



Rep. Frank J. Mautino

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1 AMENDMENT TO SENATE BILL 801

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 801 by replacing  
3 everything after the enacting clause with the following:

4 "Section 3. The Retailers' Occupation Tax Act is amended by  
5 changing Section 2a 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

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

23 The Department may deny a certificate of registration to  
24 any applicant if the owner, any partner, any manager or member  
25 of a limited liability company, or a corporate officer of the  
26 applicant, is or has been the owner, a partner, a manager or

1 member of a limited liability company, or a corporate officer,  
2 of another retailer that is in default for moneys due under  
3 this Act.

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

1 resolution. The amount of security required by the Department  
2 shall be such as, in its opinion, will protect the State of  
3 Illinois against failure to pay the amount which may become due  
4 from the applicant under this Act and under any other State tax  
5 law or municipal or county tax ordinance or resolution under  
6 which the certificate of registration that is issued to the  
7 applicant under this Act will permit the applicant to engage in  
8 business without registering separately under such other law,  
9 ordinance or resolution, but the amount of the security  
10 required by the Department shall not exceed three times the  
11 amount of the applicant's average monthly tax liability, or  
12 \$50,000.00, whichever amount is lower.

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

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

1 this State.

2 No certificate of registration issued to a taxpayer who  
3 files returns required by this Act on a monthly basis shall be  
4 valid after the expiration of 5 years from the date of its  
5 issuance or last renewal. The expiration date of a  
6 sub-certificate of registration shall be that of the  
7 certificate of registration to which the sub-certificate  
8 relates. A certificate of registration shall automatically be  
9 renewed, subject to revocation as provided by this Act, for an  
10 additional 5 years from the date of its expiration unless  
11 otherwise notified by the Department as provided by this  
12 paragraph. Where a taxpayer to whom a certificate of  
13 registration is issued under this Act is in default to the  
14 State of Illinois for delinquent returns or for moneys due  
15 under this Act or any other State tax law or municipal or  
16 county ordinance administered or enforced by the Department,  
17 the Department shall, not less than 120 days before the  
18 expiration date of such certificate of registration, give  
19 notice to the taxpayer to whom the certificate was issued of  
20 the account period of the delinquent returns, the amount of  
21 tax, penalty and interest due and owing from the taxpayer, and  
22 that the certificate of registration shall not be automatically  
23 renewed upon its expiration date unless the taxpayer, on or  
24 before the date of expiration, has filed and paid the  
25 delinquent returns or paid the defaulted amount in full. A  
26 taxpayer to whom such a notice is issued shall be deemed an

1 applicant for renewal. The Department shall promulgate  
2 regulations establishing procedures for taxpayers who file  
3 returns on a monthly basis but desire and qualify to change to  
4 a quarterly or yearly filing basis and will no longer be  
5 subject to renewal under this Section, and for taxpayers who  
6 file returns on a yearly or quarterly basis but who desire or  
7 are required to change to a monthly filing basis and will be  
8 subject to renewal under this Section.

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

1       The Department may suspend a certificate of registration if  
2 the Department finds that the person to whom the certificate of  
3 registration has been issued knowingly sold contraband  
4 cigarettes.

5       A certificate of registration issued under this Act more  
6 than 5 years before the effective date of this amendatory Act  
7 of 1989 shall expire and be subject to the renewal provisions  
8 of this Section on the next anniversary of the date of issuance  
9 of such certificate which occurs more than 6 months after the  
10 effective date of this amendatory Act of 1989. A certificate of  
11 registration issued less than 5 years before the effective date  
12 of this amendatory Act of 1989 shall expire and be subject to  
13 the renewal provisions of this Section on the 5th anniversary  
14 of the issuance of the certificate.

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

25       If the applicant will sell tangible personal property at  
26 retail through vending machines, the Department shall furnish

1 him with a sub-certificate of registration for each such  
2 vending machine, and the applicant shall display the  
3 appropriate sub-certificate of registration on each such  
4 vending machine by attaching the sub-certificate of  
5 registration to a conspicuous part of such vending machine.

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

21 Any person who is registered under the "Retailers'  
22 Occupation Tax Act" as of March 8, 1963, and who, during the  
23 3-year period immediately prior to March 8, 1963, or during a  
24 continuous 3-year period part of which passed immediately  
25 before and the remainder of which passes immediately after  
26 March 8, 1963, has been so registered continuously and who is



1 determined by the Department not to have been either delinquent  
2 or deficient in the payment of tax liability during that period  
3 under this Act or under any other State tax law or municipal or  
4 county tax ordinance or resolution under which the certificate  
5 of registration that is issued to the registrant under this Act  
6 will permit the registrant to engage in business without  
7 registering separately under such other law, ordinance or  
8 resolution, shall be considered to be a Prior Continuous  
9 Compliance taxpayer. Also any taxpayer who has, as verified by  
10 the Department, faithfully and continuously complied with the  
11 condition of his bond or other security under the provisions of  
12 this Act for a period of 3 consecutive years shall be  
13 considered to be a Prior Continuous Compliance taxpayer.

14 Every Prior Continuous Compliance taxpayer shall be exempt  
15 from all requirements under this Act concerning the furnishing  
16 of security as a condition precedent to his being authorized to  
17 engage in the business of selling tangible personal property at  
18 retail in this State. This exemption shall continue for each  
19 such taxpayer until such time as he may be determined by the  
20 Department to be delinquent in the filing of any returns, or is  
21 determined by the Department (either through the Department's  
22 issuance of a final assessment which has become final under the  
23 Act, or by the taxpayer's filing of a return which admits tax  
24 that is not paid to be due) to be delinquent or deficient in  
25 the paying of any tax under this Act or under any other State  
26 tax law or municipal or county tax ordinance or resolution

1 under which the certificate of registration that is issued to  
2 the registrant under this Act will permit the registrant to  
3 engage in business without registering separately under such  
4 other law, ordinance or resolution, at which time that taxpayer  
5 shall become subject to all the financial responsibility  
6 requirements of this Act and, as a condition of being allowed  
7 to continue to engage in the business of selling tangible  
8 personal property at retail, shall be required to post bond or  
9 other acceptable security with the Department covering  
10 liability which such taxpayer may thereafter incur. Any  
11 taxpayer who fails to pay an admitted or established liability  
12 under this Act may also be required to post bond or other  
13 acceptable security with this Department guaranteeing the  
14 payment of such admitted or established liability.

