

SB3572



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3572

Introduced 2/9/2024, by Sen. Erica Harriss

SYNOPSIS AS INTRODUCED:

720 ILCS 675/1
720 ILCS 675/2

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

Amends the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act. Provides that a person shall not advertise, distribute, market, offer for sale, or sell an electronic cigarette or an alternative nicotine product by using certain foods, characters, or school supplies designed to appeal to minors. Provides that a person who knowingly violates those provisions is guilty of a Class A misdemeanor. Effective immediately.

LRB103 36630 HLH 66739 b

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

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

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

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

19 (a-5) No person under 16 years of age may sell any tobacco
20 product, electronic cigarette, or alternative nicotine product
21 at a retail establishment selling tobacco products, electronic
22 cigarettes, or alternative nicotine products. This subsection
23 does not apply to a sales clerk in a family-owned business

1 which can prove that the sales clerk is in fact a son or
2 daughter of the owner.

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

9 (1) examining from any person that appears to be under
10 30 years of age a government-issued photographic
11 identification that establishes the person to be 21 years
12 of age or older; or

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

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

26 (a-7) (Blank).

1 (a-8) A person shall not distribute without charge samples
2 of any tobacco product, alternative nicotine product, or
3 electronic cigarette to any other person, regardless of age,
4 except for smokeless tobacco in an adult-only facility.

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

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

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

21 "Alternative nicotine product" means a product or
22 device not consisting of or containing tobacco that
23 provides for the ingestion into the body of nicotine,
24 whether by chewing, smoking, absorbing, dissolving,
25 inhaling, snorting, sniffing, or by any other means.

26 "Alternative nicotine product" does not include:

1 cigarettes as defined in Section 1 of the Cigarette Tax
2 Act and tobacco products as defined in Section 10-5 of the
3 Tobacco Products Tax Act of 1995; tobacco product and
4 electronic cigarette as defined in this Section; or any
5 product approved by the United States Food and Drug
6 Administration for sale as a tobacco cessation product, as
7 a tobacco dependence product, or for other medical
8 purposes, and is being marketed and sold solely for that
9 approved purpose.

10 "Electronic cigarette" means:

11 (1) any device that employs a battery or other
12 mechanism to heat a solution or substance to produce a
13 vapor or aerosol intended for inhalation;

14 (2) any cartridge or container of a solution or
15 substance intended to be used with or in the device or
16 to refill the device; or

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

19 "Electronic cigarette" includes, but is not limited
20 to, any electronic nicotine delivery system, electronic
21 cigar, electronic cigarillo, electronic pipe, electronic
22 hookah, vape pen, or similar product or device, any
23 components or parts that can be used to build the product
24 or device, and any component, part, or accessory of a
25 device used during the operation of the device, even if
26 the part or accessory was sold separately. "Electronic

1 cigarette" does not include: cigarettes as defined in
2 Section 1 of the Cigarette Tax Act; tobacco product and
3 alternative nicotine product as defined in this Section;
4 any product approved by the United States Food and Drug
5 Administration for sale as a tobacco cessation product, as
6 a tobacco dependence product, or for other medical
7 purposes, and is being marketed and sold solely for that
8 approved purpose; any asthma inhaler prescribed by a
9 physician for that condition and is being marketed and
10 sold solely for that approved purpose; any device that
11 meets the definition of cannabis paraphernalia under
12 Section 1-10 of the Cannabis Regulation and Tax Act; or
13 any cannabis product sold by a dispensing organization
14 pursuant to the Cannabis Regulation and Tax Act or the
15 Compassionate Use of Medical Cannabis Program Act.

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

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

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

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

13 (a-10) A person shall not advertise, distribute, market,
14 offer for sale, or sell an electronic cigarette or an
15 alternative nicotine product by using any of the following:

16 (1) in a trademark of the product or in the product's
17 advertising, branding, design, marketing, packaging, or
18 trade dress:

19 (A) the terms "cake", "candy", "cupcake",
20 "pastry", or "pie";

21 (B) a type or brand of cake, candy, cupcake,
22 pastry, or pie that does not include the term "cake",
23 "candy", "cupcake", "pastry", or "pie" in its name or
24 in any of its slogans;

25 (C) a food or beverage that is primarily marketed
26 to minors, including, but not limited to, cereal,

1 cookies, ice cream, flavored beverages, juices, or
2 soft drinks;

3 (D) a character, personality, or symbol known to
4 appeal to minors, including, but not limited to, any
5 of the following: a celebrity; a character in a comic
6 book, movie, television show, or video game; or a
7 unicorn or any other mythical creature; or

8 (E) school supplies primarily used by minors,
9 including, but not limited to, erasers, highlighters,
10 ink pens, or pencils.

