

1 AN ACT concerning revenue.

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

4 Section 3. The Retailers' Occupation Tax Act is amended by  
5 changing Section 2a and by adding Section 13.7 as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

7 Sec. 2a. It is unlawful for any person to engage in the  
8 business of selling tangible personal property at retail in  
9 this State without a certificate of registration from the  
10 Department. Application for a certificate of registration  
11 shall be made to the Department upon forms furnished by it.  
12 Each such application shall be signed and verified and shall  
13 state: (1) the name and social security number of the  
14 applicant; (2) the address of his principal place of business;  
15 (3) the address of the principal place of business from which  
16 he engages in the business of selling tangible personal  
17 property at retail in this State and the addresses of all other  
18 places of business, if any (enumerating such addresses, if any,  
19 in a separate list attached to and made a part of the  
20 application), from which he engages in the business of selling  
21 tangible personal property at retail in this State; (4) the  
22 name and address of the person or persons who will be  
23 responsible for filing returns and payment of taxes due under

1 this Act; (5) in the case of a corporation, the name, title,  
2 and social security number of each corporate officer; (6) in  
3 the case of a limited liability company, the name, social  
4 security number, and FEIN number of each manager and member;  
5 and (7) such other information as the Department may reasonably  
6 require. The application shall contain an acceptance of  
7 responsibility signed by the person or persons who will be  
8 responsible for filing returns and payment of the taxes due  
9 under this Act. If the applicant will sell tangible personal  
10 property at retail through vending machines, his application to  
11 register shall indicate the number of vending machines to be so  
12 operated; and thereafter, he shall notify the Department by  
13 January 31 of the number of vending machines which such person  
14 was using in his business of selling tangible personal property  
15 at retail on the preceding December 31.

16 The Department may deny a certificate of registration to  
17 any applicant if the owner, any partner, any manager or member  
18 of a limited liability company, or a corporate officer of the  
19 applicant, is or has been the owner, a partner, a manager or  
20 member of a limited liability company, or a corporate officer,  
21 of another retailer that is in default for moneys due under  
22 this Act.

23 Every applicant for a certificate of registration  
24 hereunder shall, at the time of filing such application,  
25 furnish a bond from a surety company authorized to do business  
26 in the State of Illinois, or an irrevocable bank letter of

1 credit or a bond signed by 2 personal sureties who have filed,  
2 with the Department, sworn statements disclosing net assets  
3 equal to at least 3 times the amount of the bond to be required  
4 of such applicant, or a bond secured by an assignment of a bank  
5 account or certificate of deposit, stocks or bonds, conditioned  
6 upon the applicant paying to the State of Illinois all moneys  
7 becoming due under this Act and under any other State tax law  
8 or municipal or county tax ordinance or resolution under which  
9 the certificate of registration that is issued to the applicant  
10 under this Act will permit the applicant to engage in business  
11 without registering separately under such other law, ordinance  
12 or resolution. The Department shall fix the amount of such  
13 security in each case, taking into consideration the amount of  
14 money expected to become due from the applicant under this Act  
15 and under any other State tax law or municipal or county tax  
16 ordinance or resolution under which the certificate of  
17 registration that is issued to the applicant under this Act  
18 will permit the applicant to engage in business without  
19 registering separately under such other law, ordinance or  
20 resolution. The amount of security required by the Department  
21 shall be such as, in its opinion, will protect the State of  
22 Illinois against failure to pay the amount which may become due  
23 from the applicant under this Act and under any other State tax  
24 law or municipal or county tax ordinance or resolution under  
25 which the certificate of registration that is issued to the  
26 applicant under this Act will permit the applicant to engage in

1 business without registering separately under such other law,  
2 ordinance or resolution, but the amount of the security  
3 required by the Department shall not exceed three times the  
4 amount of the applicant's average monthly tax liability, or  
5 \$50,000.00, whichever amount is lower.

6 No certificate of registration under this Act shall be  
7 issued by the Department until the applicant provides the  
8 Department with satisfactory security as herein provided for.

9 Upon receipt of the application for certificate of  
10 registration in proper form, and upon approval by the  
11 Department of the security furnished by the applicant, the  
12 Department shall issue to such applicant a certificate of  
13 registration which shall permit the person to whom it is issued  
14 to engage in the business of selling tangible personal property  
15 at retail in this State. The certificate of registration shall  
16 be conspicuously displayed at the place of business which the  
17 person so registered states in his application to be the  
18 principal place of business from which he engages in the  
19 business of selling tangible personal property at retail in  
20 this State.

21 No certificate of registration issued to a taxpayer who  
22 files returns required by this Act on a monthly basis shall be  
23 valid after the expiration of 5 years from the date of its  
24 issuance or last renewal. The expiration date of a  
25 sub-certificate of registration shall be that of the  
26 certificate of registration to which the sub-certificate

1 relates. A certificate of registration shall automatically be  
2 renewed, subject to revocation as provided by this Act, for an  
3 additional 5 years from the date of its expiration unless  
4 otherwise notified by the Department as provided by this  
5 paragraph. Where a taxpayer to whom a certificate of  
6 registration is issued under this Act is in default to the  
7 State of Illinois for delinquent returns or for moneys due  
8 under this Act or any other State tax law or municipal or  
9 county ordinance administered or enforced by the Department,  
10 the Department shall, not less than 120 days before the  
11 expiration date of such certificate of registration, give  
12 notice to the taxpayer to whom the certificate was issued of  
13 the account period of the delinquent returns, the amount of  
14 tax, penalty and interest due and owing from the taxpayer, and  
15 that the certificate of registration shall not be automatically  
16 renewed upon its expiration date unless the taxpayer, on or  
17 before the date of expiration, has filed and paid the  
18 delinquent returns or paid the defaulted amount in full. A  
19 taxpayer to whom such a notice is issued shall be deemed an  
20 applicant for renewal. The Department shall promulgate  
21 regulations establishing procedures for taxpayers who file  
22 returns on a monthly basis but desire and qualify to change to  
23 a quarterly or yearly filing basis and will no longer be  
24 subject to renewal under this Section, and for taxpayers who  
25 file returns on a yearly or quarterly basis but who desire or  
26 are required to change to a monthly filing basis and will be

1 subject to renewal under this Section.

2 The Department may in its discretion approve renewal by an  
3 applicant who is in default if, at the time of application for  
4 renewal, the applicant files all of the delinquent returns or  
5 pays to the Department such percentage of the defaulted amount  
6 as may be determined by the Department and agrees in writing to  
7 waive all limitations upon the Department for collection of the  
8 remaining defaulted amount to the Department over a period not  
9 to exceed 5 years from the date of renewal of the certificate;  
10 however, no renewal application submitted by an applicant who  
11 is in default shall be approved if the immediately preceding  
12 renewal by the applicant was conditioned upon the installment  
13 payment agreement described in this Section. The payment  
14 agreement herein provided for shall be in addition to and not  
15 in lieu of the security required by this Section of a taxpayer  
16 who is no longer considered a prior continuous compliance  
17 taxpayer. The execution of the payment agreement as provided in  
18 this Act shall not toll the accrual of interest at the  
19 statutory rate.

20 The Department may suspend a certificate of registration if  
21 the Department finds that the person to whom the certificate of  
22 registration has been issued knowingly sold contraband  
23 cigarettes.

24 A certificate of registration issued under this Act more  
25 than 5 years before the effective date of this amendatory Act  
26 of 1989 shall expire and be subject to the renewal provisions

1 of this Section on the next anniversary of the date of issuance  
2 of such certificate which occurs more than 6 months after the  
3 effective date of this amendatory Act of 1989. A certificate of  
4 registration issued less than 5 years before the effective date  
5 of this amendatory Act of 1989 shall expire and be subject to  
6 the renewal provisions of this Section on the 5th anniversary  
7 of the issuance of the certificate.

8 If the person so registered states that he operates other  
9 places of business from which he engages in the business of  
10 selling tangible personal property at retail in this State, the  
11 Department shall furnish him with a sub-certificate of  
12 registration for each such place of business, and the applicant  
13 shall display the appropriate sub-certificate of registration  
14 at each such place of business. All sub-certificates of  
15 registration shall bear the same registration number as that  
16 appearing upon the certificate of registration to which such  
17 sub-certificates relate.

18 If the applicant will sell tangible personal property at  
19 retail through vending machines, the Department shall furnish  
20 him with a sub-certificate of registration for each such  
21 vending machine, and the applicant shall display the  
22 appropriate sub-certificate of registration on each such  
23 vending machine by attaching the sub-certificate of  
24 registration to a conspicuous part of such vending machine.

25 Where the same person engages in 2 or more businesses of  
26 selling tangible personal property at retail in this State,

1 which businesses are substantially different in character or  
2 engaged in under different trade names or engaged in under  
3 other substantially dissimilar circumstances (so that it is  
4 more practicable, from an accounting, auditing or bookkeeping  
5 standpoint, for such businesses to be separately registered),  
6 the Department may require or permit such person (subject to  
7 the same requirements concerning the furnishing of security as  
8 those that are provided for hereinbefore in this Section as to  
9 each application for a certificate of registration) to apply  
10 for and obtain a separate certificate of registration for each  
11 such business or for any of such businesses, under a single  
12 certificate of registration supplemented by related  
13 sub-certificates of registration.

14 Any person who is registered under the "Retailers'  
15 Occupation Tax Act" as of March 8, 1963, and who, during the  
16 3-year period immediately prior to March 8, 1963, or during a  
17 continuous 3-year period part of which passed immediately  
18 before and the remainder of which passes immediately after  
19 March 8, 1963, has been so registered continuously and who is  
20 determined by the Department not to have been either delinquent  
21 or deficient in the payment of tax liability during that period  
22 under this Act or under any other State tax law or municipal or  
23 county tax ordinance or resolution under which the certificate  
24 of registration that is issued to the registrant under this Act  
25 will permit the registrant to engage in business without  
26 registering separately under such other law, ordinance or



1 resolution, shall be considered to be a Prior Continuous  
2 Compliance taxpayer. Also any taxpayer who has, as verified by  
3 the Department, faithfully and continuously complied with the  
4 condition of his bond or other security under the provisions of  
5 this Act for a period of 3 consecutive years shall be  
6 considered to be a Prior Continuous Compliance taxpayer.

7 Every Prior Continuous Compliance taxpayer shall be exempt  
8 from all requirements under this Act concerning the furnishing  
9 of security as a condition precedent to his being authorized to  
10 engage in the business of selling tangible personal property at  
11 retail in this State. This exemption shall continue for each  
12 such taxpayer until such time as he may be determined by the  
13 Department to be delinquent in the filing of any returns, or is  
14 determined by the Department (either through the Department's  
15 issuance of a final assessment which has become final under the  
16 Act, or by the taxpayer's filing of a return which admits tax  
17 that is not paid to be due) to be delinquent or deficient in  
18 the paying of any tax under this Act or under any other State  
19 tax law or municipal or county tax ordinance or resolution  
20 under which the certificate of registration that is issued to  
21 the registrant under this Act will permit the registrant to  
22 engage in business without registering separately under such  
23 other law, ordinance or resolution, at which time that taxpayer  
24 shall become subject to all the financial responsibility  
25 requirements of this Act and, as a condition of being allowed  
26 to continue to engage in the business of selling tangible

1 personal property at retail, shall be required to post bond or  
2 other acceptable security with the Department covering  
3 liability which such taxpayer may thereafter incur. Any  
4 taxpayer who fails to pay an admitted or established liability  
5 under this Act may also be required to post bond or other  
6 acceptable security with this Department guaranteeing the  
7 payment of such admitted or established liability.

8 No certificate of registration shall be issued to any  
9 person who is in default to the State of Illinois for moneys  
10 due under this Act or under any other State tax law or  
11 municipal or county tax ordinance or resolution under which the  
12 certificate of registration that is issued to the applicant  
13 under this Act will permit the applicant to engage in business  
14 without registering separately under such other law, ordinance  
15 or resolution.

16 Any person aggrieved by any decision of the Department  
17 under this Section may, within 20 days after notice of such  
18 decision, protest and request a hearing, whereupon the  
19 Department shall give notice to such person of the time and  
20 place fixed for such hearing and shall hold a hearing in  
21 conformity with the provisions of this Act and then issue its  
22 final administrative decision in the matter to such person. In  
23 the absence of such a protest within 20 days, the Department's  
24 decision shall become final without any further determination  
25 being made or notice given.