15 No certificate of registration shall be issued to any  
16 person who is in default to the State of Illinois for moneys  
17 due under this Act or under any other State tax law or  
18 municipal or county tax ordinance or resolution under which the  
19 certificate of registration that is issued to the applicant  
20 under this Act will permit the applicant to engage in business  
21 without registering separately under such other law, ordinance  
22 or resolution.

23 Any person aggrieved by any decision of the Department  
24 under this Section may, within 20 days after notice of such  
25 decision, protest and request a hearing, whereupon the  
26 Department shall give notice to such person of the time and

1 place fixed for such hearing and shall hold a hearing in  
2 conformity with the provisions of this Act and then issue its  
3 final administrative decision in the matter to such person. In  
4 the absence of such a protest within 20 days, the Department's  
5 decision shall become final without any further determination  
6 being made or notice given.

7 With respect to security other than bonds (upon which the  
8 Department may sue in the event of a forfeiture), if the  
9 taxpayer fails to pay, when due, any amount whose payment such  
10 security guarantees, the Department shall, after such  
11 liability is admitted by the taxpayer or established by the  
12 Department through the issuance of a final assessment that has  
13 become final under the law, convert the security which that  
14 taxpayer has furnished into money for the State, after first  
15 giving the taxpayer at least 10 days' written notice, by  
16 registered or certified mail, to pay the liability or forfeit  
17 such security to the Department. If the security consists of  
18 stocks or bonds or other securities which are listed on a  
19 public exchange, the Department shall sell such securities  
20 through such public exchange. If the security consists of an  
21 irrevocable bank letter of credit, the Department shall convert  
22 the security in the manner provided for in the Uniform  
23 Commercial Code. If the security consists of a bank certificate  
24 of deposit, the Department shall convert the security into  
25 money by demanding and collecting the amount of such bank  
26 certificate of deposit from the bank which issued such

1 certificate. If the security consists of a type of stocks or  
2 other securities which are not listed on a public exchange, the  
3 Department shall sell such security to the highest and best  
4 bidder after giving at least 10 days' notice of the date, time  
5 and place of the intended sale by publication in the "State  
6 Official Newspaper". If the Department realizes more than the  
7 amount of such liability from the security, plus the expenses  
8 incurred by the Department in converting the security into  
9 money, the Department shall pay such excess to the taxpayer who  
10 furnished such security, and the balance shall be paid into the  
11 State Treasury.

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

16 (1) such taxpayer becomes a Prior Continuous  
17 Compliance taxpayer; or

18 (2) such taxpayer has ceased to collect receipts on  
19 which he is required to remit tax to the Department, has  
20 filed a final tax return, and has paid to the Department an  
21 amount sufficient to discharge his remaining tax  
22 liability, as determined by the Department, under this Act  
23 and under every other State tax law or municipal or county  
24 tax ordinance or resolution under which the certificate of  
25 registration issued under this Act permits the registrant  
26 to engage in business without registering separately under

1 such other law, ordinance or resolution. The Department  
2 shall make a final determination of the taxpayer's  
3 outstanding tax liability as expeditiously as possible  
4 after his final tax return has been filed; if the  
5 Department cannot make such final determination within 45  
6 days after receiving the final tax return, within such  
7 period it shall so notify the taxpayer, stating its reasons  
8 therefor.

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

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

13 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

19 "Cigarette", means any ~~when used in this Act, shall be~~  
20 ~~construed to mean:~~ Any roll for smoking made wholly or in part  
21 of tobacco irrespective of size or shape and whether or not  
22 such tobacco is flavored, adulterated or mixed with any other  
23 ingredient, and the wrapper or cover of which is made of paper  
24 or any other substance or material except tobacco.

1       "Contraband cigarettes" means:

2           (a) cigarettes that do not bear a required tax stamp  
3       under this Act;

4           (b) cigarettes for which any required federal taxes  
5       have not been paid;

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

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

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

16           (f) cigarettes that have false manufacturing labels.

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

23       "Prior Continuous Compliance Taxpayer" means any person  
24       who is licensed under this Act and who, having been a licensee  
25       for a continuous period of 5 years, is determined by the  
26       Department not to have been either delinquent or deficient in

1 the payment of tax liability during that period or otherwise in  
2 violation of this Act. Also, any taxpayer who has, as verified  
3 by the Department, continuously complied with the condition of  
4 his bond or other security under provisions of this Act for a  
5 period of 5 consecutive years shall be considered to be a  
6 "Prior continuous compliance taxpayer". In calculating the  
7 consecutive period of time described herein for qualification  
8 as a "prior continuous compliance taxpayer", a consecutive  
9 period of time of qualifying compliance immediately prior to  
10 the effective date of this amendatory Act of 1987 shall be  
11 credited to any licensee who became licensed on or before the  
12 effective date of this amendatory Act of 1987.

13 "Department" means the Department of Revenue.

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

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

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

21 (1) Any person engaged in the business of selling  
22 cigarettes in this State who brings or causes to be brought  
23 into this State from without this State any original packages  
24 of cigarettes, on which original packages there is no  
25 authorized evidence underneath a sealed transparent wrapper  
26 showing that the tax liability imposed by this Act has been

1 paid or assumed by the out-of-State seller of such cigarettes,  
2 for sale or other disposition in the course of such business.

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

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

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

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

23 "Retailer" means any person who engages in the making of  
24 transfers of the ownership of, or title to, cigarettes to a  
25 purchaser for use or consumption and not for resale in any  
26 form, for a valuable consideration. "Retailer" does not include



1 a person:

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

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

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

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

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

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

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

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

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

9 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

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

24 No stamp or imprint may be affixed to, or made upon, any  
25 package of cigarettes unless that package complies with all

1 requirements of the federal Cigarette Labeling and Advertising  
2 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
3 warnings, or any other information upon a package of cigarettes  
4 that is sold within the United States. Under the authority of  
5 Section 6, the Department shall revoke the license of any  
6 distributor that is determined to have violated this paragraph.  
7 A person may not affix a stamp on a package of cigarettes,  
8 cigarette papers, wrappers, or tubes if that individual package  
9 has been marked for export outside the United States with a  
10 label or notice in compliance with Section 290.185 of Title 27  
11 of the Code of Federal Regulations. It is not a defense to a  
12 proceeding for violation of this paragraph that the label or  
13 notice has been removed, mutilated, obliterated, or altered in  
14 any manner.

