



Rep. Frank J. Mautino

Filed: 11/19/2008

09500SB0801ham004

LRB095 05480 HLH 53692 a

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 and by adding Section 13.7 as follows:

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

7 Sec. 2a. It is unlawful for any person to engage in the
8 business of selling tangible personal property at retail in
9 this State without a certificate of registration from the
10 Department. Application for a certificate of registration
11 shall be made to the Department upon forms furnished by it.
12 Each such application shall be signed and verified and shall
13 state: (1) the name and social security number of the
14 applicant; (2) the address of his principal place of business;
15 (3) the address of the principal place of business from which
16 he engages in the business of selling tangible personal

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 (35 ILCS 120/13.7 new)

11 Sec. 13.7. Rulemaking. Rulemaking authority to implement
12 this amendatory Act of the 95th General Assembly, if any, is
13 conditioned on the rules being adopted in accordance with all
14 provisions of the Illinois Administrative Procedure Act and all
15 rules and procedures of the Joint Committee on Administrative
16 Rules; any purported rule not so adopted, for whatever reason,
17 is unauthorized.

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

21 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

23 "Brand Style" means a variety of cigarettes distinguished

1 by the tobacco used, tar and nicotine content, flavoring used,
2 size of the cigarette, filtration on the cigarette or
3 packaging.

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

10 "Contraband cigarettes" means:

11 (a) cigarettes that do not bear a required tax stamp
12 under this Act;

13 (b) cigarettes for which any required federal taxes
14 have not been paid;

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

16 (d) cigarettes that are manufactured, fabricated,
17 assembled, processed, packaged, or labeled by any person
18 other than (i) the owner of the trademark rights in the
19 cigarette brand or (ii) a person that is directly or
20 indirectly authorized by such owner;

21 (e) cigarettes imported into the United States, or
22 otherwise distributed, in violation of the federal
23 Imported Cigarette Compliance Act of 2000 (Title IV of
24 Public Law 106-476); or

25 (f) cigarettes that have false manufacturing labels.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or
2 private corporation, however formed, limited liability
3 company, or a receiver, executor, administrator, trustee,
4 guardian or other representative appointed by order of any
5 court.

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 for 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 "Department" means the Department of Revenue.

23 "Sale" means any transfer, exchange or barter in any manner
24 or by any means whatsoever for a consideration, and includes
25 and means all sales made by any person.

26 "Original Package" means the individual packet, box or

1 other container whatsoever used to contain and to convey
2 cigarettes to the consumer.

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

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

12 (2) Any person who makes, manufactures or fabricates
13 cigarettes in this State for sale in this State, except a
14 person who makes, manufactures or fabricates cigarettes as a
15 part of a correctional industries program for sale to residents
16 incarcerated in penal institutions or resident patients of a
17 State-operated mental health facility.

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

24 "Place of business" shall mean and include any place where
25 cigarettes are sold or where cigarettes are manufactured,
26 stored or kept for the purpose of sale or consumption,

1 including any vessel, vehicle, airplane, train or vending
2 machine.

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

6 "Retailer" means any person who engages in the making of
7 transfers of the ownership of, or title to, cigarettes to a
8 purchaser for use or consumption and not for resale in any
9 form, for a valuable consideration. "Retailer" does not include
10 a person:

11 (1) who transfers to residents incarcerated in penal
12 institutions or resident patients of a State-operated
13 mental health facility ownership of cigarettes made,
14 manufactured, or fabricated as part of a correctional
15 industries program; or

16 (2) who transfers cigarettes to a not-for-profit
17 research institution that conducts tests concerning the
18 health effects of tobacco products and who does not offer
19 the cigarettes for resale.

20 "Retailer" shall be construed to include any person who
21 engages in the making of transfers of the ownership of, or
22 title to, cigarettes to a purchaser, for use or consumption by
23 any other person to whom such purchaser may transfer the
24 cigarettes without a valuable consideration, except a person
25 who transfers to residents incarcerated in penal institutions
26 or resident patients of a State-operated mental health facility

1 ownership of cigarettes made, manufactured or fabricated as
2 part of a correctional industries program.

