

1 AN ACT concerning finance.

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

4 Section 5. The Tobacco Products Manufacturers' Escrow
5 Enforcement Act of 2003 is amended by changing Section 30 as
6 follows:

7 (30 ILCS 167/30)

8 Sec. 30. Penalties and other remedies.

9 (a) In addition to or in lieu of any other civil or
10 criminal remedy provided by law, upon a determination that a
11 distributor has violated subsection (e) of Section 15 or any
12 regulation adopted pursuant thereto, the Director may revoke
13 or suspend the license of any distributor in the manner
14 provided by Section 6 of the Cigarette Tax Act, Section 6 of
15 the Cigarette Use Tax Act, or Section 10-25 of the Tobacco
16 Products Tax Act of 1995, as appropriate. Each stamp affixed
17 and each offer to sell cigarettes in violation of subsection
18 (e) of Section 15 shall constitute a separate violation. For
19 each violation, the Director may also impose a civil penalty
20 in an amount not to exceed the greater of 500% of the retail
21 value of the cigarettes sold or \$5,000 upon a determination of
22 violation of subsection (e) of Section 15 or any regulations
23 adopted pursuant thereto.

1 (b) Any cigarettes that have been sold, offered for sale,
2 or possessed for sale in this State, or imported for personal
3 consumption in this State in violation of subsection (e) of
4 Section 15 shall be subject to seizure and forfeiture as
5 provided in Sections 18, 18a, and 20 of the Cigarette Tax Act
6 and Sections 24, 25, 25a and 26 of the Cigarette Use Tax Act,
7 and all cigarettes so seized and forfeited shall be destroyed
8 and not resold.

9 (c) The Attorney General may seek an injunction to
10 restrain a threatened or actual violation of subsection (e) of
11 Section 15, subsection (a) of Section 25, or subsection (d) of
12 Section 25 by a distributor and to compel the distributor to
13 comply with such subsections. In any action brought pursuant
14 to this Section, the State shall be entitled to recover the
15 costs of investigation, costs of the action, and reasonable
16 attorney fees.

17 (c-5) Upon a distributor's failure to submit information
18 as required by subsection (a) of Section 25 or subsection (d)
19 of Section 25, the Attorney General may send a notice of
20 violation to the distributor and provide the distributor with
21 10 days to cure the violation. If the distributor does not cure
22 the violation, the Attorney General may notify the Director of
23 the violation, and, upon receiving the Attorney General's
24 notice, the Director shall revoke the distributor's license.

25 (d) It shall be unlawful for a person to: (i) sell or
26 distribute cigarettes; or (ii) acquire, hold, own, possess,

1 transport, import, or cause to be imported cigarettes that the
2 person knows or should know are intended for distribution or
3 sale in the State in violation of subsection (e) of Section 15.
4 A violation of this Section shall be a Class 2 felony.

5 (e) A person who violates subsection (e) of Section 15
6 engages in an unfair and deceptive trade practice in violation
7 of the Uniform Deceptive Trade Practices Act.

8 (Source: P.A. 93-446, eff. 1-1-04; 93-930, eff. 1-1-05;
9 94-575, eff. 8-12-05.)

10 Section 10. The Tobacco Product Manufacturers' Escrow Act
11 is amended by changing Section 15 as follows:

12 (30 ILCS 168/15)

13 Sec. 15. Requirements.

14 (a) Any tobacco product manufacturer selling cigarettes to
15 consumers within the State of Illinois (whether directly or
16 through a distributor, retailer, or similar intermediary or
17 intermediaries) after the effective date of this Act shall do
18 one of the following:

19 (1) become a participating manufacturer (as that term
20 is defined in Section II(jj) of the Master Settlement
21 Agreement) and generally perform its financial obligations
22 under the Master Settlement Agreement; or

23 (2) (A) place into a qualified escrow fund by April 15
24 of the year following the year in question the

1 following amounts (as such amounts are adjusted for
2 inflation):

3 (i) For 1999: \$0.0094241 per unit sold after
4 the effective date of this Act;

5 (ii) For 2000: \$0.0104712 per unit sold;

6 (iii) For each of 2001 and 2002: \$0.0136125
7 per unit sold;

8 (iv) For each of 2003 through 2006: \$0.0167539
9 per unit sold;

10 (v) For each of 2007 and each year thereafter:
11 \$0.0188482 per unit sold.

12 (B) A tobacco product manufacturer that places
13 funds into escrow pursuant to subdivision (a) (2) (A)
14 shall receive the interest or other appreciation on
15 the funds as earned. The funds themselves shall be
16 released from escrow only under the following
17 circumstances:

18 (i) to pay a judgment or settlement on any
19 released claim brought against the tobacco product
20 manufacturer by the State or any releasing party
21 located or residing in the State. Funds shall be
22 released from escrow under this subdivision
23 (a) (2) (B) (i): (I) in the order in which they were
24 placed into escrow; and (II) only to the extent
25 and at the time necessary to make payments
26 required under such judgment or settlement;

1 (ii) to the extent that a tobacco product
2 manufacturer establishes that the amount it was
3 required to place into escrow on account of units
4 sold in the State in a particular year was greater
5 than the Master Settlement Agreement payments, as
6 determined pursuant to Section IX(i) of that
7 Agreement, including after final determination of
8 all adjustments, that such manufacturer would have
9 been required to make on account of such units
10 sold had it been a Participating Manufacturer, the
11 excess shall be released from escrow and revert
12 back to such tobacco product manufacturer; or

13 (iii) to the extent not released from escrow
14 under subdivisions (a) (2) (B) (i) or (a) (2) (B) (ii),
15 funds shall be released from escrow and revert
16 back to such tobacco product manufacturer 25 years
17 after the date on which they were placed into
18 escrow.