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

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

16 The Department, or any person authorized by the Department,  
17 shall sell such stamps only to persons holding valid licenses  
18 as distributors under this Act. On and after July 1, 2003,  
19 payment for such stamps must be made by means of electronic  
20 funds transfer. The Department may refuse to sell stamps to any  
21 person who does not comply with the provisions of this Act.  
22 Beginning on the effective date of this amendatory Act of the  
23 92nd General Assembly and through June 30, 2002, persons  
24 holding valid licenses as distributors may purchase cigarette  
25 tax stamps up to an amount equal to 115% of the distributor's  
26 average monthly cigarette tax stamp purchases over the 12

1 calendar months prior to the effective date of this amendatory  
2 Act of the 92nd General Assembly.

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

26 On and after December 1, 1985 and until July 1, 2003, the

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

1 automatically liable to the Department for a penalty equal to  
2 25% of the amount of such draft.

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

1 Department guaranteeing the payment of such admitted or  
2 established liability.

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

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

16 (1) Such taxpayer becomes a prior continuous compliance  
17 taxpayer; or

18 (2) Such taxpayer has ceased to collect receipts on which  
19 he is required to remit tax to the Department, has filed a  
20 final tax return, and has paid to the Department an amount  
21 sufficient to discharge his remaining tax liability as  
22 determined by the Department under this Act. The Department  
23 shall make a final determination of the taxpayer's outstanding  
24 tax liability as expeditiously as possible after his final tax  
25 return has been filed. If the Department cannot make such final  
26 determination within 45 days after receiving the final tax



1 return, within such period it shall so notify the taxpayer,  
2 stating its reasons therefor.

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

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

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

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

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

1 (35 ILCS 130/3-10)

2 Sec. 3-10. Cigarette enforcement.

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

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

8 (A) any cigarettes the package of which:

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

16 (ii) does not comply with:

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

1 (bb) all federal trademark and copyright  
2 laws;

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

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

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

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

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

22 (B) any health warning that is not specified in, or  
23 does not conform with the requirements of, the federal  
24 Cigarette Labeling and Advertising Act, 15 U.S.C.  
25 1333; ~~or~~

26 (3) to affix any stamp required pursuant to this Act to

1 the package of any cigarettes described in subdivision  
2 (a)(1) of this Section or altered in violation of  
3 subdivision (a)(2); ~~or~~

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

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

11 (1) a copy of:

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

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

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

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

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

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

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

21           (c) Administrative sanctions.

22           (1) Upon finding that a distributor has committed any  
23           of the acts prohibited by subsection (a), knowing or having  
24           reason to know that he or she has done so, or has failed to  
25           comply with any requirement of subsection (b), the  
26           Department may revoke or suspend the license or licenses of

1 any distributor pursuant to the procedures set forth in  
2 Section 6 and impose on the distributor a civil penalty in  
3 an amount not to exceed the greater of 500% of the retail  
4 value of the cigarettes involved or \$5,000.

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

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

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

26 (f) General provisions.

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

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

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

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



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

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

3 (h) Applicability.

4 (1) This Section does not apply to:

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

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

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

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

18 (35 ILCS 130/3-15 new)

19 Sec. 3-15. Criminal penalties.

20 (1) Fraudulent offenses. Whoever intentionally fails to  
21 comply with any of the requirements of this Act or regulations  
22 prescribed hereunder shall, in addition to any other penalty  
23 provided in this Act, for each such offense, be guilty of a  
24 Class 3 felony.

25 (2) Knowing offenses. Whoever, knowingly violates any of

1 the requirements of this Act or regulations prescribed  
2 hereunder shall, in addition to any other penalty provided in  
3 this Act, for each such offense, be guilty of a Class 4 felony.

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

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

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

16 (4) For purposes of this Section, the term contraband  
17 cigarettes includes cigarettes that have false manufacturing  
18 labels or packs of cigarettes bearing counterfeit tax stamps.  
19 Any contraband cigarette seized by this State shall be  
20 destroyed. 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.

25 (5) The penalties provided in paragraph (3) shall not apply  
26 where a licensed distributor is in possession of contraband

1 cigarettes as a result of such cigarettes being returned to the  
2 distributor by a retailer if such distributor promptly notified  
3 appropriate law enforcement authorities.

4 (6) Criminal forfeiture.

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

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

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

22 (35 ILCS 130/4) (from Ch. 120, par. 453.4)

23 Sec. 4. Distributor's license. No person may engage in  
24 business as a distributor of cigarettes in this State within  
25 the meaning of the first 2 definitions of distributor in

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

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

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

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

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

21 Every applicant who is required to procure a distributor's  
22 license shall file with his application a joint and several  
23 bond. Such bond shall be executed to the Department of Revenue,  
24 with good and sufficient surety or sureties residing or  
25 licensed to do business within the State of Illinois, in the  
26 amount of \$2,500, conditioned upon the true and faithful

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

9 The following are ineligible to receive a distributor's  
10 license under this Act:

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

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

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

24 (4) a person, or any person who owns more than 15  
25 percent of the ownership interests in a person or a  
26 related party who:

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

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

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

24           (d) has been found to have willfully imported  
25           or caused to be imported into the United States for  
26           sale or distribution any cigarette in violation of

1                   19 U.S.C. 1681a;

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

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

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

1 right in a license issued under this Act.

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

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

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

18 (35 ILCS 130/4d new)

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



1 from a licensed distributor or an out-of-state manufacturer  
2 holding a permit.

3 (35 ILCS 130/20) (from Ch. 120, par. 453.20)

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

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

1 shall have power to tax and assess the costs of the  
2 proceedings.

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

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

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

1 (35 ILCS 130/21) (from Ch. 120, par. 453.21)

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

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

18 (b) The Department may, prior to any destruction of  
19 cigarettes, permit the true holder of the trademark rights in  
20 the cigarette brand to inspect such contraband cigarettes in  
21 order to assist the Department in any investigation regarding  
22 such cigarettes. ~~If no complaint for review, as provided in~~  
23 ~~Section 8 of this Act, has been filed within the time required~~  
24 ~~by the Administrative Review Law, and if no stay order has been~~  
25 ~~entered thereunder, the Department shall proceed to sell the~~

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

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

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

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

17 (35 ILCS 130/9c rep.)

18 (35 ILCS 130/28 rep.)