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

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

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

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

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

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

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

18 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

19 Sec. 3. Affixing tax stamp; remitting tax to the
20 Department. Payment of the taxes imposed by Section 2 of this
21 Act shall (except as hereinafter provided) be evidenced by
22 revenue tax stamps affixed to each original package of
23 cigarettes. Each distributor of cigarettes, before delivering
24 or causing to be delivered any original package of cigarettes
25 in this State to a purchaser, shall firmly affix a proper stamp

1 or stamps to each such package, or (in case of manufacturers of
2 cigarettes in original packages which are contained inside a
3 sealed transparent wrapper) shall imprint the required
4 language on the original package of cigarettes beneath such
5 outside wrapper, as hereinafter provided. Any stamp required by
6 this Act shall note whether the State tax under Section 2 of
7 this Act (35 ILCS 130/2) was paid.

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

24 Only distributors licensed under this Act or out-of-state
25 manufacturers holding a permit under this Act may receive
26 unstamped packs of cigarettes. Prior to shipment to another

1 person, each licensed distributor or out-of-state manufacturer
2 holding a permit shall apply a stamp to each pack of cigarettes
3 imported, distributed, or sold whether or not such cigarettes
4 are subject to State tax under Section 2 of this Act (35 ILCS
5 130/2) or any other provision of State law, provided that a
6 distributor or out-of-state manufacturer may only apply a tax
7 stamp to a pack of cigarettes purchased or obtained directly
8 from a licensed distributor or an out-of-state manufacturer
9 holding a permit. Only a licensed distributor or an
10 out-of-state manufacturer holding a permit may ship or
11 otherwise cause to be delivered unstamped packs of cigarettes
12 in, into, or from this State, provided that a licensed
13 distributor or an out-of-state manufacturer holding a permit
14 may transport unstamped packs of cigarettes to a facility,
15 wherever located, owned by such distributor or manufacturer.
16 Any person that ships or otherwise causes to be delivered
17 unstamped packs of cigarettes into, within, or from this State
18 shall ensure that the invoice or equivalent documentation and
19 the bill of lading or freight bill for the shipment identifies
20 the true name and address of the cosignor or seller, the true
21 name and address of the consignee or purchaser, and the quantity
22 by brand style of the cigarettes so transported, provided that
23 this Section shall not be construed as to impose any
24 requirement or liability upon any common or contract carrier.

25 The Department, or any person authorized by the Department,
26 shall sell such stamps only to persons holding valid licenses

1 as distributors under this Act. On and after July 1, 2003,
2 payment for such stamps must be made by means of electronic
3 funds transfer. The Department may refuse to sell stamps to any
4 person who does not comply with the provisions of this Act.
5 Beginning on the effective date of this amendatory Act of the
6 92nd General Assembly and through June 30, 2002, persons
7 holding valid licenses as distributors may purchase cigarette
8 tax stamps up to an amount equal to 115% of the distributor's
9 average monthly cigarette tax stamp purchases over the 12
10 calendar months prior to the effective date of this amendatory
11 Act of the 92nd General Assembly.

12 Prior to December 1, 1985, the Department shall allow a
13 distributor 21 days in which to make final payment of the
14 amount to be paid for such stamps, by allowing the distributor
15 to make payment for the stamps at the time of purchasing them
16 with a draft which shall be in such form as the Department
17 prescribes, and which shall be payable within 21 days
18 thereafter: Provided that such distributor has filed with the
19 Department, and has received the Department's approval of, a
20 bond, which is in addition to the bond required under Section 4
21 of this Act, payable to the Department in an amount equal to
22 80% of such distributor's average monthly tax liability to the
23 Department under this Act during the preceding calendar year or
24 \$500,000, whichever is less. The Bond shall be joint and
25 several and shall be in the form of a surety company bond in
26 such form as the Department prescribes, or it may be in the

1 form of a bank certificate of deposit or bank letter of credit.
2 The bond shall be conditioned upon the distributor's payment of
3 amount of any 21-day draft which the Department accepts from
4 that distributor for the delivery of stamps to that distributor
5 under this Act. The distributor's failure to pay any such
6 draft, when due, shall also make such distributor automatically
7 liable to the Department for a penalty equal to 25% of the
8 amount of such draft.

