

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 Sections 15 and  
6 30 as follows:

7 (30 ILCS 167/15)

8 Sec. 15. Certifications; directory; tax stamps.

9 (a) Every tobacco product manufacturer whose cigarettes  
10 are sold in this State whether directly or through a  
11 distributor, retailer, or similar intermediary or  
12 intermediaries shall execute and deliver on a form prescribed  
13 by the Attorney General a certification to the Attorney  
14 General, no later than the thirtieth day of April each year,  
15 certifying under penalty of perjury that, as of the date of the  
16 certification, the tobacco product manufacturer either: (i) is  
17 a participating manufacturer and has generally performed its  
18 financial obligations under the Master Settlement Agreement;  
19 or (ii) is in full compliance with the Escrow Act, including  
20 all quarterly installment payments.

21 (1) A participating manufacturer shall include in its  
22 certification a list of its brand families. The  
23 participating manufacturer shall update the list 30 days  
24 prior to any addition to or modification of its brand  
25 families by executing and delivering a supplemental  
26 certification to the Attorney General.

27 (2) A non-participating manufacturer shall include in  
28 its certification a complete list of all of its brand  
29 families: (i) separately listing brand families of  
30 cigarettes and the number of units sold for each brand  
31 family that were sold in the State during the preceding  
32 calendar year; (ii) listing all of its brand families that

1 have been sold in the State at any time during the current  
2 calendar year; (iii) indicating by an asterisk, any brand  
3 family sold in the State during the preceding calendar year  
4 that is no longer being sold in the State as of the date of  
5 the certification; and (iv) identifying by name and address  
6 any other manufacturer of the brand families in the  
7 preceding calendar year. The non-participating  
8 manufacturer shall update the list 30 days prior to any  
9 addition to or modification of its brand families by  
10 executing and delivering a supplemental certification to  
11 the Attorney General.

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

14 (A) that the non-participating manufacturer is  
15 registered to do business in this State or has  
16 appointed a resident agent for service of process and  
17 provided notice thereof as required by item 4 of  
18 subsection (a) of this Section;

19 (B) that the non-participating manufacturer has  
20 (i) established and continues to maintain a qualified  
21 escrow fund as that term is defined in Section 10 of  
22 the Escrow Act, and (ii) executed a qualified escrow  
23 agreement that has been reviewed and approved by the  
24 Attorney General and that governs the qualified escrow  
25 fund;

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

29 (D) the name, address and telephone number of the  
30 financial institution where the non-participating  
31 manufacturer has established the qualified escrow fund  
32 required pursuant to Section 15 of the Escrow Act and  
33 all regulations promulgated thereto;

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

36 (F) the amount the non-participating manufacturer

1 placed in the fund for cigarettes sold in the State  
2 during the preceding calendar year, including the  
3 dates and amount of each deposit, and such evidence or  
4 verification as may be deemed necessary by the Attorney  
5 General to confirm the foregoing; and

6 (G) the amounts of and dates of any withdrawal or  
7 transfer of funds the non-participating manufacturer  
8 made at any time from the fund or from any other  
9 qualified escrow fund into which it ever made escrow  
10 payments pursuant to Section 15 of the Escrow Act and  
11 all regulations promulgated thereto.

12 (4) A tobacco product manufacturer may not include a  
13 brand family in its certification unless: (i) in the case  
14 of a participating manufacturer, the participating  
15 manufacturer affirms that the brand family is to be deemed  
16 to be its cigarettes for purposes of calculating its  
17 payments under the master settlement agreement for the  
18 relevant year, in the volume and shares determined pursuant  
19 to the master settlement agreement; and (ii) in the case of  
20 a non-participating manufacturer, the non-participating  
21 manufacturer affirms that the brand family is to be deemed  
22 to be its cigarettes for purposes of Section 15 of the  
23 Escrow Act.