26 With respect to security other than bonds (upon which the

1 Department may sue in the event of a forfeiture), if the  
2 taxpayer fails to pay, when due, any amount whose payment such  
3 security guarantees, the Department shall, after such  
4 liability is admitted by the taxpayer or established by the  
5 Department through the issuance of a final assessment that has  
6 become final under the law, convert the security which that  
7 taxpayer has furnished into money for the State, after first  
8 giving the taxpayer at least 10 days' written notice, by  
9 registered or certified mail, to pay the liability or forfeit  
10 such security to the Department. If the security consists of  
11 stocks or bonds or other securities which are listed on a  
12 public exchange, the Department shall sell such securities  
13 through such public exchange. If the security consists of an  
14 irrevocable bank letter of credit, the Department shall convert  
15 the security in the manner provided for in the Uniform  
16 Commercial Code. If the security consists of a bank certificate  
17 of deposit, the Department shall convert the security into  
18 money by demanding and collecting the amount of such bank  
19 certificate of deposit from the bank which issued such  
20 certificate. If the security consists of a type of stocks or  
21 other securities which are not listed on a public exchange, the  
22 Department shall sell such security to the highest and best  
23 bidder after giving at least 10 days' notice of the date, time  
24 and place of the intended sale by publication in the "State  
25 Official Newspaper". If the Department realizes more than the  
26 amount of such liability from the security, plus the expenses

1 incurred by the Department in converting the security into  
2 money, the Department shall pay such excess to the taxpayer who  
3 furnished such security, and the balance shall be paid into the  
4 State Treasury.

5 The Department shall discharge any surety and shall release  
6 and return any security deposited, assigned, pledged or  
7 otherwise provided to it by a taxpayer under this Section  
8 within 30 days after:

9 (1) such taxpayer becomes a Prior Continuous  
10 Compliance taxpayer; or

11 (2) such taxpayer has ceased to collect receipts on  
12 which he is required to remit tax to the Department, has  
13 filed a final tax return, and has paid to the Department an  
14 amount sufficient to discharge his remaining tax  
15 liability, as determined by the Department, under this Act  
16 and under every other State tax law or municipal or county  
17 tax ordinance or resolution under which the certificate of  
18 registration issued under this Act permits the registrant  
19 to engage in business without registering separately under  
20 such other law, ordinance or resolution. The Department  
21 shall make a final determination of the taxpayer's  
22 outstanding tax liability as expeditiously as possible  
23 after his final tax return has been filed; if the  
24 Department cannot make such final determination within 45  
25 days after receiving the final tax return, within such  
26 period it shall so notify the taxpayer, stating its reasons

1           therefor.

2           (Source: P.A. 90-491, eff. 1-1-98; 91-357, eff. 7-29-99.)

3           (35 ILCS 120/13.7 new)

4           Sec. 13.7. Rulemaking. Rulemaking authority to implement  
5 this amendatory Act of the 95th General Assembly, if any, is  
6 conditioned on the rules being adopted in accordance with all  
7 provisions of the Illinois Administrative Procedure Act and all  
8 rules and procedures of the Joint Committee on Administrative  
9 Rules; any purported rule not so adopted, for whatever reason,  
10 is unauthorized.

11           Section 5. The Cigarette Tax Act is amended by changing  
12 Sections 1, 3, 3-10, 4, 20, and 21 and by adding Sections 3-15,  
13 4d, and 29.5 as follows:

14           (35 ILCS 130/1) (from Ch. 120, par. 453.1)

15           Sec. 1. For the purposes of this Act:

16           "Brand Style" means a variety of cigarettes distinguished  
17 by the tobacco used, tar and nicotine content, flavoring used,  
18 size of the cigarette, filtration on the cigarette or  
19 packaging.

20           "Cigarette", means any ~~when used in this Act, shall be~~  
21 ~~construed to mean:~~ Any roll for smoking made wholly or in part  
22 of tobacco irrespective of size or shape and whether or not  
23 such tobacco is flavored, adulterated or mixed with any other

1 ingredient, and the wrapper or cover of which is made of paper  
2 or any other substance or material except tobacco.

3 "Contraband cigarettes" means:

4 (a) cigarettes that do not bear a required tax stamp  
5 under this Act;

6 (b) cigarettes for which any required federal taxes  
7 have not been paid;

8 (c) cigarettes that bear a counterfeit tax stamp;

9 (d) cigarettes that are manufactured, fabricated,  
10 assembled, processed, packaged, or labeled by any person  
11 other than (i) the owner of the trademark rights in the  
12 cigarette brand or (ii) a person that is directly or  
13 indirectly authorized by such owner;

14 (e) cigarettes imported into the United States, or  
15 otherwise distributed, in violation of the federal  
16 Imported Cigarette Compliance Act of 2000 (Title IV of  
17 Public Law 106-476); or

18 (f) cigarettes that have false manufacturing labels.

19 "Person" means any natural individual, firm, partnership,  
20 association, joint stock company, joint adventure, public or  
21 private corporation, however formed, limited liability  
22 company, or a receiver, executor, administrator, trustee,  
23 guardian or other representative appointed by order of any  
24 court.

25 "Prior Continuous Compliance Taxpayer" means any person  
26 who is licensed under this Act and who, having been a licensee

1 for a continuous period of 5 years, is determined by the  
2 Department not to have been either delinquent or deficient in  
3 the payment of tax liability during that period or otherwise in  
4 violation of this Act. Also, any taxpayer who has, as verified  
5 by the Department, continuously complied with the condition of  
6 his bond or other security under provisions of this Act for a  
7 period of 5 consecutive years shall be considered to be a  
8 "Prior continuous compliance taxpayer". In calculating the  
9 consecutive period of time described herein for qualification  
10 as a "prior continuous compliance taxpayer", a consecutive  
11 period of time of qualifying compliance immediately prior to  
12 the effective date of this amendatory Act of 1987 shall be  
13 credited to any licensee who became licensed on or before the  
14 effective date of this amendatory Act of 1987.

15 "Department" means the Department of Revenue.

16 "Sale" means any transfer, exchange or barter in any manner  
17 or by any means whatsoever for a consideration, and includes  
18 and means all sales made by any person.

19 "Original Package" means the individual packet, box or  
20 other container whatsoever used to contain and to convey  
21 cigarettes to the consumer.

22 "Distributor" means any and each of the following:

23 (1) Any person engaged in the business of selling  
24 cigarettes in this State who brings or causes to be brought  
25 into this State from without this State any original packages  
26 of cigarettes, on which original packages there is no

1 authorized evidence underneath a sealed transparent wrapper  
2 showing that the tax liability imposed by this Act has been  
3 paid or assumed by the out-of-State seller of such cigarettes,  
4 for sale or other disposition in the course of such business.

5 (2) Any person who makes, manufactures or fabricates  
6 cigarettes in this State for sale in this State, except a  
7 person who makes, manufactures or fabricates cigarettes as a  
8 part of a correctional industries program for sale to residents  
9 incarcerated in penal institutions or resident patients of a  
10 State-operated mental health facility.

11 (3) Any person who makes, manufactures or fabricates  
12 cigarettes outside this State, which cigarettes are placed in  
13 original packages contained in sealed transparent wrappers,  
14 for delivery or shipment into this State, and who elects to  
15 qualify and is accepted by the Department as a distributor  
16 under Section 4b of this Act.

17 "Place of business" shall mean and include any place where  
18 cigarettes are sold or where cigarettes are manufactured,  
19 stored or kept for the purpose of sale or consumption,  
20 including any vessel, vehicle, airplane, train or vending  
21 machine.

22 "Business" means any trade, occupation, activity or  
23 enterprise engaged in for the purpose of selling cigarettes in  
24 this State.

25 "Retailer" means any person who engages in the making of  
26 transfers of the ownership of, or title to, cigarettes to a



1 purchaser for use or consumption and not for resale in any  
2 form, for a valuable consideration. "Retailer" does not include  
3 a person:

4 (1) who transfers to residents incarcerated in penal  
5 institutions or resident patients of a State-operated  
6 mental health facility ownership of cigarettes made,  
7 manufactured, or fabricated as part of a correctional  
8 industries program; or

9 (2) who transfers cigarettes to a not-for-profit  
10 research institution that conducts tests concerning the  
11 health effects of tobacco products and who does not offer  
12 the cigarettes for resale.

13 "Retailer" shall be construed to include any person who  
14 engages in the making of transfers of the ownership of, or  
15 title to, cigarettes to a purchaser, for use or consumption by  
16 any other person to whom such purchaser may transfer the  
17 cigarettes without a valuable consideration, except a person  
18 who transfers to residents incarcerated in penal institutions  
19 or resident patients of a State-operated mental health facility  
20 ownership of cigarettes made, manufactured or fabricated as  
21 part of a correctional industries program.

22 "Stamp" or "stamps" mean the indicia required to be affixed  
23 on a pack of cigarettes that evidence payment of the tax on  
24 cigarettes under Section 2 of this Act (35 ILCS 130/2), or the  
25 indicia used to indicate that the cigarettes are intended for a  
26 sale or distribution within this State that is exempt from

1 State tax under any applicable provision of law.

2 "Within this State" means within the exterior limits of the  
3 State of Illinois and includes all territory within these  
4 limits owned by or ceded to the United States of America.

5 "Related party" means any person that is associated with  
6 any other person because he or she:

7 (a) is an officer or director of a business;

8 (b) is legally recognized as a partner in business; or

9 (c) is directly or indirectly controlled by another.

10 (Source: P.A. 95-462, eff. 8-27-07.)

11 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

12 Sec. 3. Affixing tax stamp; remitting tax to the  
13 Department. Payment of the taxes imposed by Section 2 of this  
14 Act shall (except as hereinafter provided) be evidenced by  
15 revenue tax stamps affixed to each original package of  
16 cigarettes. Each distributor of cigarettes, before delivering  
17 or causing to be delivered any original package of cigarettes  
18 in this State to a purchaser, shall firmly affix a proper stamp  
19 or stamps to each such package, or (in case of manufacturers of  
20 cigarettes in original packages which are contained inside a  
21 sealed transparent wrapper) shall imprint the required  
22 language on the original package of cigarettes beneath such  
23 outside wrapper, as hereinafter provided. Any stamp required by  
24 this Act shall note whether the State tax under Section 2 of  
25 this Act (35 ILCS 130/2) was paid.

1           No stamp or imprint may be affixed to, or made upon, any  
2 package of cigarettes unless that package complies with all  
3 requirements of the federal Cigarette Labeling and Advertising  
4 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
5 warnings, or any other information upon a package of cigarettes  
6 that is sold within the United States. Under the authority of  
7 Section 6, the Department shall revoke the license of any  
8 distributor that is determined to have violated this paragraph.  
9 A person may not affix a stamp on a package of cigarettes,  
10 cigarette papers, wrappers, or tubes if that individual package  
11 has been marked for export outside the United States with a  
12 label or notice in compliance with Section 290.185 of Title 27  
13 of the Code of Federal Regulations. It is not a defense to a  
14 proceeding for violation of this paragraph that the label or  
15 notice has been removed, mutilated, obliterated, or altered in  
16 any manner.

17           Only distributors licensed under this Act or out-of-state  
18 manufacturers holding a permit under this Act may receive  
19 unstamped packs of cigarettes. Prior to shipment to another  
20 person, each licensed distributor or out-of-state manufacturer  
21 holding a permit shall apply a stamp to each pack of cigarettes  
22 imported, distributed, or sold whether or not such cigarettes  
23 are subject to State tax under Section 2 of this Act (35 ILCS  
24 130/2) or any other provision of State law, provided that a  
25 distributor or out-of-state manufacturer may only apply a tax  
26 stamp to a pack of cigarettes purchased or obtained directly

1 from a licensed distributor or an out-of-state manufacturer  
2 holding a permit. Only a licensed distributor or an  
3 out-of-state manufacturer holding a permit may ship or  
4 otherwise cause to be delivered unstamped packs of cigarettes  
5 in, into, or from this State, provided that a licensed  
6 distributor or an out-of-state manufacturer holding a permit  
7 may transport unstamped packs of cigarettes to a facility,  
8 wherever located, owned by such distributor or manufacturer.  
9 Any person that ships or otherwise causes to be delivered  
10 unstamped packs of cigarettes into, within, or from this State  
11 shall ensure that the invoice or equivalent documentation and  
12 the bill of lading or freight bill for the shipment identifies  
13 the true name and address of the cosignor or seller, the true  
14 name and address of the consignee or purchaser, and the quantity  
15 by brand style of the cigarettes so transported, provided that  
16 this Section shall not be construed as to impose any  
17 requirement or liability upon any common or contract carrier.

18 The Department, or any person authorized by the Department,  
19 shall sell such stamps only to persons holding valid licenses  
20 as distributors under this Act. On and after July 1, 2003,  
21 payment for such stamps must be made by means of electronic  
22 funds transfer. The Department may refuse to sell stamps to any  
23 person who does not comply with the provisions of this Act.  
24 Beginning on the effective date of this amendatory Act of the  
25 92nd General Assembly and through June 30, 2002, persons  
26 holding valid licenses as distributors may purchase cigarette

1 tax stamps up to an amount equal to 115% of the distributor's  
2 average monthly cigarette tax stamp purchases over the 12  
3 calendar months prior to the effective date of this amendatory  
4 Act of the 92nd General Assembly.