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

21 Section 15. The Cigarette Use Tax Act is amended by  
22 changing Sections 1, 3-10, 4, 26, and 27 and by adding Section  
23 3-15 as follows:

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

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

4 "Use" means the exercise by any person of any right or  
5 power over cigarettes incident to the ownership or possession  
6 thereof, other than the making of a sale thereof in the course  
7 of engaging in a business of selling cigarettes and shall  
8 include the keeping or retention of cigarettes for use.

9 "Brand Style" means a variety of cigarettes distinguished  
10 by the tobacco used, tar and nicotine content, flavoring used,  
11 size of the cigarette, filtration on the cigarette or  
12 packaging.

13 "Cigarette" means any roll for smoking made wholly or in  
14 part of tobacco irrespective of size or shape and whether or  
15 not such tobacco is flavored, adulterated or mixed with any  
16 other ingredient, and the wrapper or cover of which is made of  
17 paper or any other substance or material except tobacco.

18 "Contraband cigarettes" means:

19 (a) cigarettes that do not bear a required tax stamp  
20 under this Act;

21 (b) cigarettes for which any required federal taxes  
22 have not been paid;

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

24 (d) cigarettes that are manufactured, fabricated,  
25 assembled, processed, packaged, or labeled by any person  
26 other than (i) the owner of the trademark rights in the

1       cigarette brand or (ii) a person that is directly or  
2       indirectly authorized by such owner;

3       (e) cigarettes imported into the United States, or  
4       otherwise distributed, in violation of the federal  
5       Imported Cigarette Compliance Act of 2000 (Title IV of  
6       Public Law 106-476); or

7       (f) cigarettes that have false manufacturing labels.

8       "Person" means any natural individual, firm, partnership,  
9       association, joint stock company, joint adventure, public or  
10      private corporation, however formed, limited liability  
11      company, or a receiver, executor, administrator, trustee,  
12      guardian or other representative appointed by order of any  
13      court.

14      "Department" means the Department of Revenue.

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

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

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

22           a. Any person engaged in the business of selling  
23           cigarettes in this State who brings or causes to be brought  
24           into this State from without this State any original  
25           packages of cigarettes, on which original packages there is  
26           no authorized evidence underneath a sealed transparent

1 wrapper showing that the tax liability imposed by this Act  
2 has been paid or assumed by the out-of-State seller of such  
3 cigarettes, for sale in the course of such business.

4 b. Any person who makes, manufactures or fabricates  
5 cigarettes in this State for sale, except a person who  
6 makes, manufactures or fabricates cigarettes for sale to  
7 residents incarcerated in penal institutions or resident  
8 patients or a State-operated mental health facility.

9 c. Any person who makes, manufactures or fabricates  
10 cigarettes outside this State, which cigarettes are placed  
11 in original packages contained in sealed transparent  
12 wrappers, for delivery or shipment into this State, and who  
13 elects to qualify and is accepted by the Department as a  
14 distributor under Section 7 of this Act.

15 "Distributor" does not include any person who transfers  
16 cigarettes to a not-for-profit research institution that  
17 conducts tests concerning the health effects of tobacco  
18 products and who does not offer the cigarettes for resale.

19 "Distributor maintaining a place of business in this  
20 State", or any like term, means any distributor having or  
21 maintaining within this State, directly or by a subsidiary, an  
22 office, distribution house, sales house, warehouse or other  
23 place of business, or any agent operating within this State  
24 under the authority of the distributor or its subsidiary,  
25 irrespective of whether such place of business or agent is  
26 located here permanently or temporarily, or whether such



1 distributor or subsidiary is licensed to transact business  
2 within this State.

3 "Business" means any trade, occupation, activity or  
4 enterprise engaged in or conducted in this State for the  
5 purpose of selling cigarettes.

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

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 135/3-10)

12 Sec. 3-10. Cigarette enforcement.

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

14 (1) to sell or distribute in this State; to acquire,  
15 hold, own, possess, or transport, for sale or distribution  
16 in this State; or to import, or cause to be imported into  
17 this State for sale or distribution in this State:

18 (A) any cigarettes the package of which:

19 (i) bears any statement, label, stamp,  
20 sticker, or notice indicating that the  
21 manufacturer did not intend the cigarettes to be  
22 sold, distributed, or used in the United States,  
23 including but not limited to labels stating "For  
24 Export Only", "U.S. Tax Exempt", "For Use Outside  
25 U.S.", or similar wording; or

1 (ii) does not comply with:

2 (aa) all requirements imposed by or  
3 pursuant to federal law regarding warnings and  
4 other information on packages of cigarettes  
5 manufactured, packaged, or imported for sale,  
6 distribution, or use in the United States,  
7 including but not limited to the precise  
8 warning labels specified in the federal  
9 Cigarette Labeling and Advertising Act, 15  
10 U.S.C. 1333; and

11 (bb) all federal trademark and copyright  
12 laws;

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

16 (C) any cigarettes that such person otherwise  
17 knows or has reason to know the manufacturer did not  
18 intend to be sold, distributed, or used in the United  
19 States; or

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

26 (2) to alter the package of any cigarettes, prior to

1 sale or distribution to the ultimate consumer, so as to  
2 remove, conceal, or obscure:

3 (A) any statement, label, stamp, sticker, or  
4 notice described in subdivision (a)(1)(A)(i) of this  
5 Section;

6 (B) any health warning that is not specified in, or  
7 does not conform with the requirements of, the federal  
8 Cigarette Labeling and Advertising Act, 15 U.S.C.  
9 1333; ~~or~~

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

14 (4) to knowingly possess, or possess for sale,  
15 contraband cigarettes.

16 (b) Documentation. On the first business day of each month,  
17 each person licensed to affix the State tax stamp to cigarettes  
18 shall file with the Department, for all cigarettes imported  
19 into the United States to which the person has affixed the tax  
20 stamp in the preceding month:

21 (1) a copy of:

22 (A) the permit issued pursuant to the Internal  
23 Revenue Code, 26 U.S.C. 5713, to the person importing  
24 the cigarettes into the United States allowing the  
25 person to import the cigarettes; and

26 (B) the customs form containing, with respect to

1           the cigarettes, the internal revenue tax information  
2           required by the U.S. Bureau of Alcohol, Tobacco and  
3           Firearms;

4           (2) a statement, signed by the person under penalty of  
5           perjury, which shall be treated as confidential by the  
6           Department and exempt from disclosure under the Freedom of  
7           Information Act, identifying the brand and brand styles of  
8           all such cigarettes, the quantity of each brand style of  
9           such cigarettes, the supplier of such cigarettes, and the  
10          person or persons, if any, to whom such cigarettes have  
11          been conveyed for resale; and a separate statement, signed  
12          by the individual under penalty of perjury, which shall not  
13          be treated as confidential or exempt from disclosure,  
14          separately identifying the brands and brand styles of such  
15          cigarettes; and

16          (3) a statement, signed by an officer of the  
17          manufacturer or importer under penalty of perjury,  
18          certifying that the manufacturer or importer has complied  
19          with:

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

24                 (B) the provisions of Exhibit T of the Master  
25                 Settlement Agreement entered in the case of People of  
26                 the State of Illinois v. Philip Morris, et al. (Circuit

1 Court of Cook County, No. 96-L13146), including a  
2 statement indicating whether the manufacturer is, or  
3 is not, a participating tobacco manufacturer within  
4 the meaning of Exhibit T.