24 Nothing in this Section shall be construed as limiting  
25 or otherwise affecting the State's right to maintain that a  
26 brand family constitutes cigarettes of a different tobacco  
27 product manufacturer for purposes of calculating payments  
28 under the master settlement agreement or for purposes of  
29 Section 15 of the Escrow Act.

30 (5) The tobacco product manufacturers shall maintain  
31 all invoices and documentation of sales and other  
32 information relied upon for certification for a period of 5  
33 years, unless otherwise required by law to maintain them  
34 for a greater period of time.

35 (b) Not later than 6 months after the effective date of  
36 this Act, the Attorney General shall develop and make available

1 for public inspection, through publishing on its website, a  
2 directory listing all tobacco product manufacturers that have  
3 provided current and accurate certifications conforming to the  
4 requirements of subsection (a) of Section 15 and all brand  
5 families that are listed in the certifications, except for the  
6 following:

7 (1) The Attorney General shall not include or retain in  
8 the directory the name or brand families of any  
9 non-participating manufacturer that fails to provide the  
10 required certification or whose certification the Attorney  
11 General determines is not in compliance with subsections  
12 (a) (2) or (a) (3) of Section 15, unless the Attorney General  
13 has determined that the violation has been cured to the  
14 satisfaction of the Attorney General.

15 (2) Neither a tobacco product manufacturer nor brand  
16 family shall be included or retained in the directory if  
17 the Attorney General concludes that: (i) in the case of a  
18 non-participating manufacturer all escrow payments  
19 required pursuant to Section 15 of the Escrow Act for any  
20 period for any brand family, whether or not listed by the  
21 non-participating manufacturer, have not been fully paid  
22 into a qualified escrow fund governed by a qualified escrow  
23 agreement that has been approved by the Attorney General;  
24 or (ii) all outstanding final judgments, including  
25 interest thereon, for violations of Section 15 of the  
26 Escrow Act have not been fully satisfied for that brand  
27 family and manufacturer.

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

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

36 (e) It shall be unlawful for any person: (i) to affix a

1 stamp to a package or other container of cigarettes of a  
2 tobacco product manufacturer or brand family not included in  
3 the directory; or (ii) to sell, offer for sale, or possess for  
4 sale in this State, ~~or~~ or ~~(iii)~~ import for personal consumption in  
5 this State, cigarettes of a tobacco product manufacturer or  
6 brand family not included in the directory.

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

8 (30 ILCS 167/30)

9 Sec. 30. Penalties and other remedies.

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

25 (b) Any cigarettes that have been sold, offered for sale,  
26 or possessed for sale in this State, or imported for personal  
27 consumption in this State in violation of subsection (e) ~~(e)~~ of  
28 Section 15 shall be subject to seizure and forfeiture as  
29 provided in Sections 18, 18a, and 20 of the Cigarette Tax Act  
30 and Sections 24, 25, 25a and 26 of the Cigarette Use Tax Act,  
31 and all cigarettes so seized and forfeited shall be destroyed  
32 and not resold.

33 (c) The Attorney General may seek an injunction to restrain  
34 a threatened or actual violation of subsection (e) ~~(e)~~ of  
35 Section 15, subsection (a) of Section 25, or subsection (d) of

1 Section 25 by a stamping agent and to compel the stamping agent  
2 to comply with such subsections. In any action brought pursuant  
3 to this Section, the State shall be entitled to recover the  
4 costs of investigation, costs of the action, and reasonable  
5 attorney fees.

6 (d) It shall be unlawful for a person to: (i) sell or  
7 distribute cigarettes; or (ii) acquire, hold, own, possess,  
8 transport, import, or cause to be imported cigarettes that the  
9 person knows or should know are intended for distribution or  
10 sale in the State in violation of subsection (e) ~~(e)~~ of Section  
11 15. A violation of this Section shall be a Class 2 felony.

12 (e) A person who violates subsection (e) ~~(e)~~ of Section 15  
13 engages in an unfair and deceptive trade practice in violation  
14 of the Uniform Deceptive Trade Practices Act.

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