

1 AN ACT in relation to tobacco product manufacturers.

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

4 Section 1. Short title. This Act may be cited as the  
5 Tobacco Products Manufacturers' Escrow Enforcement Act of  
6 2003.

7 Section 5. Findings; purpose. The General Assembly finds  
8 that violations of the Tobacco Product Manufacturers' Escrow  
9 Act threaten the integrity of the tobacco Master Settlement  
10 Agreement, the fiscal soundness of the State, and the public  
11 health. The General Assembly finds that enacting procedural  
12 enhancements will help prevent violations and aid the  
13 enforcement of the Tobacco Product Manufacturers' Escrow Act  
14 and thereby safeguard the Master Settlement Agreement, the  
15 fiscal soundness of the State, and the public health. The  
16 provisions of this Act are not intended to and shall not be  
17 interpreted to amend the Tobacco Product Manufacturers'  
18 Escrow Act.

19 Section 10. Definitions. As used in this Act:

20 "Brand family" means all styles of cigarettes sold under  
21 the same trade mark and differentiated from one another by  
22 means of additional modifiers or descriptors, including, but  
23 not limited to, menthol, lights, kings, and 100s and includes  
24 any brand name (alone or in conjunction with any other word)  
25 trademark, logo, symbol, motto, selling message, recognizable  
26 pattern of colors, or any other indicia of product  
27 identification identical or similar to, or identifiable with,  
28 a previously known brand of cigarettes.

29 "Cigarette" has the same meaning in Section 10 of the  
30 Escrow Act.

1 "Director" means the Director of Revenue.

2 "Distributor" has the same meaning prescribed in Section  
3 1 of the Cigarette Tax Act, Section 1 of the Cigarette Use  
4 Tax Act, and, in addition, means a distributor of  
5 roll-your-own tobacco in accordance with Section 10-5 of the  
6 Tobacco Products Tax Act of 1995, as appropriate.

7 "Escrow Act" means the Tobacco Product Manufacturers'  
8 Escrow Act.

9 "Non-participating manufacturer" means any Tobacco  
10 Product Manufacturer that is not a participating  
11 manufacturer.

12 "Participating manufacturer" has the meaning given that  
13 term in Section II(jj) of the Master Settlement Agreement and  
14 all amendments thereto.

15 "Qualified escrow fund" has the same meaning as that term  
16 is defined in Section 10 of the Escrow Act.

17 "Tobacco product manufacturer" has the same meaning as  
18 that term is defined in Section 10 of the Escrow Act.

19 "Units sold" has the same meaning as that term is defined  
20 in Section 10 of the Escrow Act.

21 Section 15. Certifications; directory; tax stamps.

22 (a) Every tobacco product manufacturer whose cigarettes  
23 are sold in this State whether directly or through a  
24 distributor, retailer, or similar intermediary or  
25 intermediaries shall execute and deliver on a form prescribed  
26 by the Attorney General a certification to the Attorney  
27 General, no later than the thirtieth day of April each year,  
28 certifying under penalty of perjury that, as of the date of  
29 the certification, the tobacco product manufacturer either:  
30 (i) is a participating manufacturer and has generally  
31 performed its financial obligations under the Master  
32 Settlement Agreement; or (ii) is in full compliance with the  
33 Escrow Act, including all quarterly installment payments.

1           (1) A participating manufacturer shall include in  
2 its certification a list of its brand families. The  
3 participating manufacturer shall update the list 30 days  
4 prior to any addition to or modification of its brand  
5 families by executing and delivering a supplemental  
6 certification to the Attorney General.

7           (2) A non-participating manufacturer shall include  
8 in its certification a complete list of all of its brand  
9 families: (i) separately listing brand families of  
10 cigarettes and the number of units sold for each brand  
11 family that were sold in the State during the preceding  
12 calendar year; (ii) listing all of its brand families  
13 that have been sold in the State at any time during the  
14 current calendar year; (iii) indicating by an asterisk,  
15 any brand family sold in the State during the preceding  
16 calendar year that is no longer being sold in the State  
17 as of the date of the certification; and (iv) identifying  
18 by name and address any other manufacturer of the brand  
19 families in the preceding calendar year. The  
20 non-participating manufacturer shall update the list 30  
21 days prior to any addition to or modification of its  
22 brand families by executing and delivering a supplemental  
23 certification to the Attorney General.