5 (c) Administrative sanctions.

6 (1) Upon finding that a distributor has committed any  
7 of the acts prohibited by subsection (a), knowing or having  
8 reason to know that he or she has done so, or has failed to  
9 comply with any requirement of subsection (b), the  
10 Department may revoke or suspend the license or licenses of  
11 any distributor pursuant to the procedures set forth in  
12 Section 6 and impose on the distributor a civil penalty in  
13 an amount not to exceed the greater of 500% of the retail  
14 value of the cigarettes involved or \$5,000.

15 (2) Cigarettes that are acquired, held, owned,  
16 possessed, transported in, imported into, or sold or  
17 distributed in this State in violation of this Section  
18 shall be deemed contraband under this Act and are subject  
19 to seizure and forfeiture as provided in this Act, and all  
20 such cigarettes seized and forfeited shall be destroyed.  
21 Such cigarettes shall be deemed contraband whether the  
22 violation of this Section is knowing or otherwise.

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

1           (e) Unfair cigarette sales. For purposes of the Trademark  
2 Registration and Protection Act and the Counterfeit Trademark  
3 Act, cigarettes imported or reimported into the United States  
4 for sale or distribution under any trade name, trade dress, or  
5 trademark that is the same as, or is confusingly similar to,  
6 any trade name, trade dress, or trademark used for cigarettes  
7 manufactured in the United States for sale or distribution in  
8 the United States shall be presumed to have been purchased  
9 outside of the ordinary channels of trade.

10           (f) General provisions.

11           (1) This Section shall be enforced by the Department;  
12 provided that, at the request of the Director of Revenue or  
13 the Director's duly authorized agent, the State police and  
14 all local police authorities shall enforce the provisions  
15 of this Section. The Attorney General has concurrent power  
16 with the State's Attorney of any county to enforce this  
17 Section.

18           (2) For the purpose of enforcing this Section, the  
19 Director of Revenue and any agency to which the Director  
20 has delegated enforcement responsibility pursuant to  
21 subdivision (f)(1) may request information from any State  
22 or local agency and may share information with and request  
23 information from any federal agency and any agency of any  
24 other state or any local agency of any other state.

25           (3) In addition to any other remedy provided by law,  
26 including enforcement as provided in subdivision (a)(1),

1 any person may bring an action for appropriate injunctive  
2 or other equitable relief for a violation of this Section;  
3 actual damages, if any, sustained by reason of the  
4 violation; and, as determined by the court, interest on the  
5 damages from the date of the complaint, taxable costs, and  
6 reasonable attorney's fees. If the trier of fact finds that  
7 the violation is flagrant, it may increase recovery to an  
8 amount not in excess of 3 times the actual damages  
9 sustained by reason of the violation.

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

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

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

13 (h) Applicability.

14 (1) This Section does not apply to:

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

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

24 (2) The penalties provided in this Section are in  
25 addition to any other penalties imposed under other  
26 provision of law.



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

2 (35 ILCS 135/3-15 new)

3 Sec. 3-15. Criminal penalties.

4 (1) Fraudulent offenses. Whoever intentionally fails to  
5 comply with any of the requirements of this Act or regulations  
6 prescribed hereunder shall, in addition to any other penalty  
7 provided in this Act, for each such offense, be guilty of a  
8 Class 3 felony.

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

13 (3) Penalties for contraband. Notwithstanding any other  
14 provision of law, the possession for sale of contraband  
15 cigarettes by a manufacturer, distributor, or retailer shall be  
16 punishable as follows:

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

19 (B) A person who commits a subsequent knowing violation  
20 shall be guilty of a Class 3 felony and shall have his or  
21 her license, permit, or certificate of registration  
22 revoked by the Department. In no case shall the fine  
23 imposed under this paragraph exceed ten times the retail  
24 value of the cigarettes.

25 (4) For purposes of this Section, the term contraband

1 cigarettes includes cigarettes that have false manufacturing  
2 labels or packs of cigarettes bearing counterfeit tax stamps.  
3 Any contraband cigarette seized by this State shall be  
4 destroyed. The Department may, prior to any destruction of  
5 cigarettes, permit the true holder of the trademark rights in  
6 the cigarette brand to inspect such contraband cigarettes, in  
7 order to assist the Department in any investigation regarding  
8 such cigarettes.

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

14 (6) Criminal forfeiture.

15 (A) Notwithstanding any other provision of law, the  
16 knowing possession for sale of contraband cigarettes by a  
17 manufacturer, distributor, or retailer shall, after notice  
18 and hearing, result in the forfeiture to this State of the  
19 product and related machinery and equipment used in the  
20 production of contraband cigarettes, or to falsely mark  
21 cigarettes to reflect the payment of excise taxes.

22 (B) The knowing sale or possession for sale of  
23 contraband cigarettes shall, after notice and hearing,  
24 result in the seizure of all related machinery and  
25 equipment.

26 (C) All cigarettes forfeited to this State under this

1       Section shall be destroyed. The Department may, prior to  
2       any destruction of cigarettes, permit the true holder of  
3       the trademark rights in the cigarette brand to inspect such  
4       contraband cigarettes, in order to assist the Department in  
5       any investigation regarding such cigarettes.

6           (35 ILCS 135/4) (from Ch. 120, par. 453.34)

7           Sec. 4. Distributor's license. A distributor maintaining a  
8       place of business in this State, if required to procure a  
9       license or allowed to obtain a permit as a distributor under  
10      the Cigarette Tax Act, need not obtain an additional license or  
11      permit under this Act, but shall be deemed to be sufficiently  
12      licensed or registered by virtue of his being licensed or  
13      registered under the Cigarette Tax Act.

