



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3145

Introduced 2/9/2010, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

See Index

Creates the Cigarette Delivery Sales Reporting Act. Imposes reporting requirements on persons who sell cigarettes for delivery by mail or a delivery service. Includes civil penalties for noncompliance. Amends the Cigarette Tax Act and the Tobacco Products Tax Act of 1995. Requires a retailer of cigarettes or tobacco products to obtain a retailer's license from the Department of Revenue; specifies qualifications, fees, and penalties for noncompliance; provides for mandatory suspension or revocation of a retailer's license for repeated violations of the Sale of Tobacco to Minors Act. Also makes changes in definitions, reporting requirements, and civil and criminal penalties. Amends the Illinois Lottery Law, the Department of Revenue Law of the Civil Administrative Code of Illinois, the Cigarette Use Tax Act, the Liquor Control Act of 1934, and the Sale of Tobacco to Minors Act to make corresponding changes.

LRB096 17769 ASK 33136 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning cigarettes and tobacco products.

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

4 Section 1. Short title. This Act may be cited as the
5 Cigarette Delivery Sales Reporting Act.

6 Section 5. Legislative findings and intent. The General
7 Assembly finds that consumers are using the Internet to
8 purchase cigarettes to avoid the taxes imposed by the State of
9 Illinois on sale and use of cigarettes. The General Assembly
10 further finds that because online sales have sharply risen over
11 the years there is a large and increasing loss of revenue to
12 the State caused by the evasion of sales and use taxes on
13 cigarettes shipped in interstate commerce to Illinois
14 customers. The General Assembly finds that to help identify
15 purchasers of cigarettes from out-of-state sellers, the
16 Department of Revenue uses information required to be provided
17 by the federal Jenkins Act (15 U.S.C. §§375-377) in order to
18 bill consumers for the taxes due. The General Assembly further
19 finds that many cigarette sellers do not comply with the
20 provisions of the Jenkins Act and that many other states, in
21 order to address this problem, have enacted their own reporting
22 laws intended to prevent further tax avoidance. Therefore, it
23 is intent of the General Assembly in enacting this Act to

1 facilitate the collection of all applicable State sales and use
2 taxes on cigarettes sold to residents of this State over the
3 Internet or by mail order by establishing a reporting
4 requirement for out-of-state cigarette sellers and penalties
5 for those persons who violate this Act.

6 Section 10. Definitions. As used in this Act, unless the
7 context otherwise requires:

8 "Cigarette" means any roll for smoking made wholly or in
9 part of tobacco, irrespective of size or shape and whether or
10 not the tobacco is flavored, adulterated, or mixed with any
11 other ingredient, and the wrapper or cover of which is made of
12 paper or any other substance or material except whole tobacco
13 leaf.

14 "Consumer" means an individual who is not a licensed
15 cigarette distributor or a licensed cigarette retailer.

16 "Delivery sale" means a sale of cigarettes to a consumer in
17 this State in which:

18 (1) the purchaser submits the order for the sale by
19 means of a telephone or other method of voice transmission,
20 a delivery service, or the Internet or other online
21 service; or

22 (2) the cigarettes are delivered by a delivery service.

23 "Delivery service" means any person that is engaged in the
24 commercial delivery of letters, packages, or other containers.

25 "Department" means the Department of Revenue.

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

6 "Person accepting a purchase order for a delivery sale"
7 means a person who fills a cigarette order given by a consumer
8 and processes the order for mail, shipping or other delivery,
9 or who contracts with another party to provide delivery service
10 to the purchaser.

11 "Purchase order" means a written or electronic document
12 authorizing a seller to provide cigarettes.

13 "Retail value" means the market price of the cigarettes
14 plus all applicable taxes at the location where the cigarettes
15 were mailed, shipped, or delivered.

16 Section 15. Delivery sales reporting requirements.

17 (a) Not later than the 15th day of each calendar month,
18 each person that has made a delivery sale of delivered, mailed,
19 or shipped cigarettes during the previous calendar month, or
20 contracted with another party for delivery service in
21 connection with a delivery sale made during the previous
22 calendar month, shall file a report with the Department. The
23 report shall contain the following information:

24 (1) the name, trade name, and address of the principal
25 place of business of the seller and any other place of

1 business of the seller;

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

4 (3) the brand or brands of cigarettes that were sold in
5 the delivery sale;

6 (4) the quantity of cigarettes that were sold in the
7 delivery sale; and

8 (5) such other information as the Department may
9 require by rule.

10 (b) A person that satisfies the requirements of 15 U.S.C.
11 376 is deemed to have met the requirements of this Section.

12 (c) The Department may adopt rules to authorize the
13 electronic filing of the report required under this Section.

14 Section 20. Penalties; seizure and forfeiture; hearings.

15 (a) The Department shall impose the following penalties for
16 each unreported sale of cigarettes:

17 (1) The first time a person violates Section 15 of
18 this Act, the person shall be subject to a civil penalty of
19 \$1,000 or five times the retail value of the cigarettes
20 involved in the violation, whichever is greater.

21 (2) In the case of a second or subsequent violation of
22 Section 15 of this Act, the person shall be subject to a
23 civil penalty of \$5,000 or five times the retail value of
24 the cigarettes involved in the violation, whichever is
25 greater.

1 (b) The penalties prescribed under this Section are in
2 addition to and not in lieu of any other penalty applicable
3 under the laws of this State.

4 (c) Any cigarettes sold or attempted to be sold in a
5 delivery sale that violates this Act may be seized by the
6 Department and are subject to forfeiture.

7 (d) Any person aggrieved by a Department decision may,
8 within 30 days after notice of that decision, protest in
9 writing and request a hearing. The Department shall give notice
10 to the person of the time and place for the hearing and shall
11 hold a hearing before it issues a final administrative
12 decision. In the absence of a protest and request for a hearing
13 within 30 days, the Department's decision shall become final
14 without any further determination being made or notice given.

15 Section 25. Enforcement. All enforcement proceedings under
16 this Act shall be instituted by the Attorney General at the
17 request of the Department to require compliance with this Act,
18 to recover civil penalties authorized under Section 20 of this
19 Act, and to seek any other remedy as provided by law.

20 Section 30. Rules. The Department may adopt rules to
21 implement, administer and enforce this Act.

22 Section 905. The Department of Revenue Law of the Civil
23 Administrative Code of Illinois is amended by changing Section

1 2505-380 as follows:

2 (20 ILCS 2505/2505-380) (was 20 ILCS 2505/39b47)

3 Sec. 2505-380. Revocation of or refusal to issue a
4 certificate of registration, permit, or license. The
5 Department has the power to refuse to issue or reissue or,
6 after notice and an opportunity for a hearing, to revoke a
7 certificate of registration, permit, or license issued or
8 authorized to be issued by the Department if the applicant for
9 or holder of the certificate of registration, permit, or
10 license fails to file a return, or to pay the tax, fee,
11 penalty, or interest shown in a filed return, or to pay any
12 final assessment of tax, fee, penalty, or interest, as required
13 by the tax or fee Act under which the certificate of
14 registration, permit, or license is required or any other tax
15 or fee Act administered by the Department.

16 The procedure for notice and hearing prior to revocation
17 shall be as provided under the Act pursuant to which the
18 certificate of registration, permit, or license was issued.

19 (Source: P.A. 91-239, eff. 1-1-00.)

20 Section 910. The Cigarette Tax Act is amended by changing
21 Sections 1, 3-10, 6, 7, 8, 10, 11, 18b, 23, and 24 and by adding
22 Sections 4e, 4f and 26a as follows:

23 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

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

11 "Contraband cigarettes" means:

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

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

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

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

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

26 (f) cigarettes that have false manufacturing labels;

1 (g) cigarettes identified in Section 3-10(a)(1) of
2 this Act; or

3 (h) cigarettes that are improperly tax stamped,
4 including cigarettes that bear a tax stamp of another state
5 or taxing jurisdiction.

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

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

1 effective date of this amendatory Act of 1987.

2 "Department" means the Department of Revenue.

3 "Sale" means any transfer, exchange or barter in any manner
4 or by any means whatsoever for a consideration, and includes
5 and means all sales made by any person.

6 "Original Package" means the individual ~~packet, box or~~
7 ~~other~~ container ~~whatsoever~~ used to contain and to convey
8 cigarettes to the consumer upon which a tax stamp or other
9 indicia of tax payment is or should be affixed.

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

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

19 (2) Any person who makes, manufactures or fabricates
20 cigarettes in this State for sale in this State, except a
21 person who makes, manufactures or fabricates cigarettes as a
22 part of a correctional industries program for sale to residents
23 incarcerated in penal institutions or resident patients of a
24 State-operated mental health facility.