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

18 (1) (Blank).

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

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

24 (4) (Blank).

25 (5) (Blank).

26 (c) (Blank).

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

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

1 sheriff, a municipal police department, the Department of
2 Revenue, the Department of Public Health, or a local health
3 department. The results of any sting operation or enforcement
4 action, including the name of the clerk, shall be provided to
5 the retail seller within 7 business days.

6 (f) No person shall honor or accept any discount, coupon,
7 or other benefit or reduction in price that is inconsistent
8 with 21 CFR 1140, subsequent United States Food and Drug
9 Administration industry guidance, or any rules adopted under
10 21 CFR 1140.

11 (g) Any peace officer or duly authorized member of the
12 Illinois State Police, a county sheriff's department, a
13 municipal police department, the Department of Revenue, the
14 Department of Public Health, a local health department, or the
15 Department of Human Services, upon discovering a violation of
16 subsection (a), (a-5), (a-5.1), (a-8), (a-10), (b), or (d) of
17 this Section or a violation of the Preventing Youth Vaping
18 Act, may seize any tobacco products, alternative nicotine
19 products, or electronic cigarettes of the specific type
20 involved in that violation that are located at that place of
21 business. The tobacco products, alternative nicotine products,
22 or electronic cigarettes so seized are subject to confiscation
23 and forfeiture.

24 (h) If, within 60 days after any seizure under subsection
25 (g), a person having any property interest in the seized
26 property is charged with an offense under this Section or a

1 violation of the Preventing Youth Vaping Act, the court that
2 renders judgment upon the charge shall, within 30 days after
3 the judgment, conduct a forfeiture hearing to determine
4 whether the seized tobacco products or electronic cigarettes
5 were part of the inventory located at the place of business
6 when a violation of subsection (a), (a-5), (a-5.1), (a-8),
7 (a-10), (b), or (d) of this Section or a violation of the
8 Preventing Youth Vaping Act occurred and whether any seized
9 tobacco products or electronic cigarettes were of a type
10 involved in that violation. The hearing shall be commenced by
11 a written petition by the State, which shall include material
12 allegations of fact, the name and address of every person
13 determined by the State to have any property interest in the
14 seized property, a representation that written notice of the
15 date, time, and place of the hearing has been mailed to every
16 such person by certified mail at least 10 days before the date,
17 and a request for forfeiture. Every such person may appear as a
18 party and present evidence at the hearing. The quantum of
19 proof required shall be a preponderance of the evidence, and
20 the burden of proof shall be on the State. If the court
21 determines that the seized property was subject to forfeiture,
22 an order of forfeiture and disposition of the seized property
23 shall be entered and the property shall be received by the
24 prosecuting office, who shall effect its destruction.

25 (i) If a seizure under subsection (g) is not followed by a
26 charge under subsection (a), (a-5), (a-5.1), (a-8), (a-10),

1 (b), or (d) of this Section or under the Preventing Youth
2 Vaping Act, or if the prosecution of the charge is permanently
3 terminated or indefinitely discontinued without any judgment
4 of conviction or acquittal:

5 (1) the prosecuting office may commence in the circuit
6 court an in rem proceeding for the forfeiture and
7 destruction of any seized tobacco products or electronic
8 cigarettes; and

9 (2) any person having any property interest in the
10 seized tobacco products or electronic cigarettes may
11 commence separate civil proceedings in the manner provided
12 by law.