5 Prior to December 1, 1985, the Department shall allow a  
6 distributor 21 days in which to make final payment of the  
7 amount to be paid for such stamps, by allowing the distributor  
8 to make payment for the stamps at the time of purchasing them  
9 with a draft which shall be in such form as the Department  
10 prescribes, and which shall be payable within 21 days  
11 thereafter: Provided that such distributor has filed with the  
12 Department, and has received the Department's approval of, a  
13 bond, which is in addition to the bond required under Section 4  
14 of this Act, payable to the Department in an amount equal to  
15 80% of such distributor's average monthly tax liability to the  
16 Department under this Act during the preceding calendar year or  
17 \$500,000, whichever is less. The Bond shall be joint and  
18 several and shall be in the form of a surety company bond in  
19 such form as the Department prescribes, or it may be in the  
20 form of a bank certificate of deposit or bank letter of credit.  
21 The bond shall be conditioned upon the distributor's payment of  
22 amount of any 21-day draft which the Department accepts from  
23 that distributor for the delivery of stamps to that distributor  
24 under this Act. The distributor's failure to pay any such  
25 draft, when due, shall also make such distributor automatically  
26 liable to the Department for a penalty equal to 25% of the

1 amount of such draft.

2 On and after December 1, 1985 and until July 1, 2003, the  
3 Department shall allow a distributor 30 days in which to make  
4 final payment of the amount to be paid for such stamps, by  
5 allowing the distributor to make payment for the stamps at the  
6 time of purchasing them with a draft which shall be in such  
7 form as the Department prescribes, and which shall be payable  
8 within 30 days thereafter, and beginning on January 1, 2003 and  
9 thereafter, the draft shall be payable by means of electronic  
10 funds transfer: Provided that such distributor has filed with  
11 the Department, and has received the Department's approval of,  
12 a bond, which is in addition to the bond required under Section  
13 4 of this Act, payable to the Department in an amount equal to  
14 150% of such distributor's average monthly tax liability to the  
15 Department under this Act during the preceding calendar year or  
16 \$750,000, whichever is less, except that as to bonds filed on  
17 or after January 1, 1987, such additional bond shall be in an  
18 amount equal to 100% of such distributor's average monthly tax  
19 liability under this Act during the preceding calendar year or  
20 \$750,000, whichever is less. The bond shall be joint and  
21 several and shall be in the form of a surety company bond in  
22 such form as the Department prescribes, or it may be in the  
23 form of a bank certificate of deposit or bank letter of credit.  
24 The bond shall be conditioned upon the distributor's payment of  
25 the amount of any 30-day draft which the Department accepts  
26 from that distributor for the delivery of stamps to that

1 distributor under this Act. The distributor's failure to pay  
2 any such draft, when due, shall also make such distributor  
3 automatically liable to the Department for a penalty equal to  
4 25% of the amount of such draft.

5 Every prior continuous compliance taxpayer shall be exempt  
6 from all requirements under this Section concerning the  
7 furnishing of such bond, as defined in this Section, as a  
8 condition precedent to his being authorized to engage in the  
9 business licensed under this Act. This exemption shall continue  
10 for each such taxpayer until such time as he may be determined  
11 by the Department to be delinquent in the filing of any  
12 returns, or is determined by the Department (either through the  
13 Department's issuance of a final assessment which has become  
14 final under the Act, or by the taxpayer's filing of a return  
15 which admits tax to be due that is not paid) to be delinquent  
16 or deficient in the paying of any tax under this Act, at which  
17 time that taxpayer shall become subject to the bond  
18 requirements of this Section and, as a condition of being  
19 allowed to continue to engage in the business licensed under  
20 this Act, shall be required to furnish bond to the Department  
21 in such form as provided in this Section. Such taxpayer shall  
22 furnish such bond for a period of 2 years, after which, if the  
23 taxpayer has not been delinquent in the filing of any returns,  
24 or delinquent or deficient in the paying of any tax under this  
25 Act, the Department may reinstate such person as a prior  
26 continuance compliance taxpayer. Any taxpayer who fails to pay

1 an admitted or established liability under this Act may also be  
2 required to post bond or other acceptable security with the  
3 Department guaranteeing the payment of such admitted or  
4 established liability.

5 Any person aggrieved by any decision of the Department  
6 under this Section may, within the time allowed by law, protest  
7 and request a hearing, whereupon the Department shall give  
8 notice and shall hold a hearing in conformity with the  
9 provisions of this Act and then issue its final administrative  
10 decision in the matter to such person. In the absence of such a  
11 protest filed within the time allowed by law, the Department's  
12 decision shall become final without any further determination  
13 being made or notice given.

14 The Department shall discharge any surety and shall release  
15 and return any bond or security deposited, assigned, pledged,  
16 or otherwise provided to it by a taxpayer under this Section  
17 within 30 days after:

18 (1) Such taxpayer becomes a prior continuous compliance  
19 taxpayer; or

20 (2) Such taxpayer has ceased to collect receipts on which  
21 he is required to remit tax to the Department, has filed a  
22 final tax return, and has paid to the Department an amount  
23 sufficient to discharge his remaining tax liability as  
24 determined by the Department under this Act. The Department  
25 shall make a final determination of the taxpayer's outstanding  
26 tax liability as expeditiously as possible after his final tax



1 return has been filed. If the Department cannot make such final  
2 determination within 45 days after receiving the final tax  
3 return, within such period it shall so notify the taxpayer,  
4 stating its reasons therefor.

5 The Department may authorize distributors to affix revenue  
6 tax stamps by imprinting tax meter stamps upon original  
7 packages of cigarettes. The Department shall adopt rules and  
8 regulations relating to the imprinting of such tax meter stamps  
9 as will result in payment of the proper taxes as herein  
10 imposed. No distributor may affix revenue tax stamps to  
11 original packages of cigarettes by imprinting tax meter stamps  
12 thereon unless such distributor has first obtained permission  
13 from the Department to employ this method of affixation. The  
14 Department shall regulate the use of tax meters and may, to  
15 assure the proper collection of the taxes imposed by this Act,  
16 revoke or suspend the privilege, theretofore granted by the  
17 Department to any distributor, to imprint tax meter stamps upon  
18 original packages of cigarettes.

19 Illinois cigarette manufacturers who place their  
20 cigarettes in original packages which are contained inside a  
21 sealed transparent wrapper, and similar out-of-State cigarette  
22 manufacturers who elect to qualify and are accepted by the  
23 Department as distributors under Section 4b of this Act, shall  
24 pay the taxes imposed by this Act by remitting the amount  
25 thereof to the Department by the 5th day of each month covering  
26 cigarettes shipped or otherwise delivered in Illinois to

1 purchasers during the preceding calendar month. Such  
2 manufacturers of cigarettes in original packages which are  
3 contained inside a sealed transparent wrapper, before  
4 delivering such cigarettes or causing such cigarettes to be  
5 delivered in this State to purchasers, shall evidence their  
6 obligation to remit the taxes due with respect to such  
7 cigarettes by imprinting language to be prescribed by the  
8 Department on each original package of such cigarettes  
9 underneath the sealed transparent outside wrapper of such  
10 original package, in such place thereon and in such manner as  
11 the Department may designate. Such imprinted language shall  
12 acknowledge the manufacturer's payment of or liability for the  
13 tax imposed by this Act with respect to the distribution of  
14 such cigarettes.

15 A distributor shall not affix, or cause to be affixed, any  
16 stamp or imprint to a package of cigarettes, as provided for in  
17 this Section, if the tobacco product manufacturer, as defined  
18 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
19 that made or sold the cigarettes has failed to become a  
20 participating manufacturer, as defined in subdivision (a)(1)  
21 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
22 or has failed to create a qualified escrow fund for any  
23 cigarettes manufactured by the tobacco product manufacturer  
24 and sold in this State or otherwise failed to bring itself into  
25 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
26 Product Manufacturers' Escrow Act.

1 (Source: P.A. 92-322, eff. 1-1-02; 92-536, eff. 6-6-02; 92-737,  
2 eff. 7-25-02; 93-22, eff. 6-20-03.)

3 (35 ILCS 130/3-10)

4 Sec. 3-10. Cigarette enforcement.

5 (a) Prohibitions. It is unlawful for any person:

6 (1) to sell or distribute in this State; to acquire,  
7 hold, own, possess, or transport, for sale or distribution  
8 in this State; or to import, or cause to be imported into  
9 this State for sale or distribution in this State:

10 (A) any cigarettes the package of which:

11 (i) bears any statement, label, stamp,  
12 sticker, or notice indicating that the  
13 manufacturer did not intend the cigarettes to be  
14 sold, distributed, or used in the United States,  
15 including but not limited to labels stating "For  
16 Export Only", "U.S. Tax Exempt", "For Use Outside  
17 U.S.", or similar wording; or

18 (ii) does not comply with:

19 (aa) all requirements imposed by or  
20 pursuant to federal law regarding warnings and  
21 other information on packages of cigarettes  
22 manufactured, packaged, or imported for sale,  
23 distribution, or use in the United States,  
24 including but not limited to the precise  
25 warning labels specified in the federal

1 Cigarette Labeling and Advertising Act, 15  
2 U.S.C. 1333; and

3 (bb) all federal trademark and copyright  
4 laws;

5 (B) any cigarettes imported into the United States  
6 in violation of 26 U.S.C. 5754 or any other federal  
7 law, or implementing federal regulations;

8 (C) any cigarettes that such person otherwise  
9 knows or has reason to know the manufacturer did not  
10 intend to be sold, distributed, or used in the United  
11 States; or

12 (D) any cigarettes for which there has not been  
13 submitted to the Secretary of the U.S. Department of  
14 Health and Human Services the list or lists of the  
15 ingredients added to tobacco in the manufacture of the  
16 cigarettes required by the federal Cigarette Labeling  
17 and Advertising Act, 15 U.S.C. 1335a;

18 (2) to alter the package of any cigarettes, prior to  
19 sale or distribution to the ultimate consumer, so as to  
20 remove, conceal, or obscure:

21 (A) any statement, label, stamp, sticker, or  
22 notice described in subdivision (a)(1)(A)(i) of this  
23 Section;

24 (B) any health warning that is not specified in, or  
25 does not conform with the requirements of, the federal  
26 Cigarette Labeling and Advertising Act, 15 U.S.C.

1 1333; ~~or~~

2 (3) to affix any stamp required pursuant to this Act to  
3 the package of any cigarettes described in subdivision  
4 (a)(1) of this Section or altered in violation of  
5 subdivision (a)(2); ~~or~~

6 (4) to knowingly possess, or possess for sale,  
7 contraband cigarettes.

8 (b) Documentation. On the first business day of each month,  
9 each person licensed to affix the State tax stamp to cigarettes  
10 shall file with the Department, for all cigarettes imported  
11 into the United States to which the person has affixed the tax  
12 stamp in the preceding month:

13 (1) a copy of:

14 (A) the permit issued pursuant to the Internal  
15 Revenue Code, 26 U.S.C. 5713, to the person importing  
16 the cigarettes into the United States allowing the  
17 person to import the cigarettes; and

18 (B) the customs form containing, with respect to  
19 the cigarettes, the internal revenue tax information  
20 required by the U.S. Bureau of Alcohol, Tobacco and  
21 Firearms;

22 (2) a statement, signed by the person under penalty of  
23 perjury, which shall be treated as confidential by the  
24 Department and exempt from disclosure under the Freedom of  
25 Information Act, identifying the brand and brand styles of  
26 all such cigarettes, the quantity of each brand style of

1 such cigarettes, the supplier of such cigarettes, and the  
2 person or persons, if any, to whom such cigarettes have  
3 been conveyed for resale; and a separate statement, signed  
4 by the individual under penalty of perjury, which shall not  
5 be treated as confidential or exempt from disclosure,  
6 separately identifying the brands and brand styles of such  
7 cigarettes; and

8 (3) a statement, signed by an officer of the  
9 manufacturer or importer under penalty of perjury,  
10 certifying that the manufacturer or importer has complied  
11 with:

12 (A) the package health warning and ingredient  
13 reporting requirements of the federal Cigarette  
14 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,  
15 with respect to such cigarettes; and

16 (B) the provisions of Exhibit T of the Master  
17 Settlement Agreement entered in the case of People of  
18 the State of Illinois v. Philip Morris, et al. (Circuit  
19 Court of Cook County, No. 96-L13146), including a  
20 statement indicating whether the manufacturer is, or  
21 is not, a participating tobacco manufacturer within  
22 the meaning of Exhibit T.

23 (c) Administrative sanctions.