25 (3) Any person who makes, manufactures or fabricates
26 cigarettes outside this State, which cigarettes are placed in

1 original packages contained in sealed transparent wrappers,
2 for delivery or shipment into this State, and who elects to
3 qualify and is accepted by the Department as a distributor
4 under Section 4b of this Act.

5 "Distributor" does not include any person with respect to a
6 sale of cigarettes to a purchaser for use or consumption, and
7 not for resale.

8 "Place of business" shall mean and include any place where
9 cigarettes are sold or where cigarettes are manufactured,
10 stored or kept for the purpose of sale or consumption,
11 including any vessel, vehicle, airplane, train or vending
12 machine.

13 "Business" means any trade, occupation, activity or
14 enterprise engaged in for the purpose of selling cigarettes in
15 this State.

16 "Retailer" means any person who engages in the making of
17 transfers of the ownership of, or title to, cigarettes to a
18 purchaser for use or consumption and not for resale in any
19 form, for a valuable consideration. "Retailer" does not include
20 a person:

21 (1) who transfers to residents incarcerated in penal
22 institutions or resident patients of a State-operated
23 mental health facility ownership of cigarettes made,
24 manufactured, or fabricated as part of a correctional
25 industries program; or

26 (2) who transfers cigarettes to a not-for-profit

1 research institution that conducts tests concerning the
2 health effects of tobacco products and who does not offer
3 the cigarettes for resale.

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

13 "Stamp" or "stamps" mean the indicia required to be affixed
14 on a pack of cigarettes that evidence payment of the tax on
15 cigarettes under Section 2 of this Act.

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

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

19 (b) is legally recognized as a partner in business.

20 "Unstamped package of cigarettes" means a package of
21 cigarettes that does not bear a tax stamp as required by this
22 Act, including a package of cigarettes that bears a tax stamp
23 of another state or taxing jurisdiction, a package of
24 cigarettes that bears a counterfeit tax stamp, and a stamped or
25 unstamped package of cigarettes that is marked "Not for sale in
26 the United States".

1 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
2 96-782, eff. 1-1-10.)

3 (35 ILCS 130/3-10)

4 Sec. 3-10. Cigarette enforcement.

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

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

10 (A) any cigarettes the package of which:

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

18 (ii) does not comply with:

19 (aa) all requirements imposed by or
20 pursuant to federal law regarding warnings and
21 other information on packages of cigarettes
22 manufactured, packaged, or imported for sale,
23 distribution, or use in the United States,
24 including but not limited to the precise
25 warning labels specified in the federal

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).

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

11 (1) a copy of:

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

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

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

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

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

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

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

21 (b-5) Criminal penalties. A person who violates subsection
22 (a) or subsection (b) of this Section shall be guilty of a
23 Class 4 felony.

24 (c) Administrative sanctions.

25 (1) Upon finding that a distributor or retailer ~~person~~
26 has committed any of the acts prohibited by subsection (a),

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

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

19 (d) Unfair trade practices. In addition to any other
20 penalties provided for in this Act, a violation of subsection
21 (a) or subsection (b) of this Section shall constitute an
22 unlawful practice as provided in the Consumer Fraud and
23 Deceptive Business Practices Act.

24 (d-1) Retailers shall not be liable under subsections
25 (c)(1) and (d) of this Section for unknowingly possessing,
26 selling, or distributing to consumers or users cigarettes

1 identified in subsection (a)(1) of this Section if the
2 cigarettes possessed, sold, or distributed by the retailer were
3 obtained from a distributor licensed under this Act.

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

13 (f) General provisions.

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

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

1 other state or any local agency of any other state.

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

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

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

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

16 (h) Applicability.

17 (1) This Section does not apply to:

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

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

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

4 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

5 (35 ILCS 130/4e new)

6 Sec. 4e. Retailer's License.

7 (a) Commencing January 1, 2011, no person may engage in
8 business as a retailer of cigarettes in this State without
9 first having obtained a retailer's license from the Department.
10 Application for a license shall be made to the Department in
11 form as furnished and prescribed by the Department. Each
12 applicant for a license under this Section shall furnish to the
13 Department on the form signed and verified by the applicant the
14 following information:

15 (1) the name and address of the applicant;

16 (2) the address of the location at which the applicant
17 proposes to engage in business as a retailer of cigarettes
18 in this State; and

19 (3) such other additional information as the
20 Department may lawfully require by its rules and
21 regulations.

22 (b) The annual license fee payable to the Department for
23 each retailer's license shall be \$250. The fee will be placed
24 into the Tax Compliance and Administration Fund and used
25 towards the cost of retail inspections. Each applicant for a

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

3 (c) The Department may, in its discretion, require an
4 applicant who is required to procure a retailer's license to
5 file with the application a joint and several bond. If
6 required, such bond shall be executed to the Department of
7 Revenue, with good and sufficient surety or sureties residing
8 or licensed to do business within the State of Illinois, in an
9 amount of not less than \$2,500, conditioned upon the true and
10 faithful compliance by the licensee with all of the provisions
11 of this Act. If required, such bond, or a reissue thereof, or a
12 substitute therefor, shall be kept in effect during the entire
13 period covered by the license. A separate application for
14 license shall be made, a separate annual license fee paid, and,
15 if required, a separate bond filed, for each place of business
16 at which a person who is required to procure a retailer's
17 license under this Section proposes to engage in business as a
18 retailer in Illinois under this Act.

19 The following are ineligible to receive a retailer's
20 license under this Act:

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

23 (2) a person who has been convicted of a felony under
24 any federal or State law, if the Department, after
25 investigation and a hearing, if requested by the applicant,
26 determines that the person has not been sufficiently

1 rehabilitated to warrant the public trust;

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

7 (4) a person who possesses a distributor's license
8 under Section 4 of this Act or a distributor's license
9 under Section 4b of this Act.

10 (d) The Department, upon receipt of an application, license
11 fee, and bond in proper form from a person who is eligible to
12 receive a retailer's license under this Act, shall issue to the
13 applicant a license in form as prescribed by the Department,
14 which license shall permit the applicant to engage in business
15 as a retailer under this Act at the place shown in the
16 application. All licenses issued by the Department under this
17 Section shall be valid for not to exceed one year after
18 issuance unless sooner revoked, canceled or suspended as
19 provided in this Act. No license issued under this Section is
20 transferable or assignable. The license shall be conspicuously
21 displayed in the place of business conducted by the licensee in
22 Illinois under the license. The Department shall not issue a
23 license to a retailer unless the retailer is also validly
24 registered under the Retailers' Occupation Tax Act. A person
25 who obtains a license as a retailer and then ceases to do
26 business as specified in the license, or who does not commence

1 business, or who obtains a distributor's license, or whose
2 license is suspended or revoked, shall immediately surrender
3 the license to the Department.

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

15 (35 ILCS 130/4f new)

16 Sec. 4f. Purchases of Cigarettes by Licensed Retailers. A
17 person who possesses a retailer's license under Section 4d of
18 this Act shall obtain cigarettes for sale only from a licensed
19 distributor.

20 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

21 Sec. 6. Revocation, cancellation, or suspension of
22 license.

23 (a) The Department may, after notice and hearing as
24 provided for by this Act, revoke, cancel or suspend the license

1 of any distributor or retailer for the violation of any
2 provision of this Act, or for noncompliance with any provision
3 herein contained, or for any noncompliance with any lawful rule
4 or regulation promulgated by the Department under Section 8 of
5 this Act or under the Department of Revenue Law, or because the
6 licensee is determined to be ineligible for a distributor's
7 license for any one or more of the reasons provided for in
8 Section 4 of this Act, or because the licensee has been
9 determined to be ineligible for a retailer's license for any
10 one or more of the reasons provided for in Section 4d of this
11 Act. However, no such license shall be revoked, cancelled or
12 suspended, except after a hearing by the Department with notice
13 to the distributor or retailer, as aforesaid, and affording
14 such distributor or retailer a reasonable opportunity to appear
15 and defend, and any distributor or retailer aggrieved by any
16 decision of the Department with respect thereto may have the
17 determination of the Department judicially reviewed, as herein
18 provided.

19 (a-5) The Department may revoke, cancel, or suspend the
20 license of any distributor for a violation of the Tobacco
21 Product Manufacturers' Escrow Enforcement Act as provided in
22 Section 20 of that Act.

23 (a-10) The Department shall suspend for 7 days the license
24 of a retailer for a first violation of the Sale of Tobacco to
25 Minors Act, as provided in Section 3 of that Act.

26 The Department shall suspend for 30 days the license of a

1 retailer for a second violation of the Sale of Tobacco to
2 Minors Act, as provided in Section 3 of that Act.

