

SB3413



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3413

Introduced 2/7/2012, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

See Index

Amends the Cigarette Tax Act, the Cigarette Use Tax Act, and the Tobacco Products Tax Act of 1995. Requires retailers of cigarettes to obtain a license from the Department of Revenue. Provides that the annual license fee payable to the Department is \$250. Contains provisions concerning returns and penalties. Makes changes to the definition of "cigarette". Provides that a person who makes a sale of cigarettes to a purchaser for use or consumption and not for resale is not considered a "distributor". Effective January 1, 2013.

LRB097 18129 HLH 63353 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Department of Revenue Law is amended by
5 changing Section 2505-380 as follows:

6 (20 ILCS 2505/2505-380) (was 20 ILCS 2505/39b47)

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

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

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

1 Section 10. The Illinois Cigarette Tax Act is amended by
2 changing Sections 1, 3-10, 4d, 4e, 4f, 6, 7, 8, 10, 11, 23, and
3 26 and by adding Sections 4g, 4h, 9g, and 11c as follows:

4 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

10 "Cigarette", through December 31, 2012, means any roll for
11 smoking made wholly or in part of tobacco irrespective of size
12 or shape and whether or not such tobacco is flavored,
13 adulterated or mixed with any other ingredient, and the wrapper
14 or cover of which is made of paper or any other substance or
15 material except tobacco.

16 "Cigarette", beginning on and after January 1, 2013, means
17 any roll for smoking made wholly or in part of tobacco
18 irrespective of size or shape and whether or not such tobacco
19 is flavored, adulterated, or mixed with any other ingredient,
20 and the wrapper or cover of which is made of paper.

21 "Cigarette", beginning on and after January 1, 2013, also
22 means: any roll for smoking made wholly or in part of tobacco
23 labeled as anything other than a cigarette or not bearing a
24 label, if it meets two or more of the following criteria:

- 1 (1) the product is sold in packs similar to cigarettes;
2 (2) the product is available for sale in cartons of ten
3 packs;
4 (3) the product is sold in soft packs, hard packs,
5 flip-top boxes, clam shells, or other cigarette-type
6 boxes;
7 (4) the product is of a length and diameter found in
8 commercially-manufactured cigarettes;
9 (5) the product has a cellulose acetate or other
10 integrated filter;
11 (6) the product weighs less than three pounds per
12 thousand sticks;
13 (7) the product is marketed or advertised to consumers
14 as a cigarette or cigarette substitute; or
15 (8) other evidence that the product fits within the
16 definition of cigarette.

17 "Contraband cigarettes" means:

- 18 (a) cigarettes that do not bear a required tax stamp
19 under this Act;
20 (b) cigarettes for which any required federal taxes
21 have not been paid;
22 (c) cigarettes that bear a counterfeit tax stamp;
23 (d) cigarettes that are manufactured, fabricated,
24 assembled, processed, packaged, or labeled by any person
25 other than (i) the owner of the trademark rights in the
26 cigarette brand or (ii) a person that is directly or

1 indirectly authorized by such owner;

2 (e) cigarettes imported into the United States, or
3 otherwise distributed, in violation of the federal
4 Imported Cigarette Compliance Act of 2000 (Title IV of
5 Public Law 106-476);

6 (f) cigarettes that have false manufacturing labels;

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

9 (h) cigarettes that are improperly tax stamped,
10 including cigarettes that bear a tax stamp of another state
11 or taxing jurisdiction.

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

18 "Prior Continuous Compliance Taxpayer" means any person
19 who is licensed under this Act and who, having been a licensee
20 for a continuous period of 5 years, is determined by the
21 Department not to have been either delinquent or deficient in
22 the payment of tax liability during that period or otherwise in
23 violation of this Act. Also, any taxpayer who has, as verified
24 by the Department, continuously complied with the condition of
25 his bond or other security under provisions of this Act for a
26 period of 5 consecutive years shall be considered to be a

1 "Prior continuous compliance taxpayer". In calculating the
2 consecutive period of time described herein for qualification
3 as a "prior continuous compliance taxpayer", a consecutive
4 period of time of qualifying compliance immediately prior to
5 the effective date of this amendatory Act of 1987 shall be
6 credited to any licensee who became licensed on or before the
7 effective date of this amendatory Act of 1987.

8 "Department" means the Department of Revenue.

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

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

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

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

25 (2) Any person who makes, manufactures or fabricates
26 cigarettes in this State for sale in this State, except a

1 person who makes, manufactures or fabricates cigarettes as
2 a part of a correctional industries program for sale to
3 residents incarcerated in penal institutions or resident
4 patients of a State-operated mental health facility.

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

11 "Distributor" does not include any person who makes a sale
12 of cigarettes to a purchaser for use or consumption, and not
13 for resale.

14 "Place of business" shall mean and include any place where
15 cigarettes are sold or where cigarettes are manufactured,
16 stored or kept for the purpose of sale or consumption,
17 including any vessel, vehicle, airplane, train or vending
18 machine.

19 "Manufacturer representative" means a director, officer,
20 or employee of a manufacturer who has obtained authority from
21 the Department under Section 4f to maintain representatives in
22 