24 (1) Upon finding that a distributor has committed any  
25 of the acts prohibited by subsection (a), knowing or having  
26 reason to know that he or she has done so, or has failed to

1           comply with any requirement of subsection (b), the  
2           Department may revoke or suspend the license or licenses of  
3           any distributor pursuant to the procedures set forth in  
4           Section 6 and impose on the distributor a civil penalty in  
5           an amount not to exceed the greater of 500% of the retail  
6           value of the cigarettes involved or \$5,000.

7           (2) Cigarettes that are acquired, held, owned,  
8           possessed, transported in, imported into, or sold or  
9           distributed in this State in violation of this Section  
10          shall be deemed contraband under this Act and are subject  
11          to seizure and forfeiture as provided in this Act, and all  
12          such cigarettes seized and forfeited shall be destroyed.  
13          Such cigarettes shall be deemed contraband whether the  
14          violation of this Section is knowing or otherwise.

15          (d) Unfair trade practices. A violation of subsection (a)  
16          or subsection (b) of this Section shall constitute an unlawful  
17          practice as provided in the Consumer Fraud and Deceptive  
18          Business Practices Act.

19          (e) Unfair cigarette sales. For purposes of the Trademark  
20          Registration and Protection Act and the Counterfeit Trademark  
21          Act, cigarettes imported or reimported into the United States  
22          for sale or distribution under any trade name, trade dress, or  
23          trademark that is the same as, or is confusingly similar to,  
24          any trade name, trade dress, or trademark used for cigarettes  
25          manufactured in the United States for sale or distribution in  
26          the United States shall be presumed to have been purchased

1 outside of the ordinary channels of trade.

2 (f) General provisions.

3 (1) This Section shall be enforced by the Department;  
4 provided that, at the request of the Director of Revenue or  
5 the Director's duly authorized agent, the State police and  
6 all local police authorities shall enforce the provisions  
7 of this Section. The Attorney General has concurrent power  
8 with the State's Attorney of any county to enforce this  
9 Section.

10 (2) For the purpose of enforcing this Section, the  
11 Director of Revenue and any agency to which the Director  
12 has delegated enforcement responsibility pursuant to  
13 subdivision (f)(1) may request information from any State  
14 or local agency and may share information with and request  
15 information from any federal agency and any agency of any  
16 other state or any local agency of any other state.

17 (3) In addition to any other remedy provided by law,  
18 including enforcement as provided in subdivision (a)(1),  
19 any person may bring an action for appropriate injunctive  
20 or other equitable relief for a violation of this Section;  
21 actual damages, if any, sustained by reason of the  
22 violation; and, as determined by the court, interest on the  
23 damages from the date of the complaint, taxable costs, and  
24 reasonable attorney's fees. If the trier of fact finds that  
25 the violation is flagrant, it may increase recovery to an  
26 amount not in excess of 3 times the actual damages



1 sustained by reason of the violation.

2 (g) Definitions. As used in this Section:

3 "Importer" means that term as defined in 26 U.S.C. 5702(1).

4 "Package" means that term as defined in 15 U.S.C. 1332(4).

5 (h) Applicability.

6 (1) This Section does not apply to:

7 (A) cigarettes allowed to be imported or brought  
8 into the United States for personal use; and

9 (B) cigarettes sold or intended to be sold as  
10 duty-free merchandise by a duty-free sales enterprise  
11 in accordance with the provisions of 19 U.S.C. 1555(b)  
12 and any implementing regulations; except that this  
13 Section shall apply to any such cigarettes that are  
14 brought back into the customs territory for resale  
15 within the customs territory.

16 (2) The penalties provided in this Section are in  
17 addition to any other penalties imposed under other  
18 provision of law.

19 (Source: P.A. 91-810, eff. 6-13-00.)

20 (35 ILCS 130/3-15 new)

21 Sec. 3-15. Criminal penalties.

22 (1) Fraudulent offenses. Whoever intentionally fails to  
23 comply with any of the requirements of this Act or regulations  
24 prescribed hereunder shall, in addition to any other penalty  
25 provided in this Act, for each such offense, be guilty of a

1 Class 3 felony.

2 (2) Knowing offenses. Whoever, knowingly violates any of  
3 the requirements of this Act or regulations prescribed  
4 hereunder shall, in addition to any other penalty provided in  
5 this Act, for each such offense, be guilty of a Class 4 felony.

6 (3) Penalties for contraband. Notwithstanding any other  
7 provision of law, the possession for sale of contraband  
8 cigarettes by a manufacturer, distributor, or retailer shall be  
9 punishable as follows:

10 (A) A person who commits a first knowing violation  
11 shall be guilty of a Class 4 felony.

12 (B) A person who commits a subsequent knowing violation  
13 shall be guilty of a Class 3 felony and shall have his or  
14 her license, permit, or certificate of registration  
15 revoked by the Department. In no case shall the fine  
16 imposed under this paragraph exceed ten times the retail  
17 value of the cigarettes.

18 (4) For purposes of this Section, the term contraband  
19 cigarettes includes cigarettes that have false manufacturing  
20 labels or packs of cigarettes bearing counterfeit tax stamps.  
21 Any contraband cigarette seized by this State shall be  
22 destroyed. The Department may, prior to any destruction of  
23 cigarettes, permit the true holder of the trademark rights in  
24 the cigarette brand to inspect such contraband cigarettes, in  
25 order to assist the Department in any investigation regarding  
26 such cigarettes.

1       (5) The penalties provided in paragraph (3) shall not apply  
2 where a licensed distributor is in possession of contraband  
3 cigarettes as a result of such cigarettes being returned to the  
4 distributor by a retailer if such distributor promptly notified  
5 appropriate law enforcement authorities.

6       (6) Criminal forfeiture.

7       (A) Notwithstanding any other provision of law, the  
8 knowing possession for sale of contraband cigarettes by a  
9 manufacturer, distributor, or retailer shall, after notice  
10 and hearing, result in the forfeiture to this State of the  
11 product and related machinery and equipment used in the  
12 production of contraband cigarettes, or to falsely mark  
13 cigarettes to reflect the payment of excise taxes.

14       (B) The knowing sale or possession for sale of  
15 contraband cigarettes shall, after notice and hearing,  
16 result in the seizure of all related machinery and  
17 equipment.

18       (C) All cigarettes forfeited to this State under this  
19 Section shall be destroyed. The Department may, prior to  
20 any destruction of cigarettes, permit the true holder of  
21 the trademark rights in the cigarette brand to inspect such  
22 contraband cigarettes, in order to assist the Department in  
23 any investigation regarding such cigarettes.

24       (35 ILCS 130/4) (from Ch. 120, par. 453.4)

25       Sec. 4. Distributor's license. No person may engage in

1 business as a distributor of cigarettes in this State within  
2 the meaning of the first 2 definitions of distributor in  
3 Section 1 of this Act without first having obtained a license  
4 therefor from the Department. Application for license shall be  
5 made to the Department in form as furnished and prescribed by  
6 the Department. Each applicant for a license under this Section  
7 shall furnish to the Department on the form signed and verified  
8 by the applicant under penalty of perjury the following  
9 information:

10 (a) The name and address of the applicant;

11 (b) The address of the location at which the applicant  
12 proposes to engage in business as a distributor of  
13 cigarettes in this State;

14 (c) Such other additional information as the  
15 Department may lawfully require by its rules and  
16 regulations.

17 The annual license fee payable to the Department for each  
18 distributor's license shall be \$250. The purpose of such annual  
19 license fee is to defray the cost, to the Department, of  
20 serializing cigarette tax stamps. Each applicant for license  
21 shall pay such fee to the Department at the time of submitting  
22 his application for license to the Department.

23 Every applicant who is required to procure a distributor's  
24 license shall file with his application a joint and several  
25 bond. Such bond shall be executed to the Department of Revenue,  
26 with good and sufficient surety or sureties residing or

1 licensed to do business within the State of Illinois, in the  
2 amount of \$2,500, conditioned upon the true and faithful  
3 compliance by the licensee with all of the provisions of this  
4 Act. Such bond, or a reissue thereof, or a substitute therefor,  
5 shall be kept in effect during the entire period covered by the  
6 license. A separate application for license shall be made, a  
7 separate annual license fee paid, and a separate bond filed,  
8 for each place of business at which a person who is required to  
9 procure a distributor's license under this Section proposes to  
10 engage in business as a distributor in Illinois under this Act.

11 The following are ineligible to receive a distributor's  
12 license under this Act:

13 (1) a person who is not of good character and  
14 reputation in the community in which he resides;

15 (2) a person who has been convicted of a felony  
16 under any Federal or State law, if the Department,  
17 after investigation and a hearing, if requested by the  
18 applicant, determines that such person has not been  
19 sufficiently rehabilitated to warrant the public  
20 trust;

21 (3) a corporation, if any officer, manager or  
22 director thereof, or any stockholder or stockholders  
23 owning in the aggregate more than 5% of the stock of  
24 such corporation, would not be eligible to receive a  
25 license under this Act for any reason.

26 (4) a person, or any person who owns more than 15

1           percent of the ownership interests in a person or a  
2           related party who:

3                   (a) owes, at the time of application, \$500 or  
4                   more in delinquent cigarette taxes that have been  
5                   determined by law to be due and unpaid, unless the  
6                   license applicant has entered into an agreement  
7                   approved by the Department to pay the amount due;

8                   (b) had a license under this Act revoked within  
9                   the past two years by the Department for willful  
10                   misconduct relating to stolen or contraband  
11                   cigarettes or has been convicted of a State or  
12                   federal crime, punishable by imprisonment of one  
13                   year or more, relating to stolen or contraband  
14                   cigarettes;

15                   (c) is a distributor who manufactures  
16                   cigarettes who is neither (i) a participating  
17                   manufacturer as defined in subsection II(jj) of  
18                   the "Master Settlement Agreement" as defined in  
19                   Sections 10 of the Tobacco Products Manufacturers'  
20                   Escrow Act and the Tobacco Products Manufacturers'  
21                   Escrow Enforcement Act of 2003 (30 ILCS 168/10 and  
22                   30 ILCS 167/10); nor (ii) in full compliance with  
23                   Tobacco Products Manufacturers' Escrow Act and the  
24                   Tobacco Products Manufacturers' Escrow Enforcement  
25                   Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

26                   (d) has been found to have willfully imported

1           or caused to be imported into the United States for  
2           sale or distribution any cigarette in violation of  
3           19 U.S.C. 1681a;

4           (e) has been found to have willfully imported  
5           or caused to be imported into the United States for  
6           sale or distribution or manufactured for sale or  
7           distribution in the United States any cigarette  
8           that does not fully comply with the Federal  
9           Cigarette Labeling and Advertising Act (15 U.S.C.  
10           1331, et seq.); or

11           (f) has willfully made a material false  
12           statement in the application or has willfully  
13           failed to produce records required to be  
14           maintained by this Act.

15           The Department, upon receipt of an application, license fee  
16           and bond in proper form, from a person who is eligible to  
17           receive a distributor's license under this Act, shall issue to  
18           such applicant a license in form as prescribed by the  
19           Department, which license shall permit the applicant to which  
20           it is issued to engage in business as a distributor at the  
21           place shown in his application. All licenses issued by the  
22           Department under this Act shall be valid for not to exceed one  
23           year after issuance unless sooner revoked, canceled or  
24           suspended as provided in this Act. No license issued under this  
25           Act is transferable or assignable. Such license shall be  
26           conspicuously displayed in the place of business conducted by

1 the licensee in Illinois under such license. No distributor  
2 licensee acquires any vested interest or compensable property  
3 right in a license issued under this Act.

4 A licensed distributor shall notify the Department of any  
5 change in the information contained on the application form,  
6 including any change in ownership and shall do so within 30  
7 days after any such change.

8 Any person aggrieved by any decision of the Department  
9 under this Section may, within 20 days after notice of the  
10 decision, protest and request a hearing. Upon receiving a  
11 request for a hearing, the Department shall give notice to the  
12 person requesting the hearing of the time and place fixed for  
13 the hearing and shall hold a hearing in conformity with the  
14 provisions of this Act and then issue its final administrative  
15 decision in the matter to that person. In the absence of a  
16 protest and request for a hearing within 20 days, the  
17 Department's decision shall become final without any further  
18 determination being made or notice given.

19 (Source: P.A. 91-901, eff. 1-1-01; 92-322, eff. 1-1-02.)

20 (35 ILCS 130/4d new)

21 Sec. 4d. Transactions only with licensed distributors,  
22 out-of-state manufacturers holding a permit, and retailers  
23 holding a certificate of registration. A distributor or  
24 manufacturer may sell or distribute cigarettes to a person  
25 located or doing business within this State only if such person



1 is a licensed distributor or a retailer holding a certificate  
2 of registration. A retailer may only sell cigarettes obtained  
3 from a licensed distributor or an out-of-state manufacturer  
4 holding a permit.