3 The Department shall revoke the license of a retailer for a
4 third or subsequent violation of the Sale of Tobacco to Minors
5 Act, as provided in Section 3 of that Act.

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

20 (c) No license so revoked, as aforesaid, shall be reissued
21 to any such distributor or retailer within a period of 6 months
22 after the date of the final determination of such revocation.
23 No such license shall be reissued at all so long as the person
24 who would receive a distributor's ~~the~~ license is ineligible to
25 receive a distributor's license under this Act for any one or
26 more of the reasons provided for in Section 4 of this Act, or

1 so long as the person who would receive a retailer's license is
2 ineligible to receive a retailer's license under this Act for
3 any one or more of the reasons provided for in Section 4d of
4 this Act.

5 (d) The Department upon complaint filed in the circuit
6 court may by injunction restrain any person who fails, or
7 refuses, to comply with any of the provisions of this Act from
8 acting as a distributor of cigarettes in this State.

9 (Source: P.A. 91-901, eff. 1-1-01; 92-737, eff. 7-25-02.)

10 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

11 Sec. 7. The Department or any officer or employee of the
12 Department designated, in writing, by the Director thereof,
13 shall at its or his or her own instance, or on the written
14 request of any distributor, retailer, or other interested party
15 to the proceeding, issue subpoenas requiring the attendance of
16 and the giving of testimony by witnesses, and subpoenas duces
17 tecum requiring the production of books, papers, records or
18 memoranda. All subpoenas and subpoenas duces tecum issued under
19 the terms of this Act may be served by any person of full age.
20 The fees of witnesses for attendance and travel shall be the
21 same as the fees of witnesses before the circuit court of this
22 State; such fees to be paid when the witness is excused from
23 further attendance. When the witness is subpoenaed at the
24 instance of the Department or any officer or employee thereof,
25 such fees shall be paid in the same manner as other expenses of

1 the Department, and when the witness is subpoenaed at the
2 instance of any other party to any such proceeding, the cost of
3 service of the subpoena or subpoena duces tecum and the fee of
4 the witness shall be borne by the party at whose instance the
5 witness is summoned. In such case the Department, in its
6 discretion, may require a deposit to cover the cost of such
7 service and witness fees. A subpoena or subpoena duces tecum so
8 issued shall be served in the same manner as a subpoena or
9 subpoena duces tecum issued out of a court.

10 Any circuit court of this State, upon the application of
11 the Department or any officer or employee thereof, or upon the
12 application of any other party to the proceeding, may, in its
13 discretion, compel the attendance of witnesses, the production
14 of books, papers, records or memoranda and the giving of
15 testimony before the Department or any officer or employee
16 thereof conducting an investigation or holding a hearing
17 authorized by this Act, by an attachment for contempt, or
18 otherwise, in the same manner as production of evidence may be
19 compelled before the court.

20 The Department or any officer or employee thereof, or any
21 other party in an investigation or hearing before the
22 Department, may cause the depositions of witnesses within the
23 State to be taken in the manner prescribed by law for like
24 depositions, or depositions for discovery in civil actions in
25 courts of this State, and to that end compel the attendance of
26 witnesses and the production of books, papers, records or

1 memoranda, in the same manner hereinbefore provided.

2 (Source: P.A. 83-334.)

3 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

4 Sec. 8. The Department may make, promulgate and enforce
5 such reasonable rules and regulations relating to the
6 administration and enforcement of this Act as may be deemed
7 expedient.

8 Whenever notice is required by this Act, such notice may be
9 given by United States certified or registered mail, addressed
10 to the person concerned at his last known address, and proof of
11 such mailing shall be sufficient for the purposes of this Act.
12 Notice of any hearing provided for by this Act shall be so
13 given not less than 7 days prior to the day fixed for the
14 hearing.

15 Hearings provided for in this Act shall be held:

16 (1) In Cook County, if the taxpayer's principal place of
17 business is in that county;

18 (2) At the Department's office nearest the taxpayer's
19 principal place of business, if the taxpayer's principal place
20 of business is in Illinois but outside Cook County;

21 (3) In Sangamon County, if the taxpayer's principal place
22 of business is outside Illinois.

23 The Circuit Court of the County wherein the hearing is held
24 has power to review all final administrative decisions of the
25 Department in administering this Act. The provisions of the

1 Administrative Review Law, and all amendments and
2 modifications thereof, and the rules adopted pursuant thereto,
3 shall apply to and govern all proceedings for the judicial
4 review of final administrative decisions of the Department
5 under this Act. The term "administrative decision" is defined
6 as in Section 3-101 of the Code of Civil Procedure.

7 Service upon the Director of Revenue or Assistant Director
8 of Revenue of summons issued in any action to review a final
9 administrative decision shall be service upon the Department.
10 The Department shall certify the record of its proceedings if
11 the distributor or retailer pays to it the sum of 75¢ per page
12 of testimony taken before the Department and 25¢ per page of
13 all other matters contained in such record, except that these
14 charges may be waived where the Department is satisfied that
15 the aggrieved party is a poor person who cannot afford to pay
16 such charges. Before the delivery of such record to the person
17 applying for it, payment of these charges must be made, and if
18 the record is not paid for within 30 days after notice that
19 such record is available, the complaint may be dismissed by the
20 court upon motion of the Department.

21 No stay order shall be entered by the Circuit Court unless
22 the distributor or retailer files with the court a bond in an
23 amount fixed and approved by the court, to indemnify the State
24 against all loss and injury which may be sustained by it on
25 account of the review proceedings and to secure all costs which
26 may be occasioned by such proceedings.

1 Whenever any proceeding provided by this Act is begun
2 before the Department, either by the Department or by a person
3 subject to this Act, and such person thereafter dies or becomes
4 a person under legal disability before such proceeding is
5 concluded, the legal representative of the deceased person or
6 of the person under legal disability shall notify the
7 Department of such death or legal disability. Such legal
8 representative, as such, shall then be substituted by the
9 Department for such person. If the legal representative fails
10 to notify the Department of his or her appointment as such
11 legal representative, the Department may, upon its own motion,
12 substitute such legal representative in the proceeding pending
13 before the Department for the person who died or became a
14 person under legal disability.

15 (Source: P.A. 83-706.)

16 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

17 Sec. 10. The Department, or any officer or employee
18 designated in writing by the Director thereof, for the purpose
19 of administering and enforcing the provisions of this Act, may
20 hold investigations and hearings concerning any matters
21 covered by this Act, and may examine books, papers, records or
22 memoranda bearing upon the sale or other disposition of
23 cigarettes by such distributor or retailer, and may issue
24 subpoenas requiring the attendance of such distributor or
25 retailer, or any officer or employee of such distributor or

1 retailer, or any person having knowledge of the facts, and may
2 take testimony and require proof, and may issue subpoenas duces
3 tecum to compel the production of relevant books, papers,
4 records and memoranda, for the information of the Department.

5 In the conduct of any investigation or hearing provided for
6 by this Act, neither the Department, nor any officer or
7 employee thereof, shall be bound by the technical rules of
8 evidence, and no informality in the proceedings nor in the
9 manner of taking testimony shall invalidate any rule, order,
10 decision or regulation made, approved or confirmed by the
11 Department.

12 The Director of Revenue, or any duly authorized officer or
13 employee of the Department, shall have the power to administer
14 oaths to such persons required by this Act to give testimony
15 before the said Department.

16 The books, papers, records and memoranda of the Department,
17 or parts thereof, may be proved in any hearing, investigation
18 or legal proceeding by a reproduced copy thereof under the
19 certificate of the Director of Revenue. Such reproduced copy
20 shall, without further proof, be admitted into evidence before
21 the Department or in any legal proceeding.

22 (Source: Laws 1965, p. 192.)

23 (35 ILCS 130/11) (from Ch. 120, par. 453.11)

24 Sec. 11. Every distributor and every retailer of
25 cigarettes, who is required to procure a license under this

1 Act, shall keep within Illinois, at his licensed address,
2 complete and accurate records of cigarettes held, purchased,
3 manufactured, brought in or caused to be brought in from
4 without the State, and sold, or otherwise disposed of, and
5 shall preserve and keep within Illinois at his licensed address
6 all invoices, bills of lading, sales records, copies of bills
7 of sale, inventory at the close of each period for which a
8 return is required of all cigarettes on hand and of all
9 cigarette revenue stamps, both affixed and unaffixed, and other
10 pertinent papers and documents relating to the manufacture,
11 purchase, sale or disposition of cigarettes. All books and
12 records and other papers and documents that are required by
13 this Act to be kept shall be kept in the English language, and
14 shall, at all times during the usual business hours of the day,
15 be subject to inspection by the Department or its duly
16 authorized agents and employees. The Department may adopt rules
17 that establish requirements, including record forms and
18 formats, for records required to be kept and maintained by
19 taxpayers. For purposes of this Section, "records" means all
20 data maintained by the taxpayer, including data on paper,
21 microfilm, microfiche or any type of machine-sensible data
22 compilation. Those books, records, papers and documents shall
23 be preserved for a period of at least 3 years after the date of
24 the documents, or the date of the entries appearing in the
25 records, unless the Department, in writing, authorizes their
26 destruction or disposal at an earlier date. At all times during

1 the usual business hours of the day any duly authorized agent
2 or employee of the Department may enter any place of business
3 of the distributor or retailer, without a search warrant, and
4 inspect the premises and the stock or packages of cigarettes
5 and the vending devices therein contained, to determine whether
6 any of the provisions of this Act are being violated. If such
7 agent or employee is denied free access or is hindered or
8 interfered with in making such examination as herein provided,
9 the license of the distributor or retailer at such premises
10 shall be subject to revocation by the Department.