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

1 \$750,000, whichever is less. The bond shall be joint and
2 several and shall be in the form of a surety company bond in
3 such form as the Department prescribes, or it may be in the
4 form of a bank certificate of deposit or bank letter of credit.
5 The bond shall be conditioned upon the distributor's payment of
6 the amount of any 30-day draft which the Department accepts
7 from that distributor for the delivery of stamps to that
8 distributor under this Act. The distributor's failure to pay
9 any such draft, when due, shall also make such distributor
10 automatically liable to the Department for a penalty equal to
11 25% of the amount of such draft.

12 Every prior continuous compliance taxpayer shall be exempt
13 from all requirements under this Section concerning the
14 furnishing of such bond, as defined in this Section, as a
15 condition precedent to his being authorized to engage in the
16 business licensed under this Act. This exemption shall continue
17 for each such taxpayer until such time as he may be determined
18 by the Department to be delinquent in the filing of any
19 returns, or is determined by the Department (either through the
20 Department's issuance of a final assessment which has become
21 final under the Act, or by the taxpayer's filing of a return
22 which admits tax to be due that is not paid) to be delinquent
23 or deficient in the paying of any tax under this Act, at which
24 time that taxpayer shall become subject to the bond
25 requirements of this Section and, as a condition of being
26 allowed to continue to engage in the business licensed under

1 this Act, shall be required to furnish bond to the Department
2 in such form as provided in this Section. Such taxpayer shall
3 furnish such bond for a period of 2 years, after which, if the
4 taxpayer has not been delinquent in the filing of any returns,
5 or delinquent or deficient in the paying of any tax under this
6 Act, the Department may reinstate such person as a prior
7 continuance compliance taxpayer. Any taxpayer who fails to pay
8 an admitted or established liability under this Act may also be
9 required to post bond or other acceptable security with the
10 Department guaranteeing the payment of such admitted or
11 established liability.

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

21 The Department shall discharge any surety and shall release
22 and return any bond or security deposited, assigned, pledged,
23 or otherwise provided to it by a taxpayer under this Section
24 within 30 days after:

25 (1) Such taxpayer becomes a prior continuous compliance
26 taxpayer; or

1 (2) Such taxpayer has ceased to collect receipts on which
2 he is required to remit tax to the Department, has filed a
3 final tax return, and has paid to the Department an amount
4 sufficient to discharge his remaining tax liability as
5 determined by the Department under this Act. The Department
6 shall make a final determination of the taxpayer's outstanding
7 tax liability as expeditiously as possible after his final tax
8 return has been filed. If the Department cannot make such final
9 determination within 45 days after receiving the final tax
10 return, within such period it shall so notify the taxpayer,
11 stating its reasons therefor.

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

26 Illinois cigarette manufacturers who place their

1 cigarettes in original packages which are contained inside a
2 sealed transparent wrapper, and similar out-of-State cigarette
3 manufacturers who elect to qualify and are accepted by the
4 Department as distributors under Section 4b of this Act, shall
5 pay the taxes imposed by this Act by remitting the amount
6 thereof to the Department by the 5th day of each month covering
7 cigarettes shipped or otherwise delivered in Illinois to
8 purchasers during the preceding calendar month. Such
9 manufacturers of cigarettes in original packages which are
10 contained inside a sealed transparent wrapper, before
11 delivering such cigarettes or causing such cigarettes to be
12 delivered in this State to purchasers, shall evidence their
13 obligation to remit the taxes due with respect to such
14 cigarettes by imprinting language to be prescribed by the
15 Department on each original package of such cigarettes
16 underneath the sealed transparent outside wrapper of such
17 original package, in such place thereon and in such manner as
18 the Department may designate. Such imprinted language shall
19 acknowledge the manufacturer's payment of or liability for the
20 tax imposed by this Act with respect to the distribution of
21 such cigarettes.

22 A distributor shall not affix, or cause to be affixed, any
23 stamp or imprint to a package of cigarettes, as provided for in
24 this Section, if the tobacco product manufacturer, as defined
25 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,
26 that made or sold the cigarettes has failed to become a

1 participating manufacturer, as defined in subdivision (a) (1)
2 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,
3 or has failed to create a qualified escrow fund for any
4 cigarettes manufactured by the tobacco product manufacturer
5 and sold in this State or otherwise failed to bring itself into
6 compliance with subdivision (a) (2) of Section 15 of the Tobacco
7 Product Manufacturers' Escrow Act.