24           (3) In the case of a non-participating  
25 manufacturer, the certification shall further certify:

26           (A) that the non-participating manufacturer is  
27 registered to do business in this State or has  
28 appointed a resident agent for service of process  
29 and provided notice thereof as required by item 4 of  
30 subsection (a) of this Section;

31           (B) that the non-participating manufacturer  
32 has (i) established and continues to maintain a  
33 qualified escrow fund as that term is defined in  
34 Section 10 of the Escrow Act, and (ii) executed a

1 qualified escrow agreement that has been reviewed  
2 and approved by the Attorney General and that  
3 governs the qualified escrow fund;

4 (C) that the non-participating manufacturer is  
5 in full compliance with the Escrow Act and this Act,  
6 and any regulations promulgated pursuant thereto;

7 (D) the name, address and telephone number of  
8 the financial institution where the  
9 non-participating manufacturer has established the  
10 qualified escrow fund required pursuant to Section  
11 15 of the Escrow Act and all regulations promulgated  
12 thereto;

13 (E) the account number of the qualified escrow  
14 fund and sub-account number for this State;

15 (F) the amount the non-participating  
16 manufacturer placed in the fund for cigarettes sold  
17 in the State during the preceding calendar year,  
18 including the dates and amount of each deposit, and  
19 such evidence or verification as may be deemed  
20 necessary by the Attorney General to confirm the  
21 foregoing; and

22 (G) the amounts of and dates of any withdrawal  
23 or transfer of funds the non-participating  
24 manufacturer made at any time from the fund or from  
25 any other qualified escrow fund into which it ever  
26 made escrow payments pursuant to Section 15 of the  
27 Escrow Act and all regulations promulgated thereto.

28 (4) A tobacco product manufacturer may not include  
29 a brand family in its certification unless: (i) in the  
30 case of a participating manufacturer, the participating  
31 manufacturer affirms that the brand family is to be  
32 deemed to be its cigarettes for purposes of calculating  
33 its payments under the master settlement agreement for  
34 the relevant year, in the volume and shares determined

1           pursuant to the master settlement agreement; and (ii) in  
2           the case of a non-participating manufacturer, the  
3           non-participating manufacturer affirms that the brand  
4           family is to be deemed to be its cigarettes for purposes  
5           of Section 15 of the Escrow Act.

6           Nothing in this Section shall be construed as  
7           limiting or otherwise affecting the State's right to  
8           maintain that a brand family constitutes cigarettes of a  
9           different tobacco product manufacturer for purposes of  
10          calculating payments under the master settlement  
11          agreement or for purposes of Section 15 of the Escrow  
12          Act.

13          (5) The tobacco product manufacturers shall  
14          maintain all invoices and documentation of sales and  
15          other information relied upon for certification for a  
16          period of 5 years, unless otherwise required by law to  
17          maintain them for a greater period of time.

18          (b) Not later than 6 months after the effective date of  
19          this Act, the Attorney General shall develop and make  
20          available for public inspection, through publishing on its  
21          website, a directory listing all tobacco product  
22          manufacturers that have provided current and accurate  
23          certifications conforming to the requirements of subsection  
24          (a) of Section 15 and all brand families that are listed in  
25          the certifications, except for the following:

26                 (1) The Attorney General shall not include or  
27                 retain in the directory the name or brand families of any  
28                 non-participating manufacturer that fails to provide the  
29                 required certification or whose certification the  
30                 Attorney General determines is not in compliance with  
31                 subsections (a)(2) or (a)(3) of Section 15, unless the  
32                 Attorney General has determined that the violation has  
33                 been cured to the satisfaction of the Attorney General.

34                 (2) Neither a tobacco product manufacturer nor

1 brand family shall be included or retained in the  
2 directory if the Attorney General concludes that: (i) in  
3 the case of a non-participating manufacturer all escrow  
4 payments required pursuant to Section 15 of the Escrow  
5 Act for any period for any brand family, whether or not  
6 listed by the non-participating manufacturer, have not  
7 been fully paid into a qualified escrow fund governed by  
8 a qualified escrow agreement that has been approved by  
9 the Attorney General; or (ii) all outstanding final  
10 judgments, including interest thereon, for violations of  
11 Section 15 of the Escrow Act have not been fully  
12 satisfied for that brand family and manufacturer.

13 (c) The Attorney General shall update the directory as  
14 necessary in order to correct mistakes and to add or remove a  
15 tobacco product manufacturer or brand families to keep the  
16 directory in conformity with the requirements of this Act.

17 (d) Every distributor shall provide and update as  
18 necessary an electronic mail address to the Attorney General  
19 for the purpose of receiving any notifications as may be  
20 required by this Act.