11 (Source: P.A. 88-480.)

12 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

13 Sec. 18b. Possession of more than 100 original packages of
14 contraband cigarettes; penalty. Any person licensed or
15 required to be licensed as a retailer under this Act possessing
16 original packages of unstamped packages of cigarettes is liable
17 to pay to the Department, for deposit into the Tax Compliance
18 and Administration Fund, a penalty for each such package of
19 cigarettes, unless reasonable cause for possessing said
20 unstamped packages of cigarettes can be established by the
21 person upon whom the penalty is imposed. The penalty shall be
22 \$15 per package for possession of less than 101 packages and
23 \$25 for possession of each package in excess of 100 packages.
24 ~~With the exception of licensed distributors and transporters,~~
25 ~~as defined in Section 9c of this Act, possessing unstamped~~

1 ~~original packages of cigarettes, and licensed distributors~~
2 ~~possessing original packages of cigarettes that bear a tax~~
3 ~~stamp of another state or taxing jurisdiction, anyone~~
4 ~~possessing contraband cigarettes contained in original~~
5 ~~packages is liable to pay, to the Department for deposit in the~~
6 ~~Tax Compliance and Administration Fund, a penalty of \$25 for~~
7 ~~each such package of cigarettes in excess of 100 packages,~~
8 ~~unless reasonable cause can be established by the person upon~~
9 ~~whom the penalty is imposed.~~ This penalty is in addition to the
10 taxes imposed by this Act. Such penalty may be recovered by the
11 Department in a civil action. Reasonable cause shall be
12 determined in each situation in accordance with rules adopted
13 by the Department. The provisions of the Uniform Penalty and
14 Interest Act do not apply to this Section.

15 (Source: P.A. 96-782, eff. 1-1-10.)

16 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

17 Sec. 23. Every distributor, retailer, or other person who
18 shall knowingly and wilfully sell or offer for sale any
19 original package, as defined in this Act, having affixed
20 thereto any fraudulent, spurious, imitation or counterfeit
21 stamp, or stamp which has been previously affixed, or affixes a
22 stamp which has previously been affixed to an original package,
23 or who shall knowingly and wilfully sell or offer for sale any
24 original package, as defined in this Act, having imprinted
25 thereon underneath the sealed transparent wrapper thereof any

1 fraudulent, spurious, imitation or counterfeit tax imprint,
2 shall be deemed guilty of a Class 2 felony.

3 (Source: P.A. 83-1428.)

4 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

5 Sec. 24. Punishment for sale or possession of packages of
6 contraband cigarettes.

7 (a) Any person licensed or required to be licensed as a
8 retailer under this Act, other than a person licensed as a
9 distributor or a transporter, as defined in Section 9c of this
10 Act, who has in his possession, offers for sale, or sells 100
11 or fewer original packages of unstamped packages of cigarettes,
12 shall be guilty of a Class A misdemeanor for a first offense
13 and a Class 4 felony for each subsequent offense.

14 (b) Any person licensed or required to be licensed as a
15 retailer under this Act, other than a person licensed as a
16 distributor or a transporter, as defined in Section 9c of this
17 Act, who has in his possession, offers for sale or sells more
18 than 100 but fewer than 1001 original packages of unstamped
19 packages of cigarettes, shall be guilty of a Class 4 felony.

20 (c) Any person licensed or required to be licensed as a
21 retailer under this Act, other than a person licensed as a
22 distributor or a transporter, as defined in Section 9c of this
23 Act, who has in his possession, offers for sale or sells more
24 than 1000 original packages of unstamped packages of
25 cigarettes, shall be guilty of a Class 3 felony.

1 (d) If a retailer possesses more than 100 original packages
2 of unstamped packages of cigarettes, the prima facie
3 presumption shall arise that the retailer was offering the
4 original packages of unstamped packages of cigarettes for sale.
5 If more than 100 original packages of unstamped packages of
6 cigarettes are found at a location, the prima facie presumption
7 shall arise that the retailer is in possession of the original
8 packages of unstamped packages of cigarettes.

9 (e) Any person licensed as a distributor or transporter, as
10 defined in Section 9c of this Act, who sells an original
11 package of an unstamped package of cigarettes, except when the
12 sale is made under such circumstances that the tax imposed by
13 this Act may not legally be levied because of the Constitution
14 or laws of the United States, shall be guilty of a Class 3
15 felony.

16 ~~(a) Possession or sale of 100 or less packages of~~
17 ~~contraband cigarettes. With the exception of licensed~~
18 ~~distributors or transporters, as defined in Section 9c of this~~
19 ~~Act, any person who has in his or her possession or sells 100~~
20 ~~or less original packages of contraband cigarettes is guilty of~~
21 ~~a Class A misdemeanor.~~

22 ~~(b) Possession or sale of more than 100 but less than 251~~
23 ~~packages of contraband cigarettes. With the exception of~~
24 ~~licensed distributors or transporters, as defined in Section 9c~~
25 ~~of this Act, any person who has in his or her possession or~~
26 ~~sells more than 100 but less than 251 original packages of~~

1 ~~contraband cigarettes is guilty of a Class A misdemeanor for a~~
2 ~~first offense and a Class 4 felony for each subsequent offense.~~

3 ~~(c) Possession or sale of more than 250 but less than 1,001~~
4 ~~packages of contraband cigarettes. With the exception of~~
5 ~~licensed distributors or transporters, as defined in Section 9c~~
6 ~~of this Act, any person who has in his or her possession or~~
7 ~~sells more than 250 but less than 1,001 original packages of~~
8 ~~contraband cigarettes is guilty of a Class 4 felony.~~

9 ~~(d) Possession or sale of more than 1,000 packages of~~
10 ~~contraband cigarettes. With the exception of licensed~~
11 ~~distributors or transporters, as defined in Section 9c of this~~
12 ~~Act, any person who has in his or her possession or sells more~~
13 ~~than 1,000 original packages of contraband cigarettes is guilty~~
14 ~~of a Class 3 felony.~~

15 ~~(e) Any person licensed as a distributor or transporter, as~~
16 ~~defined in Section 9c of this Act, who has in his or her~~
17 ~~possession or sells 100 or less original packages of contraband~~
18 ~~cigarettes is guilty of a Class A misdemeanor.~~

19 ~~(f) Any person licensed as a distributor or transporter, as~~
20 ~~defined in Section 9c of this Act, who has in his or her~~
21 ~~possession or sells more than 100 original packages of~~
22 ~~contraband cigarettes is guilty of a Class 4 felony.~~

23 ~~(g) Notwithstanding subsections (c) through (f), licensed~~
24 ~~distributors and transporters, as defined in Section 9c of this~~
25 ~~Act, may possess unstamped packages of cigarettes.~~
26 ~~Notwithstanding subsections (c) through (f), licensed~~

1 ~~distributors may possess cigarettes that bear a tax stamp of~~
2 ~~another state or taxing jurisdiction. Notwithstanding~~
3 ~~subsections (c) through (f), a licensed distributor may possess~~
4 ~~contraband cigarettes returned to the distributor by a retailer~~
5 ~~if the distributor immediately conducts an inventory of the~~
6 ~~cigarettes being returned, the distributor and the retailer~~
7 ~~returning the contraband cigarettes sign the inventory, the~~
8 ~~distributor provides a copy of the signed inventory to the~~
9 ~~retailer, and the distributor retains the inventory in its~~
10 ~~books and records and promptly notifies the Department of~~
11 ~~Revenue.~~

12 ~~(h) Notwithstanding subsections (a) through (d) of this~~
13 ~~Section, a retailer unknowingly possessing contraband~~
14 ~~cigarettes obtained from a licensed distributor or knowingly~~
15 ~~possessing contraband cigarettes obtained from a licensed~~
16 ~~distributor is not subject to penalties under this Section if~~
17 ~~the retailer, within 48 hours after discovering that the~~
18 ~~cigarettes are contraband cigarettes, excluding Saturdays,~~
19 ~~Sundays, and holidays: (i) notifies the Department and the~~
20 ~~licensed distributor from whom the cigarettes were obtained,~~
21 ~~orally and in writing, that he or she possesses contraband~~
22 ~~cigarettes obtained from a licensed distributor; (ii) places~~
23 ~~the contraband cigarettes in one or more containers and seals~~
24 ~~those containers; and (iii) places on the containers the~~
25 ~~following or similar language: "Contraband Cigarettes. Not For~~
26 ~~Sale." All contraband cigarettes in the possession of a~~

1 ~~retailer remain subject to forfeiture under the provisions of~~
2 ~~this Act.~~

3 (Source: P.A. 96-782, eff. 1-1-10.)