5 (35 ILCS 130/20) (from Ch. 120, par. 453.20)

6 Sec. 20. Whenever any peace officer of the State or any  
7 duly authorized officer or employee of the Department shall  
8 have reason to believe that any violation of this Act has  
9 occurred and that the person so violating the Act has in his,  
10 her or its possession any original package of cigarettes, not  
11 tax stamped or tax imprinted underneath the sealed transparent  
12 wrapper of such original package as required by this Act, or  
13 any vending device containing such original packages to which  
14 stamps have not been affixed, or on which an authorized  
15 substitute for stamps has not been imprinted underneath the  
16 sealed transparent wrapper of such original packages, as  
17 required by this Act, he may file or cause to be filed his  
18 complaint in writing, verified by affidavit, with any court  
19 within whose jurisdiction the premises to be searched are  
20 situated, stating the facts upon which such belief is founded,  
21 the premises to be searched, and the property to be seized, and  
22 procure a search warrant and execute the same. Upon the  
23 execution of such search warrant, the peace officer, or officer  
24 or employee of the Department, executing such search warrant  
25 shall make due return thereof to the court issuing the same,

1 together with an inventory of the property taken thereunder.  
2 The court shall thereupon issue process against the owner of  
3 such property if he is known; otherwise, such process shall be  
4 issued against the person in whose possession the property so  
5 taken is found, if such person is known. In case of inability  
6 to serve such process upon the owner or the person in  
7 possession of the property at the time of its seizure, as  
8 hereinbefore provided, notice of the proceedings before the  
9 court shall be given as required by the statutes of the State  
10 governing cases of Attachment. Upon the return of the process  
11 duly served or upon the posting or publishing of notice made,  
12 as hereinabove provided, the court or jury, if a jury shall be  
13 demanded, shall proceed to determine whether or not such  
14 property so seized was held or possessed in violation of this  
15 Act, or whether, if a vending device has been so seized, it  
16 contained at the time of its seizure original packages not tax  
17 stamped or tax imprinted underneath the sealed transparent  
18 wrapper of such original packages as required by this Act. In  
19 case of a finding that the original packages seized were not  
20 tax stamped or tax imprinted underneath the sealed transparent  
21 wrapper of such original packages in accordance with the  
22 provisions of this Act, or that any vending device so seized  
23 contained at the time of its seizure original packages not tax  
24 stamped or tax imprinted underneath the sealed transparent  
25 wrapper of such original packages in accordance with the  
26 provisions of this Act, judgment shall be entered confiscating

1 and forfeiting the property to the State and ordering its  
2 delivery to the Department, and in addition thereto, the court  
3 shall have power to tax and assess the costs of the  
4 proceedings.

5 When any original packages or any cigarette vending device  
6 shall have been declared forfeited to the State by any court,  
7 as hereinbefore provided, and when such confiscated and  
8 forfeited property shall have been delivered to the Department,  
9 as provided in this Act, the said Department shall destroy ~~sell~~  
10 such property. The Department may, prior to any destruction of  
11 cigarettes, permit the true holder of the trademark rights in  
12 the cigarette brand to inspect such contraband cigarettes, in  
13 order to assist the Department in any investigation regarding  
14 such cigarettes. ~~for the best price obtainable and shall~~  
15 ~~forthwith pay over the proceeds of such sale to the State~~  
16 ~~Treasurer; provided, however, that if the value of such~~  
17 ~~property to be sold at any one time shall be \$500 or more, such~~  
18 ~~property shall be sold only to the highest and best bidder on~~  
19 ~~such terms and conditions and on open competitive bidding after~~  
20 ~~public advertisement, in such manner and for such terms as the~~  
21 ~~Department, by rule, may prescribe.~~

22 ~~Upon making such a sale of original packages of cigarettes~~  
23 ~~which were not tax stamped or tax imprinted underneath the~~  
24 ~~sealed transparent wrapper of such original packages as~~  
25 ~~required by this Act, the Department shall affix a distinctive~~  
26 ~~stamp to each of the original packages so sold indicating that~~

1 ~~the same are sold pursuant to the provisions of this Section.~~

2 (Source: Laws 1965, p. 3707.)

3 (35 ILCS 130/21) (from Ch. 120, par. 453.21)

4 Sec. 21. Destruction or use of forfeited property.

5 (a) When any original packages of cigarettes or any  
6 cigarette vending device shall have been declared forfeited to  
7 the State by the Department, as provided in Section 18a of this  
8 Act, and when all proceedings for the judicial review of the  
9 Department's decision have terminated, the Department shall,  
10 to the extent that its decision is sustained on review,  
11 destroy, or maintain and use such property in an undercover  
12 capacity, ~~or sell such property for the best price obtainable~~  
13 ~~and shall forthwith pay over the proceeds of such sale to the~~  
14 ~~State Treasurer. If the value of such property to be sold at~~  
15 ~~any one time is \$500 or more, however, such property shall be~~  
16 ~~sold only to the highest and best bidder on such terms and~~  
17 ~~conditions and on open competitive bidding after public~~  
18 ~~advertisement, in such manner and for such terms as the~~  
19 ~~Department, by rule, may prescribe.~~

20 (b) The Department may, prior to any destruction of  
21 cigarettes, permit the true holder of the trademark rights in  
22 the cigarette brand to inspect such contraband cigarettes in  
23 order to assist the Department in any investigation regarding  
24 such cigarettes. ~~If no complaint for review, as provided in~~  
25 ~~Section 8 of this Act, has been filed within the time required~~

1 ~~by the Administrative Review Law, and if no stay order has been~~  
2 ~~entered thereunder, the Department shall proceed to sell the~~  
3 ~~property for the best price obtainable and shall forthwith pay~~  
4 ~~over the proceeds of such sale to the State Treasurer. If the~~  
5 ~~value of such property to be sold at any one time is \$500 or~~  
6 ~~more, however, such property shall be sold only to the highest~~  
7 ~~and best bidder on such terms and conditions and on open~~  
8 ~~competitive bidding after public advertisement, in such manner~~  
9 ~~and for such terms as the Department, by rule, may prescribe.~~

10 ~~(c) Upon making a sale of unstamped original packages of~~  
11 ~~cigarettes as provided in this Section, the Department shall~~  
12 ~~affix a distinctive stamp to each of the original packages so~~  
13 ~~sold indicating that the same are sold under this Section.~~

14 ~~(d) Notwithstanding the foregoing, any cigarettes seized~~  
15 ~~under this Act or under the Cigarette Use Tax Act may, at the~~  
16 ~~discretion of the Director of Revenue, be distributed to any~~  
17 ~~eleemosynary institution within the State of Illinois.~~

18 (Source: P.A. 94-776, eff. 5-19-06.)

19 (35 ILCS 130/29.5 new)

20 Sec. 29.5. Rulemaking. Rulemaking authority to implement  
21 this amendatory Act of the 95th General Assembly, if any, is  
22 conditioned on the rules being adopted in accordance with all  
23 provisions of the Illinois Administrative Procedure Act and all  
24 rules and procedures of the Joint Committee on Administrative  
25 Rules; any purported rule not so adopted, for whatever reason,

1 is unauthorized.

2 (35 ILCS 130/9c rep.)

3 (35 ILCS 130/28 rep.)

4 Section 10. The Cigarette Tax Act is amended by repealing  
5 Sections 9c and 28.

6 Section 15. The Cigarette Use Tax Act is amended by  
7 changing Sections 1, 3-10, 4, 26, and 27 and by adding Sections  
8 3-15 and 35.5 as follows:

9 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

10 Sec. 1. For the purpose of this Act, unless otherwise  
11 required by the context:

12 "Use" means the exercise by any person of any right or  
13 power over cigarettes incident to the ownership or possession  
14 thereof, other than the making of a sale thereof in the course  
15 of engaging in a business of selling cigarettes and shall  
16 include the keeping or retention of cigarettes for use.

17 "Brand Style" means a variety of cigarettes distinguished  
18 by the tobacco used, tar and nicotine content, flavoring used,  
19 size of the cigarette, filtration on the cigarette or  
20 packaging.

21 "Cigarette" means any roll for smoking made wholly or in  
22 part of tobacco irrespective of size or shape and whether or  
23 not such tobacco is flavored, adulterated or mixed with any

1 other ingredient, and the wrapper or cover of which is made of  
2 paper or any other substance or material except tobacco.

3 "Contraband cigarettes" means:

4 (a) cigarettes that do not bear a required tax stamp  
5 under this Act;

6 (b) cigarettes for which any required federal taxes  
7 have not been paid;

8 (c) cigarettes that bear a counterfeit tax stamp;

9 (d) cigarettes that are manufactured, fabricated,  
10 assembled, processed, packaged, or labeled by any person  
11 other than (i) the owner of the trademark rights in the  
12 cigarette brand or (ii) a person that is directly or  
13 indirectly authorized by such owner;

14 (e) cigarettes imported into the United States, or  
15 otherwise distributed, in violation of the federal  
16 Imported Cigarette Compliance Act of 2000 (Title IV of  
17 Public Law 106-476); or

18 (f) cigarettes that have false manufacturing labels.

19 "Person" means any natural individual, firm, partnership,  
20 association, joint stock company, joint adventure, public or  
21 private corporation, however formed, limited liability  
22 company, or a receiver, executor, administrator, trustee,  
23 guardian or other representative appointed by order of any  
24 court.

25 "Department" means the Department of Revenue.

26 "Sale" means any transfer, exchange or barter in any manner

1 or by any means whatsoever for a consideration, and includes  
2 and means all sales made by any person.

3 "Original Package" means the individual packet, box or  
4 other container whatsoever used to contain and to convey  
5 cigarettes to the consumer.

6 "Distributor" means any and each of the following:

7 a. Any person engaged in the business of selling  
8 cigarettes in this State who brings or causes to be brought  
9 into this State from without this State any original  
10 packages of cigarettes, on which original packages there is  
11 no authorized evidence underneath a sealed transparent  
12 wrapper showing that the tax liability imposed by this Act  
13 has been paid or assumed by the out-of-State seller of such  
14 cigarettes, for sale in the course of such business.

15 b. Any person who makes, manufactures or fabricates  
16 cigarettes in this State for sale, except a person who  
17 makes, manufactures or fabricates cigarettes for sale to  
18 residents incarcerated in penal institutions or resident  
19 patients or a State-operated mental health facility.

20 c. Any person who makes, manufactures or fabricates  
21 cigarettes outside this State, which cigarettes are placed  
22 in original packages contained in sealed transparent  
23 wrappers, for delivery or shipment into this State, and who  
24 elects to qualify and is accepted by the Department as a  
25 distributor under Section 7 of this Act.

26 "Distributor" does not include any person who transfers



1 cigarettes to a not-for-profit research institution that  
2 conducts tests concerning the health effects of tobacco  
3 products and who does not offer the cigarettes for resale.

4 "Distributor maintaining a place of business in this  
5 State", or any like term, means any distributor having or  
6 maintaining within this State, directly or by a subsidiary, an  
7 office, distribution house, sales house, warehouse or other  
8 place of business, or any agent operating within this State  
9 under the authority of the distributor or its subsidiary,  
10 irrespective of whether such place of business or agent is  
11 located here permanently or temporarily, or whether such  
12 distributor or subsidiary is licensed to transact business  
13 within this State.

14 "Business" means any trade, occupation, activity or  
15 enterprise engaged in or conducted in this State for the  
16 purpose of selling cigarettes.

17 "Prior Continuous Compliance Taxpayer" means any person  
18 who is licensed under this Act and who, having been a licensee  
19 for a continuous period of 5 years, is determined by the  
20 Department not to have been either delinquent or deficient in  
21 the payment of tax liability during that period or otherwise in  
22 violation of this Act. Also, any taxpayer who has, as verified  
23 by the Department, continuously complied with the condition of  
24 his bond or other security under provisions of this Act of a  
25 period of 5 consecutive years shall be considered to be a  
26 "prior continuous compliance taxpayer". In calculating the

1 consecutive period of time described herein for qualification  
2 as a "prior continuous compliance taxpayer", a consecutive  
3 period of time of qualifying compliance immediately prior to  
4 the effective date of this amendatory Act of 1987 shall be  
5 credited to any licensee who became licensed on or before the  
6 effective date of this amendatory Act of 1987.

7 "Stamp" or "stamps" mean the indicia required to be affixed  
8 on a pack of cigarettes that evidence payment of the tax on  
9 cigarettes under Section 2 of this Act (35 ILCS 130/2), or the  
10 indicia used to indicate that the cigarettes are intended for a  
11 sale or distribution within this State that is exempt from  
12 State tax under any applicable provision of law.

13 "Within this State" means within the exterior limits of the  
14 State of Illinois and includes all territory within these  
15 limits owned by or ceded to the United States of America.