21 (e) It shall be unlawful for any person: (i) to affix a  
22 stamp to a package or other container of cigarettes of a  
23 tobacco product manufacturer or brand family not included in  
24 the directory or to sell, offer, or possess for sale in this  
25 State; or (ii) import for personal consumption in this State,  
26 cigarettes of a tobacco product manufacturer or brand family  
27 not included in the directory.

28 Section 20. Agent for service of process.

29 (a) Any non-resident or foreign non-participating  
30 manufacturer that has not registered to do business in this  
31 State as a foreign corporation or business entity shall, as a  
32 condition precedent to having its brand families listed or  
33 retained in the directory, appoint and continually engage

1 without interruption the services of an agent in this State  
2 to act as agent for the service of process on whom all  
3 process, and any action or proceeding against it concerning  
4 or arising out of the enforcement of this Act and the Escrow  
5 Act, may be served in any manner authorized by law. The  
6 service shall constitute legal and valid service of process  
7 on the non-participating manufacturer. The non-participating  
8 manufacturer shall provide the name, address, phone number,  
9 and proof of the appointment and availability of the agent to  
10 and to the satisfaction of the Director and Attorney General.

11 (b) The non-participating manufacturer shall provide  
12 notice to the Director and Attorney General 30 calendar days  
13 prior to termination of the authority of an agent and shall  
14 further provide proof to the satisfaction of the Attorney  
15 General of the appointment of a new agent no less than 5  
16 calendar days prior to the termination of an existing agent  
17 appointment. In the event an agent terminates an agency  
18 appointment, the non-participating manufacturer shall notify  
19 the Director and Attorney General of the termination within 5  
20 calendar days and shall include proof to the satisfaction of  
21 the Attorney General of the appointment of a new agent.

22 (c) Any non-participating manufacturer whose products  
23 are sold in this State, without appointing or designating an  
24 agent as herein required shall be deemed to have appointed  
25 the Secretary of State as the agent and may be proceeded  
26 against in courts of this State by service of process upon  
27 the Secretary of State; however, the appointment of the  
28 Secretary of State as an agent shall not satisfy the  
29 condition precedent to having its brand families listed or  
30 retained in the directory.

31 Section 25. Reporting of information; escrow  
32 installments.

33 (a) Not later than 20 days after the end of each

1 calendar quarter, and more frequently if so directed by the  
2 Attorney General, each distributor shall submit the  
3 information as the Attorney General requires to facilitate  
4 compliance with this Act, including, but not limited to, a  
5 list by brand family of the total number of cigarettes or in  
6 the case of roll-your-own, the equivalent stick count for  
7 which the distributor affixed stamps during the previous  
8 calendar quarter or otherwise paid the tax due for these  
9 cigarettes. The distributor shall maintain, and make  
10 available to the Attorney General, all invoices and  
11 documentation of sales of all non-participating manufacturer  
12 cigarettes and any other information relied upon in reporting  
13 to the Attorney General for a period of 5 years.

14 (b) The Director is authorized to disclose to the  
15 Attorney General any information received under this Act and  
16 requested by the Attorney General for purposes of determining  
17 compliance with and enforcing the provisions of this Act. The  
18 Director and Attorney General shall share with each other the  
19 information received under this Act, and may share the  
20 information with other federal, State, or local agencies only  
21 for purposes of enforcement of this Act, the Escrow Act, or  
22 corresponding laws of other states.

23 (c) The Attorney General may require at any time, from  
24 the non-participating manufacturer, proof from the financial  
25 institution in which the manufacturer has established a  
26 qualified escrow fund for the purpose of compliance with the  
27 Escrow Act of the amount of money in the fund being held on  
28 behalf of the State and the dates of deposits, and listing  
29 the amounts of all withdrawals from the fund and the dates  
30 thereof.

31 (d) In addition to the information required to be  
32 submitted pursuant to this Act, the Attorney General may  
33 require a distributor or tobacco product manufacturer to  
34 submit any additional information including, but not limited



1 to, samples of the packaging or labeling of each brand  
2 family, as is necessary to enable the Attorney General to  
3 determine whether a tobacco product manufacturer is in  
4 compliance with this Act.

5 (e) To promote compliance with the provisions of this  
6 Act, the Attorney General may promulgate regulations  
7 requiring a tobacco product manufacturer subject to the  
8 requirements of subsection (a)(2) of Section 15 to make the  
9 escrow deposits required in quarterly installments during the  
10 year in which the sales covered by the deposits are made. The  
11 Attorney General may require production of information  
12 sufficient to enable the Attorney General to determine the  
13 adequacy of the amount of the installment deposit.