4 (35 ILCS 130/26a new)

5 Sec. 26a. Operation without retail license. Any person who
6 operates as a retailer of original packages of cigarettes as
7 defined by this Act without having a license as required by
8 this Act shall be guilty of a Class 4 felony.

9 (35 ILCS 130/18c rep.)

10 Section 915. The Cigarette Tax Act is amended by repealing
11 Section 18c.

12 Section 920. The Cigarette Use Tax Act is amended by
13 changing Sections 1, 3-10, 12, and 25b as follows:

14 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

17 "Use" means the exercise by any person of any right or
18 power over cigarettes incident to the ownership or possession
19 thereof, other than the making of a sale thereof in the course
20 of engaging in a business of selling cigarettes and shall
21 include the keeping or retention of cigarettes for use, except
22 that "use" does not include the use of cigarettes by a

1 not-for-profit research institution conducting tests
2 concerning the health effects of tobacco products, provided the
3 cigarettes are not offered for resale.

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

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

13 "Contraband cigarettes" means:

14 (a) cigarettes that do not bear a required tax stamp
15 under this Act;

16 (b) cigarettes for which any required federal taxes
17 have not been paid;

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

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

24 (e) cigarettes imported into the United States, or
25 otherwise distributed, in violation of the federal
26 Imported Cigarette Compliance Act of 2000 (Title IV of

1 Public Law 106-476);

2 (f) cigarettes that have false manufacturing labels;

3 (g) cigarettes identified in Section 3-10(a)(1) of
4 this Act; or

5 (h) cigarettes that are improperly tax stamped,
6 including cigarettes that bear a tax stamp of another state
7 or taxing jurisdiction.

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

14 "Department" means the Department of Revenue.

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

18 "Original Package" means the individual ~~packet, box or~~
19 ~~other~~ container ~~whatsoever~~ used to ~~contain and to~~ convey
20 cigarettes to the consumer upon which a tax stamp or other
21 indicia of tax payment is or should be affixed.

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

23 a. Any person engaged in the business of selling
24 cigarettes in this State who brings or causes to be brought
25 into this State from without this State any original
26 packages of cigarettes, on which original packages there is

1 no authorized evidence underneath a sealed transparent
2 wrapper showing that the tax liability imposed by this Act
3 has been paid or assumed by the out-of-State seller of such
4 cigarettes, for sale in the course of such business.

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

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

16 "Distributor" does not include any person with respect to a
17 sale of cigarettes to a purchaser for use or consumption, and
18 not for resale.

19 "Distributor" does not include any person who transfers
20 cigarettes to a not-for-profit research institution that
21 conducts tests concerning the health effects of tobacco
22 products and who does not offer the cigarettes for resale.

23 "Distributor maintaining a place of business in this
24 State", or any like term, means any distributor having or
25 maintaining within this State, directly or by a subsidiary, an
26 office, distribution house, sales house, warehouse or other

1 place of business, or any agent operating within this State
2 under the authority of the distributor or its subsidiary,
3 irrespective of whether such place of business or agent is
4 located here permanently or temporarily, or whether such
5 distributor or subsidiary is licensed to transact business
6 within this State.

7 "Business" means any trade, occupation, activity or
8 enterprise engaged in or conducted in this State for the
9 purpose of selling cigarettes.

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

26 "Stamp" or "stamps" mean the indicia required to be affixed

1 on a pack of cigarettes that evidence payment of the tax on
2 cigarettes under Section 2 of this Act.

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

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

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

7 "Unstamped package of cigarettes" means a package of
8 cigarettes that does not bear a tax stamp as required by this
9 Act, including a package of cigarettes that bears a tax stamp
10 of another state or taxing jurisdiction, a package of
11 cigarettes that bears a counterfeit tax stamp, and a stamped or
12 unstamped package of cigarettes that is marked "Not for sale in
13 the United States".

14 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
15 96-782, eff. 1-1-10.)

16 (35 ILCS 135/3-10)

17 Sec. 3-10. Cigarette enforcement.

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

19 (1) to sell or distribute in this State; to acquire,
20 hold, own, possess, or transport, for sale or distribution
21 in this State; or to import, or cause to be imported into
22 this State for sale or distribution in this State:

23 (A) any cigarettes the package of which:

24 (i) bears any statement, label, stamp,
25 sticker, or notice indicating that the

1 manufacturer did not intend the cigarettes to be
2 sold, distributed, or used in the United States,
3 including but not limited to labels stating "For
4 Export Only", "U.S. Tax Exempt", "For Use Outside
5 U.S.", or similar wording; or

6 (ii) does not comply with:

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

16 (bb) all federal trademark and copyright
17 laws;

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

21 (C) any cigarettes that such person otherwise
22 knows or has reason to know the manufacturer did not
23 intend to be sold, distributed, or used in the United
24 States; or

25 (D) any cigarettes for which there has not been
26 submitted to the Secretary of the U.S. Department of

1 Health and Human Services the list or lists of the
2 ingredients added to tobacco in the manufacture of the
3 cigarettes required by the federal Cigarette Labeling
4 and Advertising Act, 15 U.S.C. 1335a;

5 (2) to alter the package of any cigarettes, prior to
6 sale or distribution to the ultimate consumer, so as to
7 remove, conceal, or obscure:

8 (A) any statement, label, stamp, sticker, or
9 notice described in subdivision (a)(1)(A)(i) of this
10 Section;

11 (B) any health warning that is not specified in, or
12 does not conform with the requirements of, the federal
13 Cigarette Labeling and Advertising Act, 15 U.S.C.
14 1333; or

15 (3) to affix any stamp required pursuant to this Act to
16 the package of any cigarettes described in subdivision
17 (a)(1) of this Section or altered in violation of
18 subdivision (a)(2).

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

24 (1) a copy of:

25 (A) the permit issued pursuant to the Internal
26 Revenue Code, 26 U.S.C. 5713, to the person importing

1 the cigarettes into the United States allowing the
2 person to import the cigarettes; and

3 (B) the customs form containing, with respect to
4 the cigarettes, the internal revenue tax information
5 required by the U.S. Bureau of Alcohol, Tobacco and
6 Firearms;

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

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

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

1 (B) the provisions of Exhibit T of the Master
2 Settlement Agreement entered in the case of People of
3 the State of Illinois v. Philip Morris, et al. (Circuit
4 Court of Cook County, No. 96-L13146), including a
5 statement indicating whether the manufacturer is, or
6 is not, a participating tobacco manufacturer within
7 the meaning of Exhibit T.

8 (b-5) Criminal penalties. A person who violates subsection
9 (a) or subsection (b) of this Section shall be guilty of a
10 Class 4 felony.

11 (c) Administrative sanctions.

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

22 (2) Cigarettes that are acquired, held, owned,
23 possessed, transported in, imported into, or sold or
24 distributed in this State in violation of this Section
25 shall be deemed contraband under this Act and are subject
26 to seizure and forfeiture as provided in this Act, and all

1 such cigarettes seized and forfeited shall be destroyed or
2 maintained and used in an undercover capacity. Such
3 cigarettes shall be deemed contraband whether the
4 violation of this Section is knowing or otherwise.

5 (d) Unfair trade practices. In addition to any other
6 penalties provided for in this Act, a violation of subsection
7 (a) or subsection (b) of this Section shall constitute an
8 unlawful practice as provided in the Consumer Fraud and
9 Deceptive Business Practices Act.

10 (d-1) Retailers shall not be liable under subsections
11 (c)(1) and (d) of this Section for unknowingly possessing,
12 selling, or distributing to consumers or users cigarettes
13 identified in subsection (a)(1) of this Section if the
14 cigarettes possessed, sold, or distributed by the retailer were
15 obtained from a distributor licensed under this Act or the
16 Cigarette Tax Act.

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

26 (f) General provisions.

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

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

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

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

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

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

3 (h) Applicability.