14          Every distributor maintaining a place of business in this  
15      State, if not required to procure a license or allowed to  
16      obtain a permit as a distributor under the Cigarette Tax Act,  
17      shall make a verified application to the Department (upon a  
18      form prescribed and furnished by the Department) for a license  
19      to act as a distributor under this Act. In completing such  
20      application, the applicant shall furnish such information as  
21      the Department may reasonably require.

22          The annual license fee payable to the Department for each  
23      distributor's license shall be \$250. The purpose of such annual  
24      license fee is to defray the cost, to the Department, of  
25      serializing cigarette tax stamps. The applicant for license

1 shall pay such fee to the Department at the time of submitting  
2 the application for license to the Department.

3 Such applicant shall file, with his application, a joint  
4 and several bond. Such bond shall be executed to the Department  
5 of Revenue, with good and sufficient surety or sureties  
6 residing or licensed to do business within the State of  
7 Illinois, in the amount of \$2,500, conditioned upon the true  
8 and faithful compliance by the licensee with all of the  
9 provisions of this Act. Such bond, or a reissue thereof, or a  
10 substitute therefor, shall be kept in effect during the entire  
11 period covered by the license. A separate application for  
12 license shall be made, a separate annual license fee paid, and  
13 a separate bond filed, for each place of business at or from  
14 which the applicant proposes to act as a distributor under this  
15 Act and for which the applicant is not required to procure a  
16 license or allowed to obtain a permit as a distributor under  
17 the Cigarette Tax Act.

18 The following are ineligible to receive a distributor's  
19 license under this Act:

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

22 (2) a person who has been convicted of a felony under  
23 any Federal or State law, if the Department, after  
24 investigation and a hearing, if requested by the applicant,  
25 determines that such person has not been sufficiently  
26 rehabilitated to warrant the public trust;

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

6           (4) a person, or any person who owns more than 15  
7           percent of the ownership interests in a person or a related  
8           party who:

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

14                   (b) had a license under this Act revoked within the  
15                   past 2 years by the Department for willful misconduct  
16                   relating to stolen or contraband cigarettes or has been  
17                   convicted of a State or federal crime, punishable by  
18                   imprisonment of one year or more, relating to stolen or  
19                   contraband cigarettes;

20                   (c) is a distributor who manufactures cigarettes  
21                   who is neither (i) a participating manufacturer as  
22                   defined in subsection II(jj) of the "Master Settlement  
23                   Agreement" as defined in Sections 10 of the Tobacco  
24                   Products Manufacturers' Escrow Act and the Tobacco  
25                   Products Manufacturers' Escrow Enforcement Act of 2003  
26                   (30 ILCS 168/10 and 30 ILCS 167/10); nor (ii) in full

1 compliance with Tobacco Products Manufacturers' Escrow  
2 Act and the Tobacco Products Manufacturers' Escrow  
3 Enforcement Act of 2003 (30 ILCS 168/ and 30 ILCS  
4 167/);

5 (d) has been found to have willfully imported or  
6 caused to be imported into the United States for sale  
7 or distribution any cigarette in violation of 19 U.S.C.  
8 1681a;

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

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

19 Upon approval of such application and bond and payment of  
20 the required annual license fee, the Department shall issue a  
21 license to the applicant. Such license shall permit the  
22 applicant to engage in business as a distributor at or from the  
23 place shown in his application. All licenses issued by the  
24 Department under this Act shall be valid for not to exceed one  
25 year after issuance unless sooner revoked, canceled or  
26 suspended as in this Act provided. No license issued under this

1 Act is transferable or assignable. Such license shall be  
2 conspicuously displayed at the place of business for which it  
3 is issued.

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

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

16 (35 ILCS 135/26) (from Ch. 120, par. 453.56)

17 Sec. 26. Whenever any peace officer of the State or any  
18 duly authorized officer or employee of the Department shall  
19 have reason to believe that any violation of this Act has  
20 occurred and that the person so violating the Act has in his,  
21 her or its possession any original package of cigarettes, not  
22 tax stamped or tax imprinted underneath the sealed transparent  
23 wrapper of such original packages, as required by this Act, or  
24 any vending device containing such original packages to which  
25 stamps have not been affixed, or on which an authorized

1 substitute for stamps has not been imprinted underneath the  
2 sealed transparent wrapper of such original packages, as  
3 required by this Act, he may file or cause to be filed his  
4 complaint in writing, verified by affidavit, with any circuit  
5 court within whose jurisdiction the premises to be searched are  
6 situated, stating the facts upon which such belief is founded,  
7 the premises to be searched, and the property to be seized, and  
8 procure a search warrant and execute the same. Upon the  
9 execution of such search warrant, the peace officer, or officer  
10 or employee of the Department, executing such search warrant  
11 shall make due return thereof to the court issuing the same,  
12 together with an inventory of the property taken thereunder.  
13 The court shall thereupon issue process against the owner of  
14 such property if he is known; otherwise, such process shall be  
15 issued against the person in whose possession the property so  
16 taken is found, if such person is known. In case of inability  
17 to serve such process upon the owner or the person in  
18 possession of the property at the time of its seizure, as  
19 hereinbefore provided, notice of the proceedings before the  
20 court shall be given as required by the statutes of the State  
21 governing cases of Attachment. Upon the return of the process  
22 duly served or upon the posting or publishing of notice made,  
23 as hereinabove provided, the court or jury, if a jury shall be  
24 demanded, shall proceed to determine whether or not such  
25 property so seized was held or possessed in violation of this  
26 Act, or whether, if a vending device has been so seized, it



1 contained at the time of its seizure original packages not tax  
2 stamped or tax imprinted underneath the sealed transparent  
3 wrapper of such original packages as required by this Act. In  
4 case of a finding that the original packages seized were not  
5 tax stamped or tax imprinted underneath the sealed transparent  
6 wrapper of such original packages in accordance with the  
7 provisions of this Act, or that any vending device so seized  
8 contained at the time of its seizure original packages not tax  
9 stamped or tax imprinted underneath the sealed transparent  
10 wrapper of such original packages in accordance with the  
11 provisions of this Act, judgment shall be entered confiscating  
12 and forfeiting the property to the State and ordering its  
13 delivery to the Department, and in addition thereto, the court  
14 shall have power to tax and assess the costs of the  
15 proceedings.