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

10 (35 ILCS 130/3-10)

11 Sec. 3-10. Cigarette enforcement.

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

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

17 (A) any cigarettes the package of which:

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

25 (ii) does not comply with:

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

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

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

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

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

25 (2) to alter the package of any cigarettes, prior to
26 sale or distribution to the ultimate consumer, so as to

1 remove, conceal, or obscure:

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

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

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

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

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

20 (1) a copy of:

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

25 (B) the customs form containing, with respect to
26 the cigarettes, the internal revenue tax information

1 required by the U.S. Bureau of Alcohol, Tobacco and
2 Firearms;

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

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

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

23 (B) the provisions of Exhibit T of the Master
24 Settlement Agreement entered in the case of People of
25 the State of Illinois v. Philip Morris, et al. (Circuit
26 Court of Cook County, No. 96-L13146), including a

1 statement indicating whether the manufacturer is, or
2 is not, a participating tobacco manufacturer within
3 the meaning of Exhibit T.

4 (c) Administrative sanctions.

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

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

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

26 (e) Unfair cigarette sales. For purposes of the Trademark

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

9 (f) General provisions.

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

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

24 (3) In addition to any other remedy provided by law,
25 including enforcement as provided in subdivision (a)(1),
26 any person may bring an action for appropriate injunctive

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

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

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

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

12 (h) Applicability.

13 (1) This Section does not apply to:

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

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

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

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

1 (35 ILCS 130/3-15 new)

2 Sec. 3-15. Criminal penalties.

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

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

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

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

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

24 (4) For purposes of this Section, the term contraband
25 cigarettes includes cigarettes that have false manufacturing

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

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

13 (6) Criminal forfeiture.

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

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

25 (C) All cigarettes forfeited to this State under this
26 Section shall be destroyed. The Department may, prior to

1 any destruction of cigarettes, permit the true holder of
2 the trademark rights in the cigarette brand to inspect such
3 contraband cigarettes, in order to assist the Department in
4 any investigation regarding such cigarettes.

5 (35 ILCS 130/4) (from Ch. 120, par. 453.4)

6 Sec. 4. Distributor's license. No person may engage in
7 business as a distributor of cigarettes in this State within
8 the meaning of the first 2 definitions of distributor in
9 Section 1 of this Act without first having obtained a license
10 therefor from the Department. Application for license shall be
11 made to the Department in form as furnished and prescribed by
12 the Department. Each applicant for a license under this Section
13 shall furnish to the Department on the form signed and verified
14 by the applicant under penalty of perjury the following
15 information:

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

17 (b) The address of the location at which the applicant
18 proposes to engage in business as a distributor of
19 cigarettes in this State;

20 (c) Such other additional information as the
21 Department may lawfully require by its rules and
22 regulations.

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

1 serializing cigarette tax stamps. Each applicant for license
2 shall pay such fee to the Department at the time of submitting
3 his application for license to the Department.

4 Every applicant who is required to procure a distributor's
5 license shall file with his application a joint and several
6 bond. Such bond shall be executed to the Department of Revenue,
7 with good and sufficient surety or sureties residing or
8 licensed to do business within the State of Illinois, in the
9 amount of \$2,500, conditioned upon the true and faithful
10 compliance by the licensee with all of the provisions of this
11 Act. Such bond, or a reissue thereof, or a substitute therefor,
12 shall be kept in effect during the entire period covered by the
13 license. A separate application for license shall be made, a
14 separate annual license fee paid, and a separate bond filed,
15 for each place of business at which a person who is required to
16 procure a distributor's license under this Section proposes to
17 engage in business as a distributor in Illinois under this 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
23 under any Federal or State law, if the Department,
24 after investigation and a hearing, if requested by the
25 applicant, determines that such person has not been
26 sufficiently rehabilitated to warrant the public

1 trust;

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

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

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

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

22 (c) is a distributor who manufactures
23 cigarettes who is neither (i) a participating
24 manufacturer as defined in subsection II(jj) of
25 the "Master Settlement Agreement" as defined in
26 Sections 10 of the Tobacco Products Manufacturers'

1 Escrow Act and the Tobacco Products Manufacturers'
2 Escrow Enforcement Act of 2003 (30 ILCS 168/10 and
3 30 ILCS 167/10); nor (ii) in full compliance with
4 Tobacco Products Manufacturers' Escrow Act and the
5 Tobacco Products Manufacturers' Escrow Enforcement
6 Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

