3 this Act must be sold to a final consumer no later than 180
4 days after the effective date of this Act unless otherwise
5 exempt under subsection (e).

6 (e) This Section does not apply to any electronic
7 cigarettes or flavored solutions or substances intended for use
8 with an electronic cigarette that are in the possession of a
9 manufacturer, distributor, or retailer and that are not
10 intended to be sold to a final consumer in the State of
11 Illinois.

12 (f) Violations of this Section shall be punishable by the
13 following civil penalties, and moneys collected from the civil
14 penalties under this Section shall be deposited into the Common
15 School Fund:

16 (1) For a first violation, a civil penalty of not less
17 than \$2,500 and not to exceed \$5,000.

18 (2) For a second violation, a civil penalty of more
19 than \$5,000 and not to exceed \$10,000.

20 (3) For a third and subsequent violation, a civil
21 penalty of \$10,000.

22 Section 75. The Prevention of Tobacco Use by Persons under
23 21 Years of Age and Sale and Distribution of Tobacco Products
24 Act is amended by changing Section 1 as follows:

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

2 Sec. 1. Prohibition on sale of tobacco products, electronic
3 cigarettes, and alternative nicotine products to persons under
4 21 years of age; prohibition on the distribution of tobacco
5 product samples, electronic cigarette samples, and alternative
6 nicotine product samples to any person; use of identification
7 cards; vending machines; lunch wagons; out-of-package sales.

8 (a) No person under 21 years of age shall buy any tobacco
9 product, electronic cigarette, or alternative nicotine
10 product. No person shall sell, buy for, distribute samples of
11 or furnish any tobacco product, electronic cigarette, or any
12 alternative nicotine product to any person under 21 years of
13 age.

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

21 (a-5.1) Before selling, offering for sale, giving, or
22 furnishing a tobacco product, electronic cigarette, or
23 alternative nicotine product to another person, the person
24 selling, offering for sale, giving, or furnishing the tobacco
25 product, electronic cigarette, or alternative nicotine product
26 shall verify that the person is at least 21 years of age by:

1 (1) examining from any person that appears to be under
2 30 years of age a government-issued photographic
3 identification that establishes the person to be 21 years
4 of age or older; or

5 (2) for sales of tobacco products, electronic
6 cigarettes, or alternative nicotine products made through
7 the Internet or other remote sales methods, performing an
8 age verification through an independent, third party age
9 verification service that compares information available
10 from public records to the personal information entered by
11 the person during the ordering process that establishes the
12 person is 21 years of age or older.

13 (a-6) No person under 21 years of age in the furtherance or
14 facilitation of obtaining any tobacco product, electronic
15 cigarette, or alternative nicotine product shall display or use
16 a false or forged identification card or transfer, alter, or
17 deface an identification card.

18 (a-7) No person under 21 years of age shall possess any
19 cigar, cigarette, smokeless tobacco, or tobacco in any of its
20 forms. ~~(Blank).~~

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

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

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

2 "Adult-only facility" means a facility or restricted
3 area (whether open-air or enclosed) where the operator
4 ensures or has a reasonable basis to believe (such as by
5 checking identification as required under State law, or by
6 checking the identification of any person appearing to be
7 under the age of 30) that no person under legal age is
8 present. A facility or restricted area need not be
9 permanently restricted to persons under 21 years of age to
10 constitute an adult-only facility, provided that the
11 operator ensures or has a reasonable basis to believe that
12 no person under 21 years of age is present during the event
13 or time period in question.

14 "Alternative nicotine product" means a product or
15 device not consisting of or containing tobacco that
16 provides for the ingestion into the body of nicotine,
17 whether by chewing, smoking, absorbing, dissolving,
18 inhaling, snorting, sniffing, or by any other means.
19 "Alternative nicotine product" does not include:
20 cigarettes as defined in Section 1 of the Cigarette Tax Act
21 and tobacco products as defined in Section 10-5 of the
22 Tobacco Products Tax Act of 1995; tobacco product and
23 electronic cigarette as defined in this Section; or any
24 product approved by the United States Food and Drug
25 Administration for sale as a tobacco cessation product, as
26 a tobacco dependence product, or for other medical

1 purposes, and is being marketed and sold solely for that
2 approved purpose.