4 (1) This Section does not apply to:

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

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

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

17 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

18 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

19 Sec. 12. Declaration of possession of cigarettes on which
20 tax not paid.

21 (a) When cigarettes are acquired for use in this State by a
22 person ~~(including a distributor as well as any other person),~~
23 who did not pay the tax herein imposed to a distributor, the
24 person, within 30 days after acquiring the cigarettes, shall
25 file with the Department a return declaring the possession of

1 the cigarettes and shall transmit with the return to the
2 Department the tax imposed by this Act.

3 (b) On receipt of the return and payment of the tax as
4 required by paragraph (a), the Department may furnish the
5 person with a suitable tax stamp to be affixed to the package
6 of cigarettes upon which the tax has been paid if the
7 Department determines that the cigarettes still exist.

8 (c) The return referred to in paragraph (a) shall contain
9 the name and address of the person possessing the cigarettes
10 involved, the location of the cigarettes and the quantity,
11 brand name, place, and date of the acquisition of the
12 cigarettes.

13 (d) The provisions of the Uniform Penalty and Interest Act
14 (35 ILCS 735/) do not apply to this Section.

15 (Source: P.A. 92-322, eff. 1-1-02.)

16 (35 ILCS 135/25b)

17 Sec. 25b. Possession of cigarette packages by persons not
18 licensed as a distributor or a retailer; penalty. Any person
19 other than a person licensed as a distributor or a retailer
20 under the Cigarette Tax Act in possession of more than 10 but
21 fewer than 101 original packages of unstamped packages of
22 cigarettes and who has not paid the taxes imposed by this Act
23 within 30 days of acquiring the cigarettes, shall be liable to
24 pay to the Department for deposit into the Tax Compliance and
25 Administration Fund, a penalty of \$15 for possession of each

1 package of cigarettes. Any person other than a person licensed
2 as a distributor or a retailer under the Cigarette Tax Act in
3 possession of more than 100 original packages of unstamped
4 packages of cigarettes and who has not paid the taxes imposed
5 by this Act within 30 days of acquiring the cigarettes, shall
6 be liable to pay to the Department for deposit into the Tax
7 Compliance and Administration Fund, a penalty of \$25 for
8 possession of each package of cigarettes. ~~Possession of not~~
9 ~~less than 10 and not more than 100 original packages not tax~~
10 ~~stamped or improperly tax stamped; penalty. With the exception~~
11 ~~of licensed distributors and transporters, as defined in~~
12 ~~Section 9c of the Cigarette Tax Act, possessing unstamped~~
13 ~~packages of cigarettes, and licensed distributors possessing~~
14 ~~original packages of cigarettes that bear a tax stamp of~~
15 ~~another state or taxing jurisdiction, anyone possessing not~~
16 ~~less than 10 and not more than 100 packages of contraband~~
17 ~~cigarettes contained in original packages is liable to pay to~~
18 ~~the Department, for deposit into the Tax Compliance and~~
19 ~~Administration Fund, a penalty of \$20 for each such package of~~
20 ~~cigarettes, unless reasonable cause can be established by the~~
21 ~~person upon whom the penalty is imposed. Reasonable cause shall~~
22 ~~be determined in each situation in accordance with rules~~
23 ~~adopted by the Department.~~ Any person who purchases and
24 possesses a total of 9 or fewer original packages of unstamped
25 cigarettes per month is exempt from the penalties of this
26 Section. The provisions of the Uniform Penalty and Interest Act

1 do not apply to this Section.

2 (Source: P.A. 96-782, eff. 1-1-10.)

3 (35 ILCS 135/25a rep.)

4 Section 925. The Cigarette Use Tax Act is amended by
5 repealing Section 25a.

6 Section 930. The Tobacco Products Tax Act of 1995 is
7 amended by changing Sections 10-5, 10-20, 10-25, 10-30, 10-35,
8 and 10-50 and by adding Sections 10-21, 10-22, 10-36, and 10-53
9 as follows:

10 (35 ILCS 143/10-5)

11 Sec. 10-5. Definitions. For purposes of this Act:

12 "Business" means any trade, occupation, activity, or
13 enterprise engaged in, at any location whatsoever, for the
14 purpose of selling tobacco products.

15 "Cigarette" has the meaning ascribed to the term in Section
16 1 of the Cigarette Tax Act.

17 "Correctional Industries program" means a program run by a
18 State penal institution in which residents of the penal
19 institution produce tobacco products for sale to persons
20 incarcerated in penal institutions or resident patients of a
21 State operated mental health facility.

22 "Department" means the Illinois Department of Revenue.

23 "Distributor" means any of the following:

1 (1) Any manufacturer or wholesaler in this State
2 engaged in the business of selling tobacco products who
3 sells, exchanges, or distributes tobacco products to
4 retailers or consumers in this State.

5 (2) Any manufacturer or wholesaler engaged in the
6 business of selling tobacco products from without this
7 State who sells, exchanges, distributes, ships, or
8 transports tobacco products to retailers ~~or consumers~~
9 located in this State, who (i) so long as that manufacturer
10 ~~or wholesaler~~ has or maintains within this State, directly
11 or by subsidiary, an office, sales house, or other place of
12 business, or any agent or other representative operating
13 within this State under the authority of the person or
14 subsidiary, irrespective of whether the place of business
15 or agent or other representative is located here
16 permanently or temporarily, or (ii) elects to apply for a
17 distributor's license and is approved by the Department as
18 a licensed distributor.

19 ~~(3) Any retailer who receives tobacco products on which~~
20 ~~the tax has not been or will not be paid by another~~
21 ~~distributor.~~

22 "Distributor" does not include any person with respect to a
23 sale of tobacco products to a purchaser for use or consumption,
24 and not for resale.

25 "Distributor" does not include any person, wherever
26 resident or located, who makes, manufactures, or fabricates

1 tobacco products as part of a Correctional Industries program
2 for sale to residents incarcerated in penal institutions or
3 resident patients of a State operated mental health facility.

4 "Manufacturer" means any person, wherever resident or
5 located, who manufactures and sells tobacco products, except a
6 person who makes, manufactures, or fabricates tobacco products
7 as a part of a Correctional Industries program for sale to
8 persons incarcerated in penal institutions or resident
9 patients of a State operated mental health facility.

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

16 "Place of business" means and includes any place where
17 tobacco products are sold or where tobacco products are
18 manufactured, stored, or kept for the purpose of sale or
19 consumption, including any vessel, vehicle, airplane, train,
20 or vending machine.

21 "Retailer" means any person in this State engaged in the
22 business of selling tobacco products to consumers in this
23 State, regardless of quantity or number of sales.

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

1 "Tobacco products" means any cigars; cheroots; stogies;
2 periques; granulated, plug cut, crimp cut, ready rubbed, and
3 other smoking tobacco; snuff or snuff flour; cavendish; plug
4 and twist tobacco; fine-cut and other chewing tobaccos; shorts;
5 refuse scraps, clippings, cuttings, and sweeping of tobacco;
6 and other kinds and forms of tobacco, prepared in such manner
7 as to be suitable for chewing or smoking in a pipe or
8 otherwise, or both for chewing and smoking; but does not
9 include cigarettes or tobacco purchased for the manufacture of
10 cigarettes by cigarette distributors and manufacturers defined
11 in the Cigarette Tax Act and persons who make, manufacture, or
12 fabricate cigarettes as a part of a Correctional Industries
13 program for sale to residents incarcerated in penal
14 institutions or resident patients of a State operated mental
15 health facility.

16 "Wholesale price" means the established list price for
17 which a manufacturer sells tobacco products to a distributor,
18 before the allowance of any discount, trade allowance, rebate,
19 or other reduction. In the absence of such an established list
20 price, the manufacturer's invoice price at which the
21 manufacturer sells the tobacco product to unaffiliated
22 distributors, before any discounts, trade allowances, rebates,
23 or other reductions, shall be presumed to be the wholesale
24 price.

25 "Wholesaler" means any person, wherever resident or
26 located, engaged in the business of selling tobacco products to

1 others for the purpose of resale.

2 (Source: P.A. 92-231, eff. 8-2-01.)

3 (35 ILCS 143/10-20)

4 Sec. 10-20. Distributor's Licenses. It shall be unlawful
5 for any person to engage in business as a distributor of
6 tobacco products within the meaning of this Act without first
7 having obtained a license to do so from the Department.
8 Application for that license shall be made to the Department in
9 a form prescribed and furnished by the Department. Each
10 applicant for a license shall furnish to the Department on a
11 form, signed and verified by the applicant, the following
12 information:

13 (1) The name of the applicant.

14 (2) The address of the location at which the applicant
15 proposes to engage in business as a distributor of tobacco
16 products.