13 (j) After the Department of Revenue has seized any tobacco
14 product, nicotine product, or electronic cigarette as provided
15 in subsection (g) and a person having any property interest in
16 the seized property has not been charged with an offense under
17 this Section or a violation of the Preventing Youth Vaping
18 Act, the Department of Revenue must hold a hearing and
19 determine whether the seized tobacco products, alternative
20 nicotine products, or electronic cigarettes were part of the
21 inventory located at the place of business when a violation of
22 subsection (a), (a-5), (a-5.1), (a-8), (a-10), (b), or (d) of
23 this Section or a violation of the Preventing Youth Vaping Act
24 occurred and whether any seized tobacco product, alternative
25 nicotine product, or electronic cigarette was of a type
26 involved in that violation. The Department of Revenue shall

1 give not less than 20 days' notice of the time and place of the
2 hearing to the owner of the property, if the owner is known,
3 and also to the person in whose possession the property was
4 found if that person is known and if the person in possession
5 is not the owner of the property. If neither the owner nor the
6 person in possession of the property is known, the Department
7 of Revenue must cause publication of the time and place of the
8 hearing to be made at least once each week for 3 weeks
9 successively in a newspaper of general circulation in the
10 county where the hearing is to be held.

11 If, as the result of the hearing, the Department of
12 Revenue determines that the tobacco products, alternative
13 nicotine products, or the electronic cigarettes were part of
14 the inventory located at the place of business when a
15 violation of subsection (a), (a-5), (a-5.1), (a-8), (b), or
16 (d) of this Section or a violation of the Preventing Youth
17 Vaping Act at the time of seizure, the Department of Revenue
18 must enter an order declaring the tobacco product, alternative
19 nicotine product, or electronic cigarette confiscated and
20 forfeited to the State, to be held by the Department of Revenue
21 for disposal by it as provided in Section 10-58 of the Tobacco
22 Products Tax Act of 1995. The Department of Revenue must give
23 notice of the order to the owner of the property, if the owner
24 is known, and also to the person in whose possession the
25 property was found if that person is known and if the person in
26 possession is not the owner of the property. If neither the

1 owner nor the person in possession of the property is known,
2 the Department of Revenue must cause publication of the order
3 to be made at least once each week for 3 weeks successively in
4 a newspaper of general circulation in the county where the
5 hearing was held.

6 (Source: P.A. 101-2, eff. 7-1-19; 102-538, eff. 8-20-21;
7 102-575, eff. 1-1-22; 102-813, eff. 5-13-22.)

8 (720 ILCS 675/2) (from Ch. 23, par. 2358)

9 Sec. 2. Penalties.

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

1 first violation of the Act. The penalties in this subsection
2 are in addition to any other penalties prescribed under the
3 Cigarette Tax Act and the Tobacco Products Tax Act of 1995.

4 (a-3) A person who knowingly violates subsection (a-10) of
5 Section 1 is guilty of a Class A misdemeanor.

6 (a-5) Any retailer who violates subsection (a), (a-5),
7 (a-5.1), (a-8), (b), or (d) of Section 1 of this Act is guilty
8 of a petty offense. For the first offense in a 24-month period,
9 the retailer shall be fined \$200 if it does not have a training
10 program that facilitates compliance with minimum-age tobacco
11 laws. For the second offense in a 24-month period, the
12 retailer shall be fined \$400 if it does not have a training
13 program that facilitates compliance with minimum-age tobacco
14 laws. For the third offense within a 24-month period, the
15 retailer shall be fined \$600 if it does not have a training
16 program that facilitates compliance with minimum-age tobacco
17 laws. For the fourth or subsequent offense in a 24-month
18 period, the retailer shall be fined \$800 if it does not have a
19 training program that facilitates compliance with minimum-age
20 tobacco laws. For the purposes of this subsection, the
21 24-month period shall begin with the person's first violation
22 of the Act. The penalties in this subsection are in addition to
23 any other penalties prescribed under the Cigarette Tax Act and
24 the Tobacco Products Tax Act of 1995.

25 (a-6) For the purpose of this Act, a training program that
26 facilitates compliance with minimum-age tobacco laws must

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

13 (b) If a person under 21 years of age violates subsection
14 (a-6) of Section 1, he or she is guilty of a Class A
15 misdemeanor.

16 (c) (Blank).

17 (d) (Blank).

18 (e) (Blank).

19 (f) (Blank).

20 (g) (Blank).

21 (h) All moneys collected as fines for violations of
22 subsection (a), (a-5), (a-5.1), (a-6), (a-8), (a-10), (b), or
23 (d) of Section 1 shall be distributed in the following manner:

24 (1) one-half of each fine shall be distributed to the
25 unit of local government or other entity that successfully
26 prosecuted the offender; and

1 (2) one-half shall be remitted to the State to be used
2 for enforcing this Act.

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

6 (Source: P.A. 101-2, eff. 7-1-19; 102-558, eff. 8-20-21.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.