3 "Electronic cigarette" means:

4 (1) any device that employs a battery or other
5 mechanism to heat a solution or substance to produce a
6 vapor or aerosol intended for inhalation;

7 (2) any cartridge or container of a solution or
8 substance intended to be used with or in the device or
9 to refill the device; or

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

12 "Electronic cigarette" includes, but is not limited
13 to, any electronic nicotine delivery system, electronic
14 cigar, electronic cigarillo, electronic pipe, electronic
15 hookah, vape pen, or similar product or device, and any
16 components or parts that can be used to build the product
17 or device. "Electronic cigarette" does not include:
18 cigarettes as defined in Section 1 of the Cigarette Tax Act
19 and tobacco products as defined in Section 10-5 of the
20 Tobacco Products Tax Act of 1995; tobacco product and
21 alternative nicotine product as defined in this Section;
22 any product approved by the United States Food and Drug
23 Administration for sale as a tobacco cessation product, as
24 a tobacco dependence product, or for other medical
25 purposes, and is being marketed and sold solely for that
26 approved purpose; any asthma inhaler prescribed by a

1 physician for that condition and is being marketed and sold
2 solely for that approved purpose; or any therapeutic
3 product approved for use under the Compassionate Use of
4 Medical Cannabis Pilot Program Act.

5 "Lunch wagon" means a mobile vehicle designed and
6 constructed to transport food and from which food is sold
7 to the general public.

8 "Nicotine" means any form of the chemical nicotine,
9 including any salt or complex, regardless of whether the
10 chemical is naturally or synthetically derived.

11 "Tobacco product" means any product containing or made
12 from tobacco that is intended for human consumption,
13 whether smoked, heated, chewed, absorbed, dissolved,
14 inhaled, snorted, sniffed, or ingested by any other means,
15 including, but not limited to, cigarettes, cigars, little
16 cigars, chewing tobacco, pipe tobacco, snuff, snus, and any
17 other smokeless tobacco product which contains tobacco
18 that is finely cut, ground, powdered, or leaf and intended
19 to be placed in the oral cavity. "Tobacco product" includes
20 any component, part, or accessory of a tobacco product,
21 whether or not sold separately. "Tobacco product" does not
22 include: an electronic cigarette and alternative nicotine
23 product as defined in this Section; or any product that has
24 been approved by the United States Food and Drug
25 Administration for sale as a tobacco cessation product, as
26 a tobacco dependence product, or for other medical

1 purposes, and is being marketed and sold solely for that
2 approved purpose.

3 (b) Tobacco products, electronic cigarettes, and
4 alternative nicotine products may be sold through a vending
5 machine only if such tobacco products, electronic cigarettes,
6 and alternative nicotine products are not placed together with
7 any non-tobacco product, other than matches, in the vending
8 machine and the vending machine is in any of the following
9 locations:

10 (1) (Blank).

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

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

16 (4) (Blank).

17 (5) (Blank).

18 (c) (Blank).

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

25 (e) It is not a violation of this Act for a person under 21
26 years of age to purchase a tobacco product, electronic

1 cigarette, or alternative nicotine product if the person under
2 the age of 21 purchases or is given the tobacco product,
3 electronic cigarette, or alternative nicotine product in any of
4 its forms from a retail seller of tobacco products, electronic
5 cigarettes, or alternative nicotine products or an employee of
6 the retail seller pursuant to a plan or action to investigate,
7 patrol, or otherwise conduct a "sting operation" or enforcement
8 action against a retail seller of tobacco products, electronic
9 cigarettes, or alternative nicotine products or a person
10 employed by the retail seller of tobacco products, electronic
11 cigarettes, or alternative nicotine products or on any premises
12 authorized to sell tobacco products, electronic cigarettes, or
13 alternative nicotine products to determine if tobacco
14 products, electronic cigarettes, or alternative nicotine
15 products are being sold or given to persons under 21 years of
16 age if the "sting operation" or enforcement action is approved
17 by, conducted by, or conducted on behalf of the Department of
18 State Police, the county sheriff, a municipal police
19 department, the Department of Revenue, the Department of Public
20 Health, or a local health department. The results of any sting
21 operation or enforcement action, including the name of the
22 clerk, shall be provided to the retail seller within 7 business
23 days.

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

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.

1

INDEX

2

Statutes amended in order of appearance

3

New Act

4

720 ILCS 675/1

from Ch. 23, par. 2357