17 (3) Other information the Department may reasonably
18 require.

19 Except as otherwise provided in this Section, every
20 applicant who is required to procure a distributor's license
21 shall file with his or her application a joint and several
22 bond. The bond shall be executed to the Department of Revenue,
23 with good and sufficient surety or sureties residing or
24 licensed to do business within the State of Illinois,
25 conditioned upon the true and faithful compliance by the

1 licensee with all of the provisions of this Act. The Department
2 shall fix the amount of the bond for each applicant, taking
3 into consideration the amount of money expected to become due
4 from the applicant under this Act. The amount of bond required
5 by the Department shall be an amount that, in its opinion, will
6 protect the State of Illinois against failure to pay the amount
7 that may become due from the applicant under this Act, but the
8 amount of the security required by the Department shall not
9 exceed 3 times the amount of the applicant's average monthly
10 tax liability, or \$50,000, whichever amount is lower. The bond,
11 a reissue, or a substitute shall be kept in full force and
12 effect during the entire period covered by the license. A
13 separate application for license shall be made, and bond filed,
14 for each place of business at which a person who is required to
15 procure a distributor's license proposes to engage in business
16 as a distributor under this Act.

17 The Department, upon receipt of an application and bond in
18 proper form, shall issue to the applicant a license, in a form
19 prescribed by the Department, which shall permit the applicant
20 to whom it is issued to engage in business as a distributor at
21 the place shown on his or her application. The license shall be
22 issued by the Department without charge or cost to the
23 applicant. No license issued under this Act is transferable or
24 assignable. The license shall be conspicuously displayed in the
25 place of business conducted by the licensee under the license.

26 The bonding requirement in this Section does not apply to

1 an applicant for a distributor's license who is already bonded
2 under the Cigarette Tax Act or the Cigarette Use Tax Act.
3 Licenses issued by the Department under this Act shall be valid
4 for a period not to exceed one year after issuance unless
5 sooner revoked, canceled, or suspended as provided in this Act.

6 No license shall be issued to any person who is in default
7 to the State of Illinois for moneys due under this Act or any
8 other tax Act administered by the Department.

9 The Department may, in its discretion, upon application,
10 authorize the payment of the tax imposed under Section 10-10 by
11 any distributor or manufacturer not otherwise subject to the
12 tax imposed under this Act who, to the satisfaction of the
13 Department, furnishes adequate security to ensure payment of
14 the tax. The distributor or manufacturer shall be issued,
15 without charge, a license to remit the tax. When so authorized,
16 it shall be the duty of the distributor or manufacturer to
17 remit the tax imposed upon the wholesale price of tobacco
18 products sold or otherwise disposed of to retailers or
19 consumers located in this State, in the same manner and subject
20 to the same requirements as any other distributor or
21 manufacturer licensed under this Act.

22 The Department may revoke, suspend, or cancel the license
23 of a distributor of roll-your-own tobacco (as that term is used
24 in Section 10 of the Tobacco Product Manufacturers' Escrow Act)
25 under this Act if the tobacco product manufacturer, as defined
26 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,

1 that made or sold the roll-your-own tobacco has failed to
2 become a participating manufacturer, as defined in subdivision
3 (a)(1) of Section 15 of the Tobacco Product Manufacturers'
4 Escrow Act, or has failed to create a qualified escrow fund for
5 any roll-your-own tobacco manufactured by the tobacco product
6 manufacturer and sold in this State or otherwise failed to
7 bring itself into compliance with subdivision (a)(2) of Section
8 15 of the Tobacco Product Manufacturers' Escrow Act.

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

19 (Source: P.A. 92-231, eff. 8-2-01; 92-737, eff. 7-25-02.)

20 (35 ILCS 143/10-21 new)

21 Sec. 10-21. Retailer's license.

22 (a) Commencing January 1, 2011, no person may engage in
23 business as a retailer of tobacco products in this State
24 without first having obtained a retailer's license from the
25 Department. Application for a license shall be made to the

1 Department in form as furnished and prescribed by the
2 Department. Each applicant for a license under this Section
3 shall furnish to the Department on the form signed and verified
4 by the applicant the following information:

5 (1) the name and address of the applicant;

6 (2) the address of the location at which the applicant
7 proposes to engage in business as a retailer of tobacco
8 products in this State; and

9 (3) such other additional information as the
10 Department may lawfully require by its rules and
11 regulations.

12 (b) The annual license fee payable to the Department for
13 each retailer's license shall be \$250. The fee will be placed
14 into the Tax Compliance and Administration Fund and used
15 towards the cost of retail inspections. Each applicant for a
16 license shall pay that fee to the Department at the time of
17 submitting the application for a license to the Department.

18 (c) The Department may, in its discretion, require an
19 applicant who is required to procure a retailer's license to
20 file with the application a joint and several bond. If
21 required, such bond shall be executed to the Department of
22 Revenue, with good and sufficient surety or sureties residing
23 or licensed to do business within the State of Illinois, in an
24 amount of not less than \$2,500, conditioned upon the true and
25 faithful compliance by the licensee with all of the provisions
26 of this Act. If required, such bond, or a reissue thereof, or a

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

8 The following are ineligible to receive a retailer's
9 license under this Act:

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

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

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

22 (4) a person who possesses a distributor's license
23 under Section 10-20 of this Act.

24 (d) The Department, upon receipt of an application, license
25 fee, and bond in proper form from a person who is eligible to
26 receive a retailer's license under this Act, shall issue to the

1 applicant a license in form as prescribed by the Department,
2 which license shall permit the applicant to engage in business
3 as a retailer under this Act at the place shown in the
4 application. All licenses issued by the Department under this
5 Section shall be valid for not to exceed one year after
6 issuance unless sooner revoked, canceled or suspended as
7 provided in this Act. No license issued under this Section is
8 transferable or assignable. The license shall be conspicuously
9 displayed in the place of business conducted by the licensee in
10 Illinois under the license. The Department shall not issue a
11 license to a retailer unless the retailer is also validly
12 registered under the Retailers' Occupation Tax Act. A person
13 who obtains a license as a retailer and then ceases to do
14 business as specified in the license, or who does not commence
15 business, or who obtains a distributor's license, or whose
16 license is suspended or revoked, shall immediately surrender
17 the license to the Department. A retailer as defined under the
18 Cigarette Tax Act need not obtain an additional license under
19 this Act, but shall be deemed to be sufficiently licensed by
20 virtue of his being properly licensed as a retailer under
21 Section 4d of the Cigarette Tax Act.

22 (e) Any person aggrieved by any decision of the Department
23 under this subsection 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 (35 ILCS 143/10-22 new)

8 Sec. 10-22. Purchases of tobacco products by licensed
9 retailers. A person who possesses a retailer's license under
10 Section 10-21 of this Act shall obtain tobacco products for
11 sale only from a licensed distributor.

12 (35 ILCS 143/10-25)

13 Sec. 10-25. License actions.

14 (a) The Department may, after notice and a hearing, revoke,
15 cancel, or suspend the license of any distributor or retailer
16 who violates any of the provisions of this Act. The notice
17 shall specify the alleged violation or violations upon which
18 the revocation, cancellation, or suspension proceeding is
19 based.

20 (b) The Department may revoke, cancel, or suspend the
21 license of any distributor for a violation of the Tobacco
22 Product Manufacturers' Escrow Enforcement Act as provided in
23 Section 20 of that Act.

24 (c) The Department shall suspend for 7 days the license of

1 a retailer for a first violation of the Sale of Tobacco to
2 Minors Act, as provided in Section 3 of that Act.

3 The Department shall suspend for 30 days the license of a
4 retailer for a second violation of the Sale of Tobacco to
5 Minors Act, as provided in Section 3 of that Act.

6 The Department shall revoke the license of a retailer for a
7 third or subsequent violation of the Sale of Tobacco to Minors
8 Act, as provided in Section 3 of that Act.

9 (d) The Department may, by application to any circuit
10 court, obtain an injunction restraining any person who engages
11 in business as a distributor of tobacco products without a
12 license (either because his or her license has been revoked,
13 canceled, or suspended or because of a failure to obtain a
14 license in the first instance) from engaging in that business
15 until that person, as if that person were a new applicant for a
16 license, complies with all of the conditions, restrictions, and
17 requirements of Section 10-20 (for a distributor's license) or
18 Section 10-21 (for a retailer's license) ~~of this Act~~ and
19 qualifies for and obtains a license. Refusal or neglect to obey
20 the order of the court may result in punishment for contempt.

21 (Source: P.A. 92-737, eff. 7-25-02.)