16 "Related party" means any person that is associated with  
17 any other person because he or she:

18 (a) is an officer or director of a business;

19 (b) is legally recognized as a partner in business; or

20 (c) is directly or indirectly controlled by another.

21 (Source: P.A. 95-462, eff. 8-27-07.)

22 (35 ILCS 135/3-10)

23 Sec. 3-10. Cigarette enforcement.

24 (a) Prohibitions. It is unlawful for any person:

25 (1) to sell or distribute in this State; to acquire,

1 hold, own, possess, or transport, for sale or distribution  
2 in this State; or to import, or cause to be imported into  
3 this State for sale or distribution in this State:

4 (A) any cigarettes the package of which:

5 (i) bears any statement, label, stamp,  
6 sticker, or notice indicating that the  
7 manufacturer did not intend the cigarettes to be  
8 sold, distributed, or used in the United States,  
9 including but not limited to labels stating "For  
10 Export Only", "U.S. Tax Exempt", "For Use Outside  
11 U.S.", or similar wording; or

12 (ii) does not comply with:

13 (aa) all requirements imposed by or  
14 pursuant to federal law regarding warnings and  
15 other information on packages of cigarettes  
16 manufactured, packaged, or imported for sale,  
17 distribution, or use in the United States,  
18 including but not limited to the precise  
19 warning labels specified in the federal  
20 Cigarette Labeling and Advertising Act, 15  
21 U.S.C. 1333; and

22 (bb) all federal trademark and copyright  
23 laws;

24 (B) any cigarettes imported into the United States  
25 in violation of 26 U.S.C. 5754 or any other federal  
26 law, or implementing federal regulations;

1 (C) any cigarettes that such person otherwise  
2 knows or has reason to know the manufacturer did not  
3 intend to be sold, distributed, or used in the United  
4 States; or

5 (D) any cigarettes for which there has not been  
6 submitted to the Secretary of the U.S. Department of  
7 Health and Human Services the list or lists of the  
8 ingredients added to tobacco in the manufacture of the  
9 cigarettes required by the federal Cigarette Labeling  
10 and Advertising Act, 15 U.S.C. 1335a;

11 (2) to alter the package of any cigarettes, prior to  
12 sale or distribution to the ultimate consumer, so as to  
13 remove, conceal, or obscure:

14 (A) any statement, label, stamp, sticker, or  
15 notice described in subdivision (a)(1)(A)(i) of this  
16 Section;

17 (B) any health warning that is not specified in, or  
18 does not conform with the requirements of, the federal  
19 Cigarette Labeling and Advertising Act, 15 U.S.C.  
20 1333; ~~or~~

21 (3) to affix any stamp required pursuant to this Act to  
22 the package of any cigarettes described in subdivision  
23 (a)(1) of this Section or altered in violation of  
24 subdivision (a)(2); ~~or~~

25 (4) to knowingly possess, or possess for sale,  
26 contraband cigarettes.

1 (b) Documentation. On the first business day of each month,  
2 each person licensed to affix the State tax stamp to cigarettes  
3 shall file with the Department, for all cigarettes imported  
4 into the United States to which the person has affixed the tax  
5 stamp in the preceding month:

6 (1) a copy of:

7 (A) the permit issued pursuant to the Internal  
8 Revenue Code, 26 U.S.C. 5713, to the person importing  
9 the cigarettes into the United States allowing the  
10 person to import the cigarettes; and

11 (B) the customs form containing, with respect to  
12 the cigarettes, the internal revenue tax information  
13 required by the U.S. Bureau of Alcohol, Tobacco and  
14 Firearms;

15 (2) a statement, signed by the person under penalty of  
16 perjury, which shall be treated as confidential by the  
17 Department and exempt from disclosure under the Freedom of  
18 Information Act, identifying the brand and brand styles of  
19 all such cigarettes, the quantity of each brand style of  
20 such cigarettes, the supplier of such cigarettes, and the  
21 person or persons, if any, to whom such cigarettes have  
22 been conveyed for resale; and a separate statement, signed  
23 by the individual under penalty of perjury, which shall not  
24 be treated as confidential or exempt from disclosure,  
25 separately identifying the brands and brand styles of such  
26 cigarettes; and

1           (3) a statement, signed by an officer of the  
2 manufacturer or importer under penalty of perjury,  
3 certifying that the manufacturer or importer has complied  
4 with:

5           (A) the package health warning and ingredient  
6 reporting requirements of the federal Cigarette  
7 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,  
8 with respect to such cigarettes; and

9           (B) the provisions of Exhibit T of the Master  
10 Settlement Agreement entered in the case of People of  
11 the State of Illinois v. Philip Morris, et al. (Circuit  
12 Court of Cook County, No. 96-L13146), including a  
13 statement indicating whether the manufacturer is, or  
14 is not, a participating tobacco manufacturer within  
15 the meaning of Exhibit T.

16 (c) Administrative sanctions.

17           (1) Upon finding that a distributor has committed any  
18 of the acts prohibited by subsection (a), knowing or having  
19 reason to know that he or she has done so, or has failed to  
20 comply with any requirement of subsection (b), the  
21 Department may revoke or suspend the license or licenses of  
22 any distributor pursuant to the procedures set forth in  
23 Section 6 and impose on the distributor a civil penalty in  
24 an amount not to exceed the greater of 500% of the retail  
25 value of the cigarettes involved or \$5,000.

26           (2) Cigarettes that are acquired, held, owned,

1        possessed, transported in, imported into, or sold or  
2        distributed in this State in violation of this Section  
3        shall be deemed contraband under this Act and are subject  
4        to seizure and forfeiture as provided in this Act, and all  
5        such cigarettes seized and forfeited shall be destroyed.  
6        Such cigarettes shall be deemed contraband whether the  
7        violation of this Section is knowing or otherwise.

8        (d) Unfair trade practices. A violation of subsection (a)  
9        or subsection (b) of this Section shall constitute an unlawful  
10       practice as provided in the Consumer Fraud and Deceptive  
11       Business Practices Act.

12       (e) Unfair cigarette sales. For purposes of the Trademark  
13       Registration and Protection Act and the Counterfeit Trademark  
14       Act, cigarettes imported or reimported into the United States  
15       for sale or distribution under any trade name, trade dress, or  
16       trademark that is the same as, or is confusingly similar to,  
17       any trade name, trade dress, or trademark used for cigarettes  
18       manufactured in the United States for sale or distribution in  
19       the United States shall be presumed to have been purchased  
20       outside of the ordinary channels of trade.

21       (f) General provisions.

22       (1) This Section shall be enforced by the Department;  
23       provided that, at the request of the Director of Revenue or  
24       the Director's duly authorized agent, the State police and  
25       all local police authorities shall enforce the provisions  
26       of this Section. The Attorney General has concurrent power

1 with the State's Attorney of any county to enforce this  
2 Section.

3 (2) For the purpose of enforcing this Section, the  
4 Director of Revenue and any agency to which the Director  
5 has delegated enforcement responsibility pursuant to  
6 subdivision (f)(1) may request information from any State  
7 or local agency and may share information with and request  
8 information from any federal agency and any agency of any  
9 other state or any local agency of any other state.

10 (3) In addition to any other remedy provided by law,  
11 including enforcement as provided in subdivision (a)(1),  
12 any person may bring an action for appropriate injunctive  
13 or other equitable relief for a violation of this Section;  
14 actual damages, if any, sustained by reason of the  
15 violation; and, as determined by the court, interest on the  
16 damages from the date of the complaint, taxable costs, and  
17 reasonable attorney's fees. If the trier of fact finds that  
18 the violation is flagrant, it may increase recovery to an  
19 amount not in excess of 3 times the actual damages  
20 sustained by reason of the violation.

21 (g) Definitions. As used in this Section:

22 "Importer" means that term as defined in 26 U.S.C. 5702(1).

23 "Package" means that term as defined in 15 U.S.C. 1332(4).

24 (h) Applicability.

25 (1) This Section does not apply to:

26 (A) cigarettes allowed to be imported or brought



1 into the United States for personal use; and

2 (B) cigarettes sold or intended to be sold as  
3 duty-free merchandise by a duty-free sales enterprise  
4 in accordance with the provisions of 19 U.S.C. 1555(b)  
5 and any implementing regulations; except that this  
6 Section shall apply to any such cigarettes that are  
7 brought back into the customs territory for resale  
8 within the customs territory.

9 (2) The penalties provided in this Section are in  
10 addition to any other penalties imposed under other  
11 provision of law.

12 (Source: P.A. 91-810, eff. 6-13-00.)

13 (35 ILCS 135/3-15 new)

14 Sec. 3-15. Criminal penalties.

15 (1) Fraudulent offenses. Whoever intentionally fails to  
16 comply with any of the requirements of this Act or regulations  
17 prescribed hereunder shall, in addition to any other penalty  
18 provided in this Act, for each such offense, be guilty of a  
19 Class 3 felony.

20 (2) Knowing offenses. Whoever, knowingly violates any of  
21 the requirements of this Act or regulations prescribed  
22 hereunder shall, in addition to any other penalty provided in  
23 this Act, for each such offense, be guilty of a Class 4 felony.

24 (3) Penalties for contraband. Notwithstanding any other  
25 provision of law, the possession for sale of contraband

1 cigarettes by a manufacturer, distributor, or retailer shall be  
2 punishable as follows:

3 (A) A person who commits a first knowing violation  
4 shall be guilty of a Class 4 felony.

5 (B) A person who commits a subsequent knowing violation  
6 shall be guilty of a Class 3 felony and shall have his or  
7 her license, permit, or certificate of registration  
8 revoked by the Department. In no case shall the fine  
9 imposed under this paragraph exceed ten times the retail  
10 value of the cigarettes.

11 (4) For purposes of this Section, the term contraband  
12 cigarettes includes cigarettes that have false manufacturing  
13 labels or packs of cigarettes bearing counterfeit tax stamps.  
14 Any contraband cigarette seized by this State shall be  
15 destroyed. The Department may, prior to any destruction of  
16 cigarettes, permit the true holder of the trademark rights in  
17 the cigarette brand to inspect such contraband cigarettes, in  
18 order to assist the Department in any investigation regarding  
19 such cigarettes.

20 (5) The penalties provided in paragraph (3) shall not apply  
21 where a licensed distributor is in possession of contraband  
22 cigarettes as a result of such cigarettes being returned to the  
23 distributor by a retailer if such distributor promptly notified  
24 appropriate law enforcement authorities.

25 (6) Criminal forfeiture.

26 (A) Notwithstanding any other provision of law, the

1       knowing possession for sale of contraband cigarettes by a  
2       manufacturer, distributor, or retailer shall, after notice  
3       and hearing, result in the forfeiture to this State of the  
4       product and related machinery and equipment used in the  
5       production of contraband cigarettes, or to falsely mark  
6       cigarettes to reflect the payment of excise taxes.

7       (B) The knowing sale or possession for sale of  
8       contraband cigarettes shall, after notice and hearing,  
9       result in the seizure of all related machinery and  
10      equipment.

11      (C) All cigarettes forfeited to this State under this  
12      Section shall be destroyed. The Department may, prior to  
13      any destruction of cigarettes, permit the true holder of  
14      the trademark rights in the cigarette brand to inspect such  
15      contraband cigarettes, in order to assist the Department in  
16      any investigation regarding such cigarettes.

17           (35 ILCS 135/4) (from Ch. 120, par. 453.34)

18       Sec. 4. Distributor's license. A distributor maintaining a  
19       place of business in this State, if required to procure a  
20       license or allowed to obtain a permit as a distributor under  
21       the Cigarette Tax Act, need not obtain an additional license or  
22       permit under this Act, but shall be deemed to be sufficiently  
23       licensed or registered by virtue of his being licensed or  
24       registered under the Cigarette Tax Act.

25       Every distributor maintaining a place of business in this

1 State, if not required to procure a license or allowed to  
2 obtain a permit as a distributor under the Cigarette Tax Act,  
3 shall make a verified application to the Department (upon a  
4 form prescribed and furnished by the Department) for a license  
5 to act as a distributor under this Act. In completing such  
6 application, the applicant shall furnish such information as  
7 the Department may reasonably require.

8 The annual license fee payable to the Department for each  
9 distributor's license shall be \$250. The purpose of such annual  
10 license fee is to defray the cost, to the Department, of  
11 serializing cigarette tax stamps. The applicant for license  
12 shall pay such fee to the Department at the time of submitting  
13 the application for license to the Department.