7 (d) has been found to have willfully imported
8 or caused to be imported into the United States for
9 sale or distribution any cigarette in violation of
10 19 U.S.C. 1681a;

11 (e) has been found to have willfully imported
12 or caused to be imported into the United States for
13 sale or distribution or manufactured for sale or
14 distribution in the United States any cigarette
15 that does not fully comply with the Federal
16 Cigarette Labeling and Advertising Act (15 U.S.C.
17 1331, et seq.); or

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

22 The Department, upon receipt of an application, license fee
23 and bond in proper form, from a person who is eligible to
24 receive a distributor's license under this Act, shall issue to
25 such applicant a license in form as prescribed by the
26 Department, which license shall permit the applicant to which

1 it is issued to engage in business as a distributor at the
2 place shown in his application. All licenses issued by the
3 Department under this Act shall be valid for not to exceed one
4 year after issuance unless sooner revoked, canceled or
5 suspended as provided in this Act. No license issued under this
6 Act is transferable or assignable. Such license shall be
7 conspicuously displayed in the place of business conducted by
8 the licensee in Illinois under such license. No distributor
9 licensee acquires any vested interest or compensable property
10 right in a license issued under this Act.

11 A licensed distributor shall notify the Department of any
12 change in the information contained on the application form,
13 including any change in ownership and shall do so within 30
14 days after any such change.

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

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

1 (35 ILCS 130/4d new)

2 Sec. 4d. Transactions only with licensed distributors,
3 out-of-state manufacturers holding a permit, and retailers
4 holding a certificate of registration. A distributor or
5 manufacturer may sell or distribute cigarettes to a person
6 located or doing business within this State only if such person
7 is a licensed distributor or a retailer holding a certificate
8 of registration. A retailer may only sell cigarettes obtained
9 from a licensed distributor or an out-of-state manufacturer
10 holding a permit.

11 (35 ILCS 130/20) (from Ch. 120, par. 453.20)

12 Sec. 20. Whenever any peace officer of the State or any
13 duly authorized officer or employee of the Department shall
14 have reason to believe that any violation of this Act has
15 occurred and that the person so violating the Act has in his,
16 her or its possession any original package of cigarettes, not
17 tax stamped or tax imprinted underneath the sealed transparent
18 wrapper of such original package as required by this Act, or
19 any vending device containing such original packages to which
20 stamps have not been affixed, or on which an authorized
21 substitute for stamps has not been imprinted underneath the
22 sealed transparent wrapper of such original packages, as
23 required by this Act, he may file or cause to be filed his
24 complaint in writing, verified by affidavit, with any court

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

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

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

1 ~~public advertisement, in such manner and for such terms as the~~
2 ~~Department, by rule, may prescribe.~~

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

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

10 (35 ILCS 130/21) (from Ch. 120, par. 453.21)

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

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

1 ~~Department, by rule, may prescribe.~~

2 (b) The Department may, prior to any destruction of
3 cigarettes, permit the true holder of the trademark rights in
4 the cigarette brand to inspect such contraband cigarettes in
5 order to assist the Department in any investigation regarding
6 such cigarettes. ~~If no complaint for review, as provided in~~
7 ~~Section 8 of this Act, has been filed within the time required~~
8 ~~by the Administrative Review Law, and if no stay order has been~~
9 ~~entered thereunder, the Department shall proceed to sell the~~
10 ~~property for the best price obtainable and shall forthwith pay~~
11 ~~over the proceeds of such sale to the State Treasurer. If the~~
12 ~~value of such property to be sold at any one time is \$500 or~~
13 ~~more, however, such property shall be sold only to the highest~~
14 ~~and best bidder on such terms and conditions and on open~~
15 ~~competitive bidding after public advertisement, in such manner~~
16 ~~and for such terms as the Department, by rule, may prescribe.~~

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

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

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

1 (35 ILCS 130/29.5 new)

2 Sec. 29.5. Rulemaking. Rulemaking authority to implement
3 this amendatory Act of the 95th General Assembly, if any, is
4 conditioned on the rules being adopted in accordance with all
5 provisions of the Illinois Administrative Procedure Act and all
6 rules and procedures of the Joint Committee on Administrative
7 Rules; any purported rule not so adopted, for whatever reason,
8 is unauthorized.