14 Section 30. Penalties and other remedies.

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

30 (b) Any cigarettes that have been sold, offered for  
31 sale, or possessed for sale in this State, or imported for  
32 personal consumption in this State in violation of subsection  
33 (c) of Section 15 shall be subject to seizure and forfeiture

1 as provided in Sections 18, 18a, and 20 of the Cigarette Tax  
2 Act and Sections 24, 25, 25a and 26 of the Cigarette Use Tax  
3 Act, and all cigarettes so seized and forfeited shall be  
4 destroyed and not resold.

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

13 (d) It shall be unlawful for a person to: (i) sell or  
14 distribute cigarettes; or (ii) acquire, hold, own, possess,  
15 transport, import, or cause to be imported cigarettes that  
16 the person knows or should know are intended for distribution  
17 or sale in the State in violation of subsection (c) of  
18 Section 15. A violation of this Section shall be a Class 2  
19 felony.

20 (e) A person who violates subsection (c) of Section 15  
21 engages in an unfair and deceptive trade practice in  
22 violation of the Uniform Deceptive Trade Practices Act.

23 Section 35. Miscellaneous provisions.

24 (a) A determination of the Attorney General to not list  
25 or to remove from the directory a brand family or tobacco  
26 product manufacturer shall be subject to review in the manner  
27 prescribed by rule.

28 (b) No person shall be issued a license or granted a  
29 renewal of a license to act as a distributor unless the  
30 person has certified in writing, under penalty of perjury,  
31 that the person will comply fully with this Act.

32 (c) The Attorney General may promulgate rules necessary  
33 to effect the purposes of this Act.

1 (d) In any action brought by the State to enforce this  
2 Act, the State shall be entitled to recover the costs of  
3 investigation, expert witness fees, costs of the action, and  
4 reasonable attorney fees.

5 (e) If a court determines that a person has violated  
6 this Act, the court shall order any profits, gain, gross  
7 receipts, or other benefit from the violation to be disgorged  
8 and paid to the General Revenue Fund.

9 (f) Unless otherwise expressly provided the remedies or  
10 penalties provided by this Act are cumulative to each other  
11 and to the remedies or penalties available under all other  
12 laws of this State.

13 Section 40. Severability.

14 (a) If any provision of this Act or its application to  
15 any person or circumstance is held invalid, the invalidity  
16 does not affect other provisions or applications of this Act  
17 that can be given effect without the invalid provision or  
18 application.

19 (b) If a court of competent jurisdiction finds that the  
20 provisions of this Act and of the Escrow Act conflict and  
21 cannot be harmonized, then the provisions of the Escrow Act  
22 shall control.

23 (c) If any Section, subsection, subdivision, paragraph,  
24 sentence, clause, or phrase of this Act (excluding the  
25 amendatory provisions of Section 300) causes the Escrow Act  
26 to no longer constitute a qualifying or model statute, as  
27 those terms are defined in the Master Settlement Agreement,  
28 then that portion of this Act shall not be valid.

29 (30 ILCS 169/Act rep.)

30 Section 200. The Tobacco Products Manufacturers' Escrow  
31 Enforcement Act is repealed.

1 Section 300. The Tobacco Product Manufacturers' Escrow  
2 Act is amended by changing Section 15 and by adding Section  
3 20 as follows:

4 (30 ILCS 168/15)

5 Sec. 15. Requirements.

6 (a) Any tobacco product manufacturer selling cigarettes  
7 to consumers within the State of Illinois (whether directly  
8 or through a distributor, retailer, or similar intermediary  
9 or intermediaries) after the effective date of this Act shall  
10 do one of the following:

11 (1) become a participating manufacturer (as that  
12 term is defined in Section II(jj) of the Master  
13 Settlement Agreement) and generally perform its  
14 financial obligations under the Master Settlement  
15 Agreement; or

16 (2) (A) place into a qualified escrow fund by April  
17 15 of the year following the year in question the  
18 following amounts (as such amounts are adjusted for  
19 inflation):

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

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

23 (iii) For each of 2001 and 2002:  
24 \$0.0136125 per unit sold;

25 (iv) For each of 2003 through 2006:  
26 \$0.0167539 per unit sold;

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

29 (B) A tobacco product manufacturer that places  
30 funds into escrow pursuant to subdivision (a)(2)(A)  
31 shall receive the interest or other appreciation on  
32 the funds as earned. The funds themselves shall be  
33 released from escrow only under the following

1 circumstances:

2 (i) to pay a judgment or settlement on  
3 any released claim brought against the tobacco  
4 product manufacturer by the State or any  
5 releasing party located or residing in the  
6 State. Funds shall be released from escrow  
7 under this subdivision (a)(2)(B)(i): (I) in  
8 the order in which they were placed into  
9 escrow; and (II) only to the extent and at the  
10 time necessary to make payments required under  
11 such judgment or settlement;

12 (ii) to the extent that a tobacco product  
13 manufacturer establishes that the amount it was  
14 required to place into escrow on account of  
15 units sold in the State in a particular year  
16 was greater than the Master Settlement  
17 Agreement payments, as determined pursuant to  
18 Section IX(i) of that Agreement, including  
19 after final determination of all adjustments,  
20 that such manufacturer would have been required  
21 to make on account of such units sold the  
22 State's allocable share of the total payments  
23 that such manufacturer would have been required  
24 to make in that year under the Master  
25 Settlement Agreement (as determined pursuant to  
26 Section IX(i)(2) of the Master Settlement  
27 Agreement, and before any of the adjustments or  
28 offsets described in Section IX(i)(3) of that  
29 Agreement other than the Inflation Adjustment)  
30 had it been a Participating Manufacturer, the  
31 excess shall be released from escrow and revert  
32 back to such tobacco product manufacturer; or

33 (iii) to the extent not released from  
34 escrow under subdivisions (a)(2)(B)(i) or

1 (a)(2)(B)(ii), funds shall be released from  
2 escrow and revert back to such tobacco product  
3 manufacturer 25 years after the date on which  
4 they were placed into escrow.

5 (C) Each tobacco product manufacturer that  
6 elects to place funds into escrow pursuant to this  
7 subdivision (a)(2) shall annually certify to the  
8 Attorney General that it is in compliance with this  
9 subdivision (a)(2). The Attorney General may bring  
10 a civil action on behalf of the State of Illinois  
11 against any tobacco product manufacturer that fails  
12 to place into escrow the funds required under this  
13 subdivision (a)(2). Any tobacco product  
14 manufacturer that fails in any year to place into  
15 escrow the funds required under this subdivision  
16 (a)(2) shall:

17 (i) be required within 15 days to place  
18 such funds into escrow as shall bring it into  
19 compliance with this Section. The court, upon  
20 a finding of a violation of this subdivision  
21 (a)(2), may impose a civil penalty to be paid  
22 into the General Revenue Fund in an amount not  
23 to exceed 5% of the amount improperly withheld  
24 from escrow per day of the violation and in a  
25 total amount not to exceed 100% of the original  
26 amount improperly withheld from escrow;

27 (ii) in the case of a knowing violation,  
28 be required within 15 days to place such funds  
29 into escrow as shall bring it into compliance  
30 with this Section. The court, upon a finding  
31 of a knowing violation of this subdivision  
32 (a)(2), may impose a civil penalty to be paid  
33 into the General Revenue Fund in an amount not  
34 to exceed 15% of the amount improperly withheld

1 from escrow per day of the violation and in a  
2 total amount not to exceed 300% of the original  
3 amount improperly withheld from escrow; and

4 (iii) in the case of a second knowing  
5 violation, be prohibited from selling  
6 cigarettes to consumers within the State of  
7 Illinois (whether directly or through a  
8 distributor, retailer, or similar intermediary)  
9 for a period not to exceed 2 years.

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

17 (Source: P.A. 91-41, eff. 6-30-99.)

18 (30 ILCS 168/20 new)

19 Sec. 20. If this amendatory Act of the 93rd General  
20 Assembly or any portion of the amendment to subdivision  
21 (2)(B)(ii) of subsection (a) of Section 15 made by this  
22 amendatory Act of the 93rd General Assembly is held by a  
23 court of competent jurisdiction to be unconstitutional, then  
24 such subdivision (2)(B)(ii) of subsection (a) of Section 15  
25 shall be deemed to be repealed in its entirety. If  
26 subdivision (2)(B)(ii) of subsection (a) of Section 15 shall  
27 thereafter be held by a court of competent jurisdiction to be  
28 unconstitutional, then this amendatory Act of the 93rd  
29 General Assembly shall be deemed repealed and subdivision  
30 (2)(B)(ii) of subsection (a) of Section 15 shall be restored  
31 as if no such amendments had been made. Neither any holding  
32 of unconstitutionality nor the repeal of subdivision  
33 (2)(B)(ii) of subsection (a) of Section 15 shall affect,

1 impair, or invalidate any other portion of Section 15 or the  
2 application of such Section to any other person or  
3 circumstance, and such remaining portions of Section 15 shall  
4 at all times continue in full force and effect.