22 (35 ILCS 143/10-30)

23 Sec. 10-30. Returns.

24 (a) Every distributor shall, on or before the 15th day of
25 each month, file a return with the Department covering the

1 preceding calendar month. The return shall disclose the
2 wholesale price for tobacco products sold or otherwise disposed
3 of and other information that the Department may reasonably
4 require. The return shall be filed upon a form prescribed and
5 furnished by the Department.

6 At the time when any return of any distributor is due to be
7 filed with the Department, the distributor shall also remit to
8 the Department the tax liability that the distributor has
9 incurred for transactions occurring in the preceding calendar
10 month.

11 (b) A retailer who possesses, acquires, or purchases
12 tobacco products on which the tax imposed by this Act has not
13 been paid shall file a return and pay the tax in a format and at
14 a time prescribed by the Department by rule.

15 (Source: P.A. 89-21, eff. 6-6-95.)

16 (35 ILCS 143/10-35)

17 Sec. 10-35. Record keeping.

18 (a) Every distributor, as defined in Section 10-5, shall
19 keep complete and accurate records of tobacco products held,
20 purchased, manufactured, brought in or caused to be brought in
21 from without the State, and tobacco products sold, or otherwise
22 disposed of, and shall preserve and keep all invoices, bills of
23 lading, sales records, and copies of bills of sale, the
24 wholesale price for tobacco products sold or otherwise disposed
25 of, an inventory of tobacco products prepared as of December 31

1 of each year or as of the last day of the distributor's fiscal
2 year if he or she files federal income tax returns on the basis
3 of a fiscal year, and other pertinent papers and documents
4 relating to the manufacture, purchase, sale, or disposition of
5 tobacco products. Every sales invoice issued by a licensed
6 distributor to a retailer in this State shall contain the
7 distributor's Tobacco Products License number.

8 (b) Every retailer, as defined in Section 10-5, shall keep
9 within Illinois, at his or her licensed address, complete and
10 accurate records of tobacco products held, purchased, sold, or
11 otherwise disposed of, and shall preserve and keep all
12 invoices, bills of lading, sales records, copies of bills of
13 sale, returns, and other pertinent papers and documents
14 relating to the purchase, sale, or disposition of tobacco
15 products.

16 (c) Books, records, papers, and documents that are required
17 by this Act to be kept shall, at all times during the usual
18 business hours of the day, be subject to inspection by the
19 Department or its duly authorized agents and employees. The
20 books, records, papers, and documents for any period with
21 respect to which the Department is authorized to issue a notice
22 of tax liability shall be preserved until the expiration of
23 that period.

24 (Source: P.A. 89-21, eff. 6-6-95.)

1 Sec. 10-36. Proof of payment of tax imposed by this Act.
2 Every licensed distributor of tobacco products in this State is
3 required to show proof of the tax having been paid as required
4 by this Act by displaying his or her Tobacco Products License
5 number on every sales invoice issued to a retailer in this
6 State. No retailer shall possess tobacco products without
7 either (i) a proper invoice indicating that the tobacco
8 products tax was paid by a distributor for the tobacco products
9 in the retailer's possession or (ii) proof that the tax was
10 paid by the retailer if it has purchased tobacco products on
11 which tax has not been paid as required by this Act. Failure to
12 comply with the provisions of this Section may be grounds for
13 revocation of a distributor's or retailer's license in
14 accordance with Section 10-25 of this Act or Section 6 of the
15 Cigarette Tax Act. In addition, the Department may impose a
16 civil penalty not to exceed \$1000 for each violation, which
17 shall be deposited into the Tax Compliance and Administration
18 Fund.

19 (35 ILCS 143/10-50)

20 Sec. 10-50. Violations and penalties.

21 (a) When the amount due is under \$300, any distributor who
22 fails to file a return, willfully ~~wilfully~~ fails or refuses to
23 make any payment to the Department of the tax imposed by this
24 Act, or files a fraudulent return, or any officer or agent of a
25 corporation engaged in the business of distributing tobacco

1 products to retailers and consumers located in this State who
2 signs a fraudulent return filed on behalf of the corporation,
3 or any accountant or other agent who knowingly enters false
4 information on the return of any taxpayer under this Act is
5 guilty of a Class 4 felony.

6 (b) Any person who violates any provision of Section 10-20,
7 10-21, or 10-22 of this Act, fails to keep books and records as
8 required under this Act, or willfully ~~willfully~~ violates a rule
9 or regulation of the Department for the administration and
10 enforcement of this Act is guilty of a Class 4 felony. A person
11 commits a separate offense on each day that he or she engages
12 in business in violation of Section 10-20, 10-21 or 10-22 of
13 this Act.

14 (c) When the amount due is under \$300, any person who
15 accepts money that is due to the Department under this Act from
16 a taxpayer for the purpose of acting as the taxpayer's agent to
17 make the payment to the Department, but who fails to remit the
18 payment to the Department when due, is guilty of a Class 4
19 felony.

20 (d) When the amount due is \$300 or more, any distributor
21 who files, or causes to be filed, a fraudulent return, or any
22 officer or agent of a corporation engaged in the business of
23 distributing tobacco products to retailers and consumers
24 located in this State who files or causes to be filed or signs
25 or causes to be signed a fraudulent return filed on behalf of
26 the corporation, or any accountant or other agent who knowingly

1 enters false information on the return of any taxpayer under
2 this Act is guilty of a Class 3 felony.

3 (e) When the amount due is \$300 or more, any person engaged
4 in the business of distributing tobacco products to retailers
5 and consumers located in this State who fails to file a return,
6 willfully ~~willfully~~ fails or refuses to make any payment to the
7 Department of the tax imposed by this Act, or accepts money
8 that is due to the Department under this Act from a taxpayer
9 for the purpose of acting as the taxpayer's agent to make
10 payment to the Department but fails to remit such payment to
11 the Department when due is guilty of a Class 3 felony.

12 (f) When the amount due is under \$300, any retailer who
13 fails to file a return, willfully fails or refuses to make any
14 payment to the Department of the tax imposed by this Act, or
15 files a fraudulent return, or any officer or agent of a
16 corporation engaged in the retail business of selling tobacco
17 products to purchasers of tobacco products for use and
18 consumption located in this State who signs a fraudulent return
19 filed on behalf of the corporation, or any accountant or other
20 agent who knowingly enters false information on the return of
21 any taxpayer under this Act is guilty of a Class 4 felony.

22 (g) When the amount due is \$300 or more, any retailer who
23 fails to file a return, willfully fails or refuses to make any
24 payment to the Department of the tax imposed by this Act, or
25 files a fraudulent return, or any officer or agent of a
26 corporation engaged in the retail business of selling tobacco

1 products to purchasers of tobacco products for use and
2 consumption located in this State who signs a fraudulent return
3 filed on behalf of the corporation, or any accountant or other
4 agent who knowingly enters false information on the return of
5 any taxpayer under this Act is guilty of a Class 3 felony.

6 (h) Any person whose principal place of business is in this
7 State and who is charged with a violation under this Section
8 shall be tried in the county where his or her principal place
9 of business is located unless he or she asserts a right to be
10 tried in another venue. If the taxpayer does not have his or
11 her principal place of business in this State, however, the
12 hearing must be held in Sangamon County unless the taxpayer
13 asserts a right to be tried in another venue.

14 (i) Any taxpayer or agent of a taxpayer who with the intent
15 to defraud purports to make a payment due to the Department by
16 issuing or delivering a check or other order upon a real or
17 fictitious depository for the payment of money, knowing that it
18 will not be paid by the depository, is guilty of a deceptive
19 practice in violation of Section 17-1 of the Criminal Code of
20 1961.

21 (j) A prosecution for a violation described in this Section
22 may be commenced within 3 years after the commission of the act
23 constituting the violation.

24 (Source: P.A. 92-231, eff. 8-2-01.)

1 Sec. 10-53. Acting as a retailer of tobacco products
2 without a license. Any person who knowingly acts as a retailer
3 of tobacco products in this State without first having obtained
4 a license to do so in compliance with Section 10-21 of this Act
5 or a license in compliance with Section 4d of the Cigarette Tax
6 Act shall be guilty of a Class 4 felony.

7 Section 940. The Sale of Tobacco to Minors Act is amended
8 by adding Section 3 as follows:

9 (720 ILCS 675/3 new)

10 Sec. 3. Additional penalties for retailers. In addition to
11 the penalties provided in Section 2 of this Act, if a person
12 who is a licensed retailer under the Cigarette Tax Act or the
13 Tobacco Products Tax Act of 1995 commits a violation of this
14 Act, that person's retailer's license shall be:

15 (1) suspended for 7 days for a first violation of this
16 Act;

17 (2) suspended for 30 days for a second violation of
18 this Act; and

19 (3) revoked for a third or subsequent violation of this
20 Act.

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