16 When any original packages or any cigarette vending device  
17 shall have been declared forfeited to the State by any court,  
18 as hereinbefore provided, and when such confiscated and  
19 forfeited property shall have been delivered to the Department,  
20 as provided in this Act, the said Department shall destroy ~~or~~ or  
21 maintain and use such property in an undercover capacity. The  
22 Department may, prior to any destruction of cigarettes, permit  
23 the true holder of the trademark rights in the cigarette brand  
24 to inspect such contraband cigarettes, in order to assist the  
25 Department in any investigation regarding such cigarettes. ~~or~~  
26 ~~sell such property for the best price obtainable and shall~~

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

8 ~~Upon making such a sale of original packages of cigarettes~~  
9 ~~which were not tax stamped or tax imprinted underneath the~~  
10 ~~sealed transparent wrapper of such original packages as~~  
11 ~~required by this Act, the Department shall affix a distinctive~~  
12 ~~stamp to each of the original packages so sold indicating that~~  
13 ~~the same are sold pursuant to the provisions of this Section.~~

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

15 (35 ILCS 135/27) (from Ch. 120, par. 453.57)

16 Sec. 27. Destruction or use of forfeited property. When  
17 any original packages of cigarettes or any cigarette vending  
18 device shall have been declared forfeited to the State by the  
19 Department, as provided in Section 25 of this Act, and when all  
20 proceedings for the judicial review of the Department's  
21 decision have terminated, the Department shall, to the extent  
22 that its decision is sustained on review, ~~destroy~~ or maintain  
23 and use such property in an undercover capacity. The Department  
24 may, prior to any destruction of cigarettes, permit the true  
25 holder of the trademark rights in the cigarette brand to

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

12 ~~If no complaint for review, as provided in Section 21 of~~  
13 ~~this Act, has been filed within the time required by the~~  
14 ~~"Administrative Review Law," and if no stay order has been~~  
15 ~~entered thereunder, the Department shall proceed to sell said~~  
16 ~~property for the best price obtainable and shall forthwith pay~~  
17 ~~over the proceeds of such sale to the State Treasurer;~~  
18 ~~provided, however, that if the value of such property to be~~  
19 ~~sold at any one time shall be \$500 or more, such property shall~~  
20 ~~be sold only to the highest and best bidder on such terms and~~  
21 ~~conditions and on open competitive bidding after public~~  
22 ~~advertisement, in such manner and for such terms as the~~  
23 ~~Department, by rule, may prescribe.~~

24 ~~Upon making a sale of unstamped original packages of~~  
25 ~~cigarettes as provided in this Section, the Department shall~~  
26 ~~affix a distinctive stamp to each of the original packages so~~

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

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

4 Section 20. The Prevention of Cigarette Sales to Minors Act  
5 is amended by changing Sections 5 and 10 and by adding Sections  
6 2, 6, 7, 8, 9, 20, 25, and 30 as follows:

7 (720 ILCS 678/2 new)

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

9 "Clear and conspicuous statement" means the statement is of  
10 sufficient type size to be clearly readable by the recipient of  
11 the communication.

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

14 "Delivery sale" means any sale of cigarettes to a consumer  
15 if:

16 (a) the consumer submits the order for such sale by  
17 means of a telephone or other method of voice transmission,  
18 the mails, or the Internet or other online service, or the  
19 seller is otherwise not in the physical presence of the  
20 buyer when the request for purchase or order is made; or

21 (b) the cigarettes are delivered by use of a common  
22 carrier, private delivery service, or the mails, or the  
23 seller is not in the physical presence of the buyer when  
24 the buyer obtains possession of the cigarettes.

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

4       "Department" means the Department of Revenue.

5       "Government-issued identification" means a State driver's  
6 license, State identification card, passport, a military  
7 identification or an official naturalization or immigration  
8 document, such as an alien registration recipient card  
9 (commonly known as a "green card") or an immigrant visa.

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

13       "Mails" or "mailing" mean the shipment of cigarettes  
14 through the United States Postal Service.

15       "Out-of-state sale" means a sale of cigarettes to a  
16 consumer located outside of this State where the consumer  
17 submits the order for such sale by means of a telephonic or  
18 other method of voice transmission, the mails or any other  
19 delivery service, facsimile transmission, or the Internet or  
20 other online service and where the cigarettes are delivered by  
21 use of the mails or other delivery service.

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

25       "Shipping package" means a container in which packs or  
26 cartons of cigarettes are shipped in connection with a delivery

1 sale.

2 "Shipping documents" means bills of lading, air bills, or  
3 any other documents used to evidence the undertaking by a  
4 delivery service to deliver letters, packages, or other  
5 containers.

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

9 (720 ILCS 678/5)

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

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

14 (1) is licensed as a distributor under either the  
15 Cigarette Tax Act, or the Cigarette Use Tax Act; or  
16 delivers the cigarettes to a distributor licensed under  
17 either the Cigarette Tax Act or the Cigarette Use Tax Act;  
18 or

19 (2) ships them to an export warehouse proprietor  
20 pursuant to Chapter 52 of the Internal Revenue Code, or an  
21 operator of a customs bonded warehouse pursuant to Section  
22 1311 or 1555 of Title 19 of the United States Code.

23 For purposes of this subsection (a), a person is a licensed  
24 distributor if the person's name appears on a list of licensed  
25 distributors published by the Illinois Department of Revenue.

1 The term cigarette has the same meaning as defined in Section 1  
2 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax  
3 Act. Nothing in this Act prohibits a person licensed as a  
4 distributor under the Cigarette Tax Act or the Cigarette Use  
5 Tax Act from shipping or causing to be shipped any cigarettes  
6 to a registered retailer under the Retailers' Occupation Tax  
7 Act and the Cigarette Tax Act provided the cigarette tax or  
8 cigarette use tax has been paid.

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

19 (c) A common or contract carrier may not complete the  
20 delivery of any cigarettes to persons other than those  
21 described in paragraph (a)(1) of this Section without first  
22 obtaining from the purchaser an official written  
23 identification from any state or federal agency that displays  
24 the person's date of birth or a birth certificate that includes  
25 a reliable confirmation that the purchaser is at least 18 years  
26 of age; that the cigarettes purchased are not intended for

1 consumption by an individual who is younger than 18 years of  
2 age; and a written statement signed by the purchaser that  
3 certifies the purchaser's address and that the purchaser is at  
4 least 18 years of age. The statement shall also confirm: (1)  
5 that the purchaser understands that signing another person's  
6 name to the certification is illegal; (2) that the sale of  
7 cigarettes to individuals under 18 years of age is illegal; and  
8 (3) that the purchase of cigarettes by individuals under 18  
9 years of age is illegal under the laws of Illinois.