14 Such applicant shall file, with his application, a joint  
15 and several bond. Such bond shall be executed to the Department  
16 of Revenue, with good and sufficient surety or sureties  
17 residing or licensed to do business within the State of  
18 Illinois, in the amount of \$2,500, conditioned upon the true  
19 and faithful compliance by the licensee with all of the  
20 provisions of this Act. Such bond, or a reissue thereof, or a  
21 substitute therefor, shall be kept in effect during the entire  
22 period covered by the license. A separate application for  
23 license shall be made, a separate annual license fee paid, and  
24 a separate bond filed, for each place of business at or from  
25 which the applicant proposes to act as a distributor under this  
26 Act and for which the applicant is not required to procure a

1 license or allowed to obtain a permit as a distributor under  
2 the Cigarette Tax Act.

3 The following are ineligible to receive a distributor's  
4 license under this Act:

5 (1) a person who is not of good character and  
6 reputation in the community in which he resides;

7 (2) a person who has been convicted of a felony under  
8 any Federal or State law, if the Department, after  
9 investigation and a hearing, if requested by the applicant,  
10 determines that such person has not been sufficiently  
11 rehabilitated to warrant the public trust;

12 (3) a corporation, if any officer, manager or director  
13 thereof, or any stockholder or stockholders owning in the  
14 aggregate more than 5% of the stock of such corporation,  
15 would not be eligible to receive a license hereunder for  
16 any reason.

17 (4) a person, or any person who owns more than 15  
18 percent of the ownership interests in a person or a related  
19 party who:

20 (a) owes, at the time of application, \$500 or more  
21 in delinquent cigarette taxes that have been  
22 determined by law to be due and unpaid, unless the  
23 license applicant has entered into an agreement  
24 approved by the Department to pay the amount due;

25 (b) had a license under this Act revoked within the  
26 past 2 years by the Department for willful misconduct

1 relating to stolen or contraband cigarettes or has been  
2 convicted of a State or federal crime, punishable by  
3 imprisonment of one year or more, relating to stolen or  
4 contraband cigarettes;

5 (c) is a distributor who manufactures cigarettes  
6 who is neither (i) a participating manufacturer as  
7 defined in subsection II(jj) of the "Master Settlement  
8 Agreement" as defined in Sections 10 of the Tobacco  
9 Products Manufacturers' Escrow Act and the Tobacco  
10 Products Manufacturers' Escrow Enforcement Act of 2003  
11 (30 ILCS 168/10 and 30 ILCS 167/10); nor (ii) in full  
12 compliance with Tobacco Products Manufacturers' Escrow  
13 Act and the Tobacco Products Manufacturers' Escrow  
14 Enforcement Act of 2003 (30 ILCS 168/ and 30 ILCS  
15 167/);

16 (d) has been found to have willfully imported or  
17 caused to be imported into the United States for sale  
18 or distribution any cigarette in violation of 19 U.S.C.  
19 1681a;

20 (e) has been found to have willfully imported or  
21 caused to be imported into the United States for sale  
22 or distribution or manufactured for sale or  
23 distribution in the United States any cigarette that  
24 does not fully comply with the Federal Cigarette  
25 Labeling and Advertising Act (15 U.S.C. 1331, et seq.);  
26 or

1           (f) has willfully made a material false statement  
2           in the application or has willfully failed to produce  
3           records required to be maintained by this Act.

4           Upon approval of such application and bond and payment of  
5           the required annual license fee, the Department shall issue a  
6           license to the applicant. Such license shall permit the  
7           applicant to engage in business as a distributor at or from the  
8           place shown in his application. All licenses issued by the  
9           Department under this Act shall be valid for not to exceed one  
10          year after issuance unless sooner revoked, canceled or  
11          suspended as in this Act provided. No license issued under this  
12          Act is transferable or assignable. Such license shall be  
13          conspicuously displayed at the place of business for which it  
14          is issued.

15          Any person aggrieved by any decision of the Department  
16          under this Section may, within 20 days after notice of the  
17          decision, protest and request a hearing. Upon receiving a  
18          request for a hearing, the Department shall give notice to the  
19          person requesting the hearing of the time and place fixed for  
20          the hearing and shall hold a hearing in conformity with the  
21          provisions of this Act and then issue its final administrative  
22          decision in the matter to that person. In the absence of a  
23          protest and request for a hearing within 20 days, the  
24          Department's decision shall become final without any further  
25          determination being made or notice given.

26          (Source: P.A. 91-901, eff. 1-1-01; 92-322, eff. 1-1-02.)

1 (35 ILCS 135/26) (from Ch. 120, par. 453.56)

2 Sec. 26. Whenever any peace officer of the State or any  
3 duly authorized officer or employee of the Department shall  
4 have reason to believe that any violation of this Act has  
5 occurred and that the person so violating the Act has in his,  
6 her or its possession any original package of cigarettes, not  
7 tax stamped or tax imprinted underneath the sealed transparent  
8 wrapper of such original packages, as required by this Act, or  
9 any vending device containing such original packages to which  
10 stamps have not been affixed, or on which an authorized  
11 substitute for stamps has not been imprinted underneath the  
12 sealed transparent wrapper of such original packages, as  
13 required by this Act, he may file or cause to be filed his  
14 complaint in writing, verified by affidavit, with any circuit  
15 court within whose jurisdiction the premises to be searched are  
16 situated, stating the facts upon which such belief is founded,  
17 the premises to be searched, and the property to be seized, and  
18 procure a search warrant and execute the same. Upon the  
19 execution of such search warrant, the peace officer, or officer  
20 or employee of the Department, executing such search warrant  
21 shall make due return thereof to the court issuing the same,  
22 together with an inventory of the property taken thereunder.  
23 The court shall thereupon issue process against the owner of  
24 such property if he is known; otherwise, such process shall be  
25 issued against the person in whose possession the property so



1 taken is found, if such person is known. In case of inability  
2 to serve such process upon the owner or the person in  
3 possession of the property at the time of its seizure, as  
4 hereinbefore provided, notice of the proceedings before the  
5 court shall be given as required by the statutes of the State  
6 governing cases of Attachment. Upon the return of the process  
7 duly served or upon the posting or publishing of notice made,  
8 as hereinabove provided, the court or jury, if a jury shall be  
9 demanded, shall proceed to determine whether or not such  
10 property so seized was held or possessed in violation of this  
11 Act, or whether, if a vending device has been so seized, it  
12 contained at the time of its seizure original packages not tax  
13 stamped or tax imprinted underneath the sealed transparent  
14 wrapper of such original packages as required by this Act. In  
15 case of a finding that the original packages seized were not  
16 tax stamped or tax imprinted underneath the sealed transparent  
17 wrapper of such original packages in accordance with the  
18 provisions of this Act, or that any vending device so seized  
19 contained at the time of its seizure original packages not tax  
20 stamped or tax imprinted underneath the sealed transparent  
21 wrapper of such original packages in accordance with the  
22 provisions of this Act, judgment shall be entered confiscating  
23 and forfeiting the property to the State and ordering its  
24 delivery to the Department, and in addition thereto, the court  
25 shall have power to tax and assess the costs of the  
26 proceedings.

1           When any original packages or any cigarette vending device  
2 shall have been declared forfeited to the State by any court,  
3 as hereinbefore provided, and when such confiscated and  
4 forfeited property shall have been delivered to the Department,  
5 as provided in this Act, the said Department shall destroy, or  
6 maintain and use such property in an undercover capacity. The  
7 Department may, prior to any destruction of cigarettes, permit  
8 the true holder of the trademark rights in the cigarette brand  
9 to inspect such contraband cigarettes, in order to assist the  
10 Department in any investigation regarding such cigarettes. ~~or~~  
11 ~~sell such property for the best price obtainable and shall~~  
12 ~~forthwith pay over the proceeds of such sale to the State~~  
13 ~~Treasurer; provided, however, that if the value of such~~  
14 ~~property to be sold at any one time shall be \$500 or more, such~~  
15 ~~property shall be sold only to the highest and best bidder on~~  
16 ~~such terms and conditions and on open competitive bidding after~~  
17 ~~public advertisement, in such manner and for such terms as the~~  
18 ~~Department, by rule, may prescribe.~~

19           ~~Upon making such a sale of original packages of cigarettes~~  
20 ~~which were not tax stamped or tax imprinted underneath the~~  
21 ~~sealed transparent wrapper of such original packages as~~  
22 ~~required by this Act, the Department shall affix a distinctive~~  
23 ~~stamp to each of the original packages so sold indicating that~~  
24 ~~the same are sold pursuant to the provisions of this Section.~~

25           (Source: P.A. 94-776, eff. 5-19-06.)

1 (35 ILCS 135/27) (from Ch. 120, par. 453.57)

2 Sec. 27. Destruction or use of forfeited property. When any  
3 original packages of cigarettes or any cigarette vending device  
4 shall have been declared forfeited to the State by the  
5 Department, as provided in Section 25 of this Act, and when all  
6 proceedings for the judicial review of the Department's  
7 decision have terminated, the Department shall, to the extent  
8 that its decision is sustained on review, ~~destroy,~~ or maintain  
9 and use such property in an undercover capacity. The Department  
10 may, prior to any destruction of cigarettes, permit the true  
11 holder of the trademark rights in the cigarette brand to  
12 inspect such contraband cigarettes, in order to assist the  
13 Department in any investigation regarding such cigarettes., ~~or~~  
14 ~~sell such property for the best price obtainable and shall~~  
15 ~~forthwith pay over the proceeds of such sale to the State~~  
16 ~~Treasurer; provided, however, that if the value of such~~  
17 ~~property to be sold at any one time shall be Five Hundred~~  
18 ~~Dollars (\$500) or more, such property shall be sold only to the~~  
19 ~~highest and best bidder on such terms and conditions and on~~  
20 ~~open competitive bidding after public advertisement, in such~~  
21 ~~manner and for such terms as the Department, by rule, may~~  
22 ~~prescribe.~~

23 ~~If no complaint for review, as provided in Section 21 of~~  
24 ~~this Act, has been filed within the time required by the~~  
25 ~~"Administrative Review Law," and if no stay order has been~~  
26 ~~entered thereunder, the Department shall proceed to sell said~~

1 ~~property for the best price obtainable and shall forthwith pay~~  
2 ~~over the proceeds of such sale to the State Treasurer;~~  
3 ~~provided, however, that if the value of such property to be~~  
4 ~~sold at any one time shall be \$500 or more, such property shall~~  
5 ~~be sold only to the highest and best bidder on such terms and~~  
6 ~~conditions and on open competitive bidding after public~~  
7 ~~advertisement, in such manner and for such terms as the~~  
8 ~~Department, by rule, may prescribe.~~

9 ~~Upon making a sale of unstamped original packages of~~  
10 ~~cigarettes as provided in this Section, the Department shall~~  
11 ~~affix a distinctive stamp to each of the original packages so~~  
12 ~~sold indicating that the same are sold pursuant to the~~  
13 ~~provisions of this Section.~~

14 (Source: P.A. 94-776, eff. 5-19-06.)

15 (35 ILCS 135/35.5 new)

16 Sec. 35.5. Rulemaking. Rulemaking authority to implement  
17 this amendatory Act of the 95th General Assembly, if any, is  
18 conditioned on the rules being adopted in accordance with all  
19 provisions of the Illinois Administrative Procedure Act and all  
20 rules and procedures of the Joint Committee on Administrative  
21 Rules; any purported rule not so adopted, for whatever reason,  
22 is unauthorized.

23 Section 20. The Prevention of Cigarette Sales to Minors Act  
24 is amended by changing Sections 5 and 10 and by adding Sections

1 2, 6, 7, 8, 9, 20, 25, 30, and 35 as follows:

2 (720 ILCS 678/2 new)

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

4 "Clear and conspicuous statement" means the statement is of  
5 sufficient type size to be clearly readable by the recipient of  
6 the communication.

7 "Consumer" means an individual who acquires or seeks to  
8 acquire cigarettes for personal use.

9 "Delivery sale" means any sale of cigarettes to a consumer  
10 if:

11 (a) the consumer submits the order for such sale by  
12 means of a telephone or other method of voice transmission,  
13 the mails, or the Internet or other online service, or the  
14 seller is otherwise not in the physical presence of the  
15 buyer when the request for purchase or order is made; or

16 (b) the cigarettes are delivered by use of a common  
17 carrier, private delivery service, or the mails, or the  
18 seller is not in the physical presence of the buyer when  
19 the buyer obtains possession of the cigarettes.

20 "Delivery service" means any person (other than a person  
21 that makes a delivery sale) who delivers to the consumer the  
22 cigarettes sold in a delivery sale.

23 "Department" means the Department of Revenue.

24 "Government-issued identification" means a State driver's  
25 license, State identification card, passport, a military

1 identification or an official naturalization or immigration  
2 document, such as an alien registration recipient card  
3 (commonly known as a "green card") or an immigrant visa.

4 "Legal minimum age" means the minimum age at which an  
5 individual may legally purchase cigarettes within this State,  
6 as determined by either State or local government.