19 (C) Each tobacco product manufacturer that elects
20 to place funds into escrow pursuant to this
21 subdivision (a) (2) shall annually certify to the
22 Attorney General that it is in compliance with this
23 subdivision (a) (2). The Attorney General may bring a
24 civil action on behalf of the State of Illinois
25 against any tobacco product manufacturer that fails to
26 place into escrow the funds required under this

1 subdivision (a)(2). Any tobacco product manufacturer
2 that fails in any year to place into escrow the funds
3 required under this subdivision (a)(2) shall:

4 (i) be required within 15 days to place such
5 funds into escrow as shall bring it into
6 compliance with this Section. The court, upon a
7 finding of a violation of this subdivision (a)(2),
8 may impose a civil penalty to be paid into the
9 General Revenue Fund in an amount not to exceed 5%
10 of the amount improperly withheld from escrow per
11 day of the violation and in a total amount not to
12 exceed 100% of the original amount improperly
13 withheld from escrow;

14 (ii) in the case of a knowing violation, be
15 required within 15 days to place such funds into
16 escrow as shall bring it into compliance with this
17 Section. The court, upon a finding of a knowing
18 violation of this subdivision (a)(2), may impose a
19 civil penalty to be paid into the General Revenue
20 Fund in an amount not to exceed 15% of the amount
21 improperly withheld from escrow per day of the
22 violation and in a total amount not to exceed 300%
23 of the original amount improperly withheld from
24 escrow; and

25 (iii) in the case of a second knowing
26 violation, be prohibited from selling cigarettes

1 to consumers within the State of Illinois (whether
2 directly or through a distributor, retailer, or
3 similar intermediary) for a period not to exceed 2
4 years.

5 (b) Each failure to make an annual deposit required under
6 this Section shall constitute a separate violation. If a
7 tobacco product manufacturer is successfully prosecuted by the
8 Attorney General for a violation of subdivision (a)(2), the
9 tobacco product manufacturer must pay, in addition to any fine
10 imposed by a court, the State's costs and attorney's fees
11 incurred in the prosecution.

12 (c) Notwithstanding subparagraph (B) of item (2) of
13 subsection (a) of this Section, a tobacco product manufacturer
14 that elects to place funds into escrow pursuant to
15 subparagraph (A) of item (2) of subsection (a) of this Section
16 may make an irrevocable assignment of its interest in the
17 funds to the benefit of the State. The assignment shall be
18 permanent and shall apply to all funds that are in the escrow
19 account or that may subsequently come into the account,
20 including (i) those funds deposited into the escrow account
21 before the assignment is executed, (ii) those funds deposited
22 into the escrow account on or after the date the assignment is
23 executed, and (iii) interest or other appreciation on the
24 funds. The tobacco product manufacturer, the Attorney General,
25 and the financial institution where the escrow account is
26 maintained may make amendments to the qualified escrow account

1 agreement as necessary to effectuate an assignment of rights
2 executed pursuant to this subsection or a withdrawal of moneys
3 from the escrow account pursuant to subparagraph (B) of item
4 (2) of subsection (a) of this Section. An assignment of rights
5 executed pursuant to this subsection shall be in writing,
6 shall be signed by a duly authorized representative of the
7 tobacco product manufacturer making the assignment, and shall
8 become effective on delivery of the assignment to the Attorney
9 General and the financial institution where the escrow account
10 is maintained. An assignment of escrow funds shall not be made
11 by a tobacco product manufacturer unless and until the
12 Attorney General provides written approval to the tobacco
13 product manufacturer.

14 (d) Notwithstanding subparagraph (B) of item (2) of
15 subsection (a) of this Section, any escrow funds assigned to
16 the State pursuant to subsection (c) shall be withdrawn by the
17 State on the approval of the Attorney General. Any funds
18 withdrawn pursuant to this subsection shall be used to
19 reimburse the State for Medicaid costs and shall be calculated
20 on a dollar-for-dollar basis as a credit against any judgment
21 or settlement described in subparagraph (B) of item (2) of
22 subsection (a) of this Section that may be obtained against
23 the tobacco product manufacturer that has assigned the funds
24 in the escrow account. This Section does not relieve a tobacco
25 product manufacturer from any past, current, or future
26 obligations that the manufacturer may have pursuant to this

1 Section.

2 (e) Notwithstanding subparagraph (B) of item (2) of
3 subsection (a) of this Section, if, after more than one year
4 from the date of release, the escrow amount has not been
5 subject to a request by the tobacco product manufacturer who
6 made the deposit or currently owns the rights to the account,
7 the Attorney General may send a notice of intent to assign
8 giving the entity 10 days to make an application for release in
9 the manner established by the Attorney General. If, after the
10 expiration of that 10-day period, no application has been
11 received, the Attorney General may send a notice of assignment
12 to the last known contact, and if no application is received
13 after the expiration of that 10-day period, the Attorney
14 General may provide notice to the escrow bank that the funds
15 shall be transferred to the State.

16 (Source: P.A. 93-446, eff. 1-1-04.)