10 (d) When a person engaged in the business of selling  
11 cigarettes ships or causes to be shipped any cigarettes to any  
12 person in this State, other than in the cigarette  
13 manufacturer's or tobacco products manufacturer's original  
14 container or wrapping, the container or wrapping must be  
15 plainly and visibly marked with the word "cigarettes".

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

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



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

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

4       (b) Each person accepting a purchase order for a delivery  
5 sale shall comply with the provisions of this Act and all other  
6 laws of this State generally applicable to sales of cigarettes  
7 that occur entirely within this State, including, but not  
8 limited to, those laws imposing: (i) excise taxes; (ii) sales  
9 taxes; (iii) license and revenue-stamping requirements; and  
10 (iv) escrow payment obligations.

11       (720 ILCS 678/7 new)

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

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

17       (1) prior to the first delivery sale to the prospective  
18 consumer, obtains from the prospective consumer a written  
19 certification which includes a statement signed by the  
20 prospective consumer that certifies:

21               (A) the prospective consumer's current address;

22       and

23               (B) that the prospective consumer is at least the  
24 legal minimum age;

25       (2) informs, in writing, such prospective consumer

1       that:

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

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

6               (C) the purchase of cigarettes by individuals  
7               under the legal minimum age is illegal; and

8               (D) the name and identity of the prospective  
9               consumer may be reported to the state of the consumer's  
10              current address under the Act of October 19, 1949 (15  
11              U.S.C. § 375, et seq.), commonly known as the Jenkins  
12              Act;

13              (3) makes a good faith effort to verify the date of  
14              birth of the prospective consumer provided pursuant to this  
15              Section by:

16              (A) comparing the date of birth against a  
17              commercially available database or

18              (B) obtaining a photocopy or other image of a  
19              valid, government-issued identification stating the  
20              date of birth or age of the prospective consumer;

21              (4) provides to the prospective consumer a notice that  
22              meets the requirements of subsection (b);

23              (5) receives payment for the delivery sale from the  
24              prospective consumer by a credit or debit card that has  
25              been issued in such consumer's name, or by a check or other  
26              written instrument in such consumer's name; and

1           (6) ensures that the shipping package is delivered to  
2           the same address as is shown on the government-issued  
3           identification or contained in the commercially available  
4           database.

5           (b) The notice required under this Section shall include:

6           (1) a statement that cigarette sales to consumers below  
7           the legal minimum age are illegal;

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

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

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

16           (1) the statement is clear and conspicuous;

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

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

20           (4) the statement is printed with a degree of color  
21           contrast between the background and the printed statement  
22           that is no less than the color contrast between the  
23           background and the largest text used in the communication;  
24           and

25           (5) for any printed material delivered by electronic  
26           means, the statement appears at both the top and the bottom

1 of the electronic mail message or both the top and the  
2 bottom of the Internet website homepage.

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

6 (1) include as part of the shipping documents a clear  
7 and conspicuous statement stating: "Cigarettes: Illinois  
8 Law Prohibits Shipping to Individuals Under 18 and Requires  
9 the Payment of All Applicable Taxes";

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

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

15 (720 ILCS 678/8 new)

16 Sec. 8. Registration and reporting requirements to prevent  
17 delivery sales to minors.

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

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

24 (2) not later than the tenth day of each calendar  
25 month, a memorandum or copy of the invoice for each and

1       every such delivery sale made during the previous calendar  
2       month, which includes the following information:

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

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

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

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

13       (b) Each person engaged in business within this State who  
14       makes an out-of-state sale shall, for each individual sale,  
15       submit to the appropriate tax official of the state in which  
16       the consumer is located the information required in subsection  
17       (a).

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

21       (d) The Department is authorized to disclose to the  
22       Attorney General any information received under this title and  
23       requested by the Attorney General. The Department and the  
24       Attorney General shall share with each other the information  
25       received under this title and may share the information with  
26       other federal, State, or local agencies for purposes of

1 enforcement of this title or the laws of the federal government  
2 or of other states.

3 (e) This Section shall not be construed to impose liability  
4 upon any delivery service, or officers or employees thereof,  
5 when acting within the scope of business of the delivery  
6 service.

7 (720 ILCS 678/9 new)

8 Sec. 9. Statements for delivery sales.

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

17 (b) A statement meets the requirements of subsection (a) if  
18 the statement is:

19 (1) clear and conspicuous;

20 (2) contained in a printed box set apart from the  
21 shipping label and other markings contained on the shipping  
22 package;

23 (3) printed in bold, capital letters;

24 (4) printed with a degree of color contrast between the  
25 background and the printed statement that is no less than

1       the color contrast between the background and the largest  
2       text used on the shipping label; and

3               (5) located on the same side of the shipping package as  
4       the shipping label.

5               (720 ILCS 678/10)

6               Sec. 10. Violation.

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

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

20               (c) All cigarettes sold or attempted to be sold in a  
21       delivery sale that does not meet the requirements of this Act  
22       shall be forfeited to the State. All cigarettes forfeited to  
23       this State under this Act shall be destroyed. The Department  
24       may, prior to any destruction of cigarettes, permit the true  
25       holder of the trademark rights in the cigarette brand to

1 inspect such contraband cigarettes, in order to assist the  
2 Department in any investigation regarding such cigarettes.

3 (d) ~~(e)~~ Any person aggrieved by any decision of the  
4 Department of Revenue may, within 60 days after notice of that  
5 decision, protest in writing and request a hearing. The  
6 Department of Revenue shall give notice to the person of the  
7 time and place for the hearing and shall hold a hearing before  
8 it issues a final administrative decision. Absent a written  
9 protest within 60 days, the Department's decision shall become  
10 final without any further determination made or notice given.

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

12 (720 ILCS 678/20 new)

13 Sec. 20. Tip line.

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

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

24 (720 ILCS 678/25 new)



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

4       (720 ILCS 678/30 new)

5       Sec. 30. Severability. If any provision of this Act is for  
6 any reason held to be unconstitutional or invalid, such holding  
7 shall not affect the constitutionality or validity of the  
8 remaining provisions of this Act, and to this end the  
9 provisions of this Act are expressly declared to be severable.

10       Section 99. Effective date. This Act takes effect January  
11 1, 2010."