9 (35 ILCS 130/9c rep.)

10 (35 ILCS 130/28 rep.)

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

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

16 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

19 "Use" means the exercise by any person of any right or
20 power over cigarettes incident to the ownership or possession
21 thereof, other than the making of a sale thereof in the course
22 of engaging in a business of selling cigarettes and shall
23 include the keeping or retention of cigarettes for use.

1 "Brand Style" means a variety of cigarettes distinguished
2 by the tobacco used, tar and nicotine content, flavoring used,
3 size of the cigarette, filtration on the cigarette or
4 packaging.

5 "Cigarette" means any roll for smoking made wholly or in
6 part of tobacco irrespective of size or shape and whether or
7 not such tobacco is flavored, adulterated or mixed with any
8 other ingredient, and the wrapper or cover of which is made of
9 paper or any other substance or material except tobacco.

10 "Contraband cigarettes" means:

11 (a) cigarettes that do not bear a required tax stamp
12 under this Act;

13 (b) cigarettes for which any required federal taxes
14 have not been paid;

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

16 (d) cigarettes that are manufactured, fabricated,
17 assembled, processed, packaged, or labeled by any person
18 other than (i) the owner of the trademark rights in the
19 cigarette brand or (ii) a person that is directly or
20 indirectly authorized by such owner;

21 (e) cigarettes imported into the United States, or
22 otherwise distributed, in violation of the federal
23 Imported Cigarette Compliance Act of 2000 (Title IV of
24 Public Law 106-476); or

25 (f) cigarettes that have false manufacturing labels.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or
2 private corporation, however formed, limited liability
3 company, or a receiver, executor, administrator, trustee,
4 guardian or other representative appointed by order of any
5 court.

6 "Department" means the Department of Revenue.

7 "Sale" means any transfer, exchange or barter in any manner
8 or by any means whatsoever for a consideration, and includes
9 and means all sales made by any person.

10 "Original Package" means the individual packet, box or
11 other container whatsoever used to contain and to convey
12 cigarettes to the consumer.

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

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

22 b. Any person who makes, manufactures or fabricates
23 cigarettes in this State for sale, except a person who
24 makes, manufactures or fabricates cigarettes for sale to
25 residents incarcerated in penal institutions or resident
26 patients or a State-operated mental health facility.

1 c. Any person who makes, manufactures or fabricates
2 cigarettes outside this State, which cigarettes are placed
3 in original packages contained in sealed transparent
4 wrappers, for delivery or shipment into this State, and who
5 elects to qualify and is accepted by the Department as a
6 distributor under Section 7 of this Act.

7 "Distributor" does not include any person who transfers
8 cigarettes to a not-for-profit research institution that
9 conducts tests concerning the health effects of tobacco
10 products and who does not offer the cigarettes for resale.

11 "Distributor maintaining a place of business in this
12 State", or any like term, means any distributor having or
13 maintaining within this State, directly or by a subsidiary, an
14 office, distribution house, sales house, warehouse or other
15 place of business, or any agent operating within this State
16 under the authority of the distributor or its subsidiary,
17 irrespective of whether such place of business or agent is
18 located here permanently or temporarily, or whether such
19 distributor or subsidiary is licensed to transact business
20 within this State.

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

24 "Prior Continuous Compliance Taxpayer" means any person
25 who is licensed under this Act and who, having been a licensee
26 for a continuous period of 5 years, is determined by the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 1333; ~~or~~

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

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

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

13 (1) a copy of:

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

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

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

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

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

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

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

23 (c) Administrative sanctions.

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

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

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

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

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

1 outside of the ordinary channels of trade.

2 (f) General provisions.

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

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

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

1 sustained by reason of the violation.

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

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

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

5 (h) Applicability.

6 (1) This Section does not apply to:

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

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

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

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

20 (35 ILCS 135/3-15 new)

21 Sec. 3-15. Criminal penalties.

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

1 Class 3 felony.

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

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

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

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

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

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

6 (6) Criminal forfeiture.

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

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

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

24 (35 ILCS 135/4) (from Ch. 120, par. 453.34)

25 Sec. 4. Distributor's license. A distributor maintaining a

1 place of business in this State, if required to procure a
2 license or allowed to obtain a permit as a distributor under
3 the Cigarette Tax Act, need not obtain an additional license or
4 permit under this Act, but shall be deemed to be sufficiently
5 licensed or registered by virtue of his being licensed or
6 registered under the Cigarette Tax Act.