7 "Mails" or "mailing" mean the shipment of cigarettes  
8 through the United States Postal Service.

9 "Out-of-state sale" means a sale of cigarettes to a  
10 consumer located outside of this State where the consumer  
11 submits the order for such sale by means of a telephonic or  
12 other method of voice transmission, the mails or any other  
13 delivery service, facsimile transmission, or the Internet or  
14 other online service and where the cigarettes are delivered by  
15 use of the mails or other delivery service.

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

19 "Shipping package" means a container in which packs or  
20 cartons of cigarettes are shipped in connection with a delivery  
21 sale.

22 "Shipping documents" means bills of lading, air bills, or  
23 any other documents used to evidence the undertaking by a  
24 delivery service to deliver letters, packages, or other  
25 containers.

26 "Within this State" means within the exterior limits of the

1 State of Illinois and includes all territory within these  
2 limits owned by or ceded to the United States of America.

3 (720 ILCS 678/5)

4 Sec. 5. Unlawful shipment or transportation of cigarettes.

5 (a) It is unlawful for any person engaged in the business  
6 of selling cigarettes to ship or cause to be shipped any  
7 cigarettes unless the person shipping the cigarettes:

8 (1) is licensed as a distributor under either the  
9 Cigarette Tax Act, or the Cigarette Use Tax Act; or  
10 delivers the cigarettes to a distributor licensed under  
11 either the Cigarette Tax Act or the Cigarette Use Tax Act;  
12 or

13 (2) ships them to an export warehouse proprietor  
14 pursuant to Chapter 52 of the Internal Revenue Code, or an  
15 operator of a customs bonded warehouse pursuant to Section  
16 1311 or 1555 of Title 19 of the United States Code.

17 For purposes of this subsection (a), a person is a licensed  
18 distributor if the person's name appears on a list of licensed  
19 distributors published by the Illinois Department of Revenue.  
20 The term cigarette has the same meaning as defined in Section 1  
21 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax  
22 Act. Nothing in this Act prohibits a person licensed as a  
23 distributor under the Cigarette Tax Act or the Cigarette Use  
24 Tax Act from shipping or causing to be shipped any cigarettes  
25 to a registered retailer under the Retailers' Occupation Tax

1 Act and the Cigarette Tax Act provided the cigarette tax or  
2 cigarette use tax has been paid.

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

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



1 cigarettes to individuals under 18 years of age is illegal; and  
2 (3) that the purchase of cigarettes by individuals under 18  
3 years of age is illegal under the laws of Illinois.

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

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

18 (Source: P.A. 93-960, eff. 8-20-04.)

19 (720 ILCS 678/6 new)

20 Sec. 6. Prevention of delivery sales to minors.

21 (a) No person shall make a delivery sale of cigarettes to  
22 any individual who is under the legal minimum age.

23 (b) Each person accepting a purchase order for a delivery  
24 sale shall comply with the provisions of this Act and all other  
25 laws of this State generally applicable to sales of cigarettes

1 that occur entirely within this State, including, but not  
2 limited to, those laws imposing: (i) excise taxes; (ii) sales  
3 taxes; (iii) license and revenue-stamping requirements; and  
4 (iv) escrow payment obligations.

5 (720 ILCS 678/7 new)

6 Sec. 7. Age verification and shipping requirements to  
7 prevent delivery sales to minors.

8 (a) No person, other than a delivery service, shall mail,  
9 ship, or otherwise cause to be delivered a shipping package in  
10 connection with a delivery sale unless the person:

11 (1) prior to the first delivery sale to the prospective  
12 consumer, obtains from the prospective consumer a written  
13 certification which includes a statement signed by the  
14 prospective consumer that certifies:

15 (A) the prospective consumer's current address;  
16 and

17 (B) that the prospective consumer is at least the  
18 legal minimum age;

19 (2) informs, in writing, such prospective consumer  
20 that:

21 (A) the signing of another person's name to the  
22 certification described in this Section is illegal;

23 (B) sales of cigarettes to individuals under the  
24 legal minimum age are illegal;

25 (C) the purchase of cigarettes by individuals

1           under the legal minimum age is illegal; and  
2           (D) the name and identity of the prospective  
3           consumer may be reported to the state of the consumer's  
4           current address under the Act of October 19, 1949 (15  
5           U.S.C. § 375, et seq.), commonly known as the Jenkins  
6           Act;  
7           (3) makes a good faith effort to verify the date of  
8           birth of the prospective consumer provided pursuant to this  
9           Section by:  
10           (A) comparing the date of birth against a  
11           commercially available database or  
12           (B) obtaining a photocopy or other image of a  
13           valid, government-issued identification stating the  
14           date of birth or age of the prospective consumer;  
15           (4) provides to the prospective consumer a notice that  
16           meets the requirements of subsection (b);  
17           (5) receives payment for the delivery sale from the  
18           prospective consumer by a credit or debit card that has  
19           been issued in such consumer's name, or by a check or other  
20           written instrument in such consumer's name; and  
21           (6) ensures that the shipping package is delivered to  
22           the same address as is shown on the government-issued  
23           identification or contained in the commercially available  
24           database.  
25           (b) The notice required under this Section shall include:  
26           (1) a statement that cigarette sales to consumers below

1 the legal minimum age are illegal;

2 (2) a statement that sales of cigarettes are restricted  
3 to those consumers who provide verifiable proof of age in  
4 accordance with subsection (a);

5 (3) a statement that cigarette sales are subject to tax  
6 under Section 2 of the Cigarette Tax Act (35 ILCS 130/2)  
7 and an explanation of how such tax has been, or is to be,  
8 paid with respect to such delivery sale.

9 (c) A statement meets the requirement of this Section if:

10 (1) the statement is clear and conspicuous;

11 (2) the statement is contained in a printed box set  
12 apart from the other contents of the communication;

13 (3) the statement is printed in bold, capital letters;

14 (4) the statement is printed with a degree of color  
15 contrast between the background and the printed statement  
16 that is no less than the color contrast between the  
17 background and the largest text used in the communication;  
18 and

19 (5) for any printed material delivered by electronic  
20 means, the statement appears at both the top and the bottom  
21 of the electronic mail message or both the top and the  
22 bottom of the Internet website homepage.

23 (d) Each person, other than a delivery service, who mails,  
24 ships, or otherwise causes to be delivered a shipping package  
25 in connection with a delivery sale shall:

26 (1) include as part of the shipping documents a clear

1 and conspicuous statement stating: "Cigarettes: Illinois  
2 Law Prohibits Shipping to Individuals Under 18 and Requires  
3 the Payment of All Applicable Taxes";

4 (2) use a method of mailing, shipping, or delivery that  
5 requires a signature before the shipping package is  
6 released to the consumer; and

7 (3) ensure that the shipping package is not delivered  
8 to any post office box.

9 (720 ILCS 678/8 new)

10 Sec. 8. Registration and reporting requirements to prevent  
11 delivery sales to minors.

12 (a) Each person who makes a delivery sale of cigarettes to  
13 a consumer located within this State shall file with the  
14 Department for each individual sale:

15 (1) a statement setting forth such person's name, trade  
16 name, and the address of such person's principal place of  
17 business and any other place of business; and

18 (2) not later than the tenth day of each calendar  
19 month, a memorandum or copy of the invoice for each and  
20 every such delivery sale made during the previous calendar  
21 month, which includes the following information:

22 (A) the name and address of the consumer to whom  
23 such delivery sale was made;

24 (B) the brand style or brand styles of the  
25 cigarettes that were sold in such delivery sale;

1           (C) the quantity of cigarettes that were sold in  
2           such delivery sale; and

3           (D) an indication of whether or not the cigarettes  
4           sold in the delivery sale bore a tax stamp evidencing  
5           payment of the tax under Section 2 of the Cigarette Tax  
6           Act (35 ILCS 130/2).

7           (b) Each person engaged in business within this State who  
8           makes an out-of-state sale shall, for each individual sale,  
9           submit to the appropriate tax official of the state in which  
10           the consumer is located the information required in subsection  
11           (a).

12           (c) Any person that satisfies the requirements of 15 U.S.C.  
13           Section 376 shall be deemed to satisfy the requirements of  
14           subsections (a) and (b).

15           (d) The Department is authorized to disclose to the  
16           Attorney General any information received under this title and  
17           requested by the Attorney General. The Department and the  
18           Attorney General shall share with each other the information  
19           received under this title and may share the information with  
20           other federal, State, or local agencies for purposes of  
21           enforcement of this title or the laws of the federal government  
22           or of other states.

23           (e) This Section shall not be construed to impose liability  
24           upon any delivery service, or officers or employees thereof,  
25           when acting within the scope of business of the delivery  
26           service.

1 (720 ILCS 678/9 new)

2 Sec. 9. Statements for delivery sales.

3 (a) Each person who makes a delivery sale shall collect and  
4 remit to the Department all excise taxes imposed by this State  
5 with respect to such delivery sale and maintain evidence of  
6 such payment unless the person is located outside the State and  
7 includes a statement on the outside of the shipping package  
8 stating: "Illinois law requires the payment of state taxes on  
9 this shipment of cigarettes. You are legally responsible for  
10 all applicable unpaid state taxes on these cigarettes."

11 (b) A statement meets the requirements of subsection (a) if  
12 the statement is:

13 (1) clear and conspicuous;

14 (2) contained in a printed box set apart from the  
15 shipping label and other markings contained on the shipping  
16 package;

17 (3) printed in bold, capital letters;

18 (4) printed with a degree of color contrast between the  
19 background and the printed statement that is no less than  
20 the color contrast between the background and the largest  
21 text used on the shipping label; and

22 (5) located on the same side of the shipping package as  
23 the shipping label.

24 (720 ILCS 678/10)

1           Sec. 10. Violation.

2           (a) A person who violates subsection (a), (b), or (c) of  
3 Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A  
4 misdemeanor. A second or subsequent violation of subsection  
5 (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a  
6 Class 4 felony.

7           (b) The Department of Revenue shall impose a civil penalty  
8 not to exceed \$5,000 on any person who violates subsection (a),  
9 (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The  
10 Department of Revenue shall impose a civil penalty not to  
11 exceed \$5,000 on any person engaged in the business of selling  
12 cigarettes who ships or causes to be shipped any such  
13 cigarettes to any person in this State in violation of  
14 subsection (d) of Section 5.

15           (c) All cigarettes sold or attempted to be sold in a  
16 delivery sale that does not meet the requirements of this Act  
17 shall be forfeited to the State. All cigarettes forfeited to  
18 this State under this Act shall be destroyed. The Department  
19 may, prior to any destruction of cigarettes, permit the true  
20 holder of the trademark rights in the cigarette brand to  
21 inspect such contraband cigarettes, in order to assist the  
22 Department in any investigation regarding such cigarettes.

23           (d) ~~(e)~~ Any person aggrieved by any decision of the  
24 Department of Revenue may, within 60 days after notice of that  
25 decision, protest in writing and request a hearing. The  
26 Department of Revenue shall give notice to the person of the



1 time and place for the hearing and shall hold a hearing before  
2 it issues a final administrative decision. Absent a written  
3 protest within 60 days, the Department's decision shall become  
4 final without any further determination made or notice given.  
5 (Source: P.A. 93-960, eff. 8-20-04.)

6 (720 ILCS 678/20 new)

7 Sec. 20. Tip line.

8 (a) Not later than 120 days after the effective date of  
9 this amendatory Act of the 95th General Assembly, the  
10 Department shall establish, publicize, and maintain a  
11 toll-free telephone number to receive information related to  
12 the sale and delivery of contraband cigarettes.

13 (b) The Attorney General may pay a reward of up to \$5,000  
14 to any person who furnishes information leading to the  
15 Department's collection of excise taxes imposed upon delivery  
16 sales which otherwise would not have been collected but for the  
17 information provided by the person.

18 (720 ILCS 678/25 new)

19 Sec. 25. Construction. The requirements imposed by this Act  
20 shall not apply where such application would be contrary to the  
21 Constitution and laws of the United States.

22 (720 ILCS 678/30 new)

23 Sec. 30. Severability. If any provision of this Act is for

1 any reason held to be unconstitutional or invalid, such holding  
2 shall not affect the constitutionality or validity of the  
3 remaining provisions of this Act, and to this end the  
4 provisions of this Act are expressly declared to be severable.

5 (720 ILCS 678/35 new)

6 Sec. 35. Rulemaking. Rulemaking authority to implement  
7 this amendatory Act of the 95th General Assembly, if any, is  
8 conditioned on the rules being adopted in accordance with all  
9 provisions of the Illinois Administrative Procedure Act and all  
10 rules and procedures of the Joint Committee on Administrative  
11 Rules; any purported rule not so adopted, for whatever reason,  
12 is unauthorized.

13 Section 99. Effective date. This Act takes effect January  
14 1, 2010.