7 Every distributor maintaining a place of business in this
8 State, if not required to procure a license or allowed to
9 obtain a permit as a distributor under the Cigarette Tax Act,
10 shall make a verified application to the Department (upon a
11 form prescribed and furnished by the Department) for a license
12 to act as a distributor under this Act. In completing such
13 application, the applicant shall furnish such information as
14 the Department may reasonably require.

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. The applicant for license
19 shall pay such fee to the Department at the time of submitting
20 the application for license to the Department.

21 Such applicant shall file, with his application, a joint
22 and several bond. Such bond shall be executed to the Department
23 of Revenue, with good and sufficient surety or sureties
24 residing or licensed to do business within the State of
25 Illinois, in the amount of \$2,500, conditioned upon the true
26 and faithful compliance by the licensee with all of the

1 provisions of this Act. Such bond, or a reissue thereof, or a
2 substitute therefor, shall be kept in effect during the entire
3 period covered by the license. A separate application for
4 license shall be made, a separate annual license fee paid, and
5 a separate bond filed, for each place of business at or from
6 which the applicant proposes to act as a distributor under this
7 Act and for which the applicant is not required to procure a
8 license or allowed to obtain a permit as a distributor under
9 the Cigarette Tax Act.

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

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

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

19 (3) a corporation, if any officer, manager or director
20 thereof, or any stockholder or stockholders owning in the
21 aggregate more than 5% of the stock of such corporation,
22 would not be eligible to receive a license hereunder for
23 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 related
26 party who:

1 (a) owes, at the time of application, \$500 or more
2 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 the
7 past 2 years by the Department for willful misconduct
8 relating to stolen or contraband cigarettes or has been
9 convicted of a State or federal crime, punishable by
10 imprisonment of one year or more, relating to stolen or
11 contraband cigarettes;

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

23 (d) has been found to have willfully imported or
24 caused to be imported into the United States for sale
25 or distribution any cigarette in violation of 19 U.S.C.
26 1681a;

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

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

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

22 Any person aggrieved by any decision of the Department
23 under this Section may, within 20 days after notice of the
24 decision, protest and request a hearing. Upon receiving a
25 request for a hearing, the Department shall give notice to the
26 person requesting the hearing of the time and place fixed for

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

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

8 (35 ILCS 135/26) (from Ch. 120, par. 453.56)

9 Sec. 26. Whenever any peace officer of the State or any
10 duly authorized officer or employee of the Department shall
11 have reason to believe that any violation of this Act has
12 occurred and that the person so violating the Act has in his,
13 her or its possession any original package of cigarettes, not
14 tax stamped or tax imprinted underneath the sealed transparent
15 wrapper of such original packages, as required by this Act, or
16 any vending device containing such original packages to which
17 stamps have not been affixed, or on which an authorized
18 substitute for stamps has not been imprinted underneath the
19 sealed transparent wrapper of such original packages, as
20 required by this Act, he may file or cause to be filed his
21 complaint in writing, verified by affidavit, with any circuit
22 court within whose jurisdiction the premises to be searched are
23 situated, stating the facts upon which such belief is founded,
24 the premises to be searched, and the property to be seized, and
25 procure a search warrant and execute the same. Upon the

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

1 stamped or tax imprinted underneath the sealed transparent
2 wrapper of such original packages in accordance with the
3 provisions of this Act, judgment shall be entered confiscating
4 and forfeiting the property to the State and ordering its
5 delivery to the Department, and in addition thereto, the court
6 shall have power to tax and assess the costs of the
7 proceedings.

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

26 ~~Upon making such a sale of original packages of cigarettes~~

1 ~~which were not tax stamped or tax imprinted underneath the~~
2 ~~sealed transparent wrapper of such original packages as~~
3 ~~required by this Act, the Department shall affix a distinctive~~
4 ~~stamp to each of the original packages so sold indicating that~~
5 ~~the same are sold pursuant to the provisions of this Section.~~

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

7 (35 ILCS 135/27) (from Ch. 120, par. 453.57)

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

1 ~~open competitive bidding after public advertisement, in such~~
2 ~~manner and for such terms as the Department, by rule, may~~
3 ~~prescribe.~~

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

16 ~~Upon making a sale of unstamped original packages of~~
17 ~~cigarettes as provided in this Section, the Department shall~~
18 ~~affix a distinctive stamp to each of the original packages so~~
19 ~~sold indicating that the same are sold pursuant to the~~
20 ~~provisions of this Section.~~

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

22 (35 ILCS 135/35.5 new)

23 Sec. 35.5. Rulemaking. Rulemaking authority to implement
24 this amendatory Act of the 95th General Assembly, if any, is
25 conditioned on the rules being adopted in accordance with all

1 provisions of the Illinois Administrative Procedure Act and all
2 rules and procedures of the Joint Committee on Administrative
3 Rules; any purported rule not so adopted, for whatever reason,
4 is unauthorized.

5 Section 20. The Prevention of Cigarette Sales to Minors Act
6 is amended by changing Sections 5 and 10 and by adding Sections
7 2, 6, 7, 8, 9, 20, 25, 30, and 35 as follows:

8 (720 ILCS 678/2 new)

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

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

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

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

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

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

1 the buyer obtains possession of the cigarettes.

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

5 "Department" means the Department of Revenue.

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

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

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

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

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

26 "Shipping package" means a container in which packs or

1 cartons of cigarettes are shipped in connection with a delivery
2 sale.

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

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

10 (720 ILCS 678/5)

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

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

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

20 (2) ships them to an export warehouse proprietor
21 pursuant to Chapter 52 of the Internal Revenue Code, or an
22 operator of a customs bonded warehouse pursuant to Section
23 1311 or 1555 of Title 19 of the United States Code.

24 For purposes of this subsection (a), a person is a licensed
25 distributor if the person's name appears on a list of licensed

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

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

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

1 of age; that the cigarettes purchased are not intended for
2 consumption by an individual who is younger than 18 years of
3 age; and a written statement signed by the purchaser that
4 certifies the purchaser's address and that the purchaser is at
5 least 18 years of age. The statement shall also confirm: (1)
6 that the purchaser understands that signing another person's
7 name to the certification is illegal; (2) that the sale of
8 cigarettes to individuals under 18 years of age is illegal; and
9 (3) that the purchase of cigarettes by individuals under 18
10 years of age is illegal under the laws of Illinois.

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

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

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

1 (720 ILCS 678/6 new)

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

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

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

12 (720 ILCS 678/7 new)

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

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

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

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

23 and

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

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

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

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

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

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

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

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

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

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

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

1 written instrument in such consumer's name; and

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

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

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

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

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

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

17 (1) the statement is clear and conspicuous;

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

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

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

25 and

26 (5) for any printed material delivered by electronic

1 means, the statement appears at both the top and the bottom
2 of the electronic mail message or both the top and the
3 bottom of the Internet website homepage.

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

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

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

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

16 (720 ILCS 678/8 new)

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

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

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

25 (2) not later than the tenth day of each calendar

1 month, a memorandum or copy of the invoice for each and
2 every such delivery sale made during the previous calendar
3 month, which includes the following information:

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

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

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

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

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

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

22 (d) The Department is authorized to disclose to the
23 Attorney General any information received under this title and
24 requested by the Attorney General. The Department and the
25 Attorney General shall share with each other the information
26 received under this title and may share the information with

1 other federal, State, or local agencies for purposes of
2 enforcement of this title or the laws of the federal government
3 or of other states.

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

8 (720 ILCS 678/9 new)

9 Sec. 9. Statements for delivery sales.

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

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

20 (1) clear and conspicuous;

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

24 (3) printed in bold, capital letters;

25 (4) printed with a degree of color contrast between the

1 background and the printed statement that is no less than
2 the color contrast between the background and the largest
3 text used on the shipping label; and

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

6 (720 ILCS 678/10)

7 Sec. 10. Violation.

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

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

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

1 holder of the trademark rights in the cigarette brand to
2 inspect such contraband cigarettes, in order to assist the
3 Department in any investigation regarding such cigarettes.

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

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

13 (720 ILCS 678/20 new)

14 Sec. 20. Tip line.

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

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

1 (720 ILCS 678/25 new)

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

5 (720 ILCS 678/30 new)

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

11 (720 ILCS 678/35 new)

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

19 Section 99. Effective date. This Act takes effect January
20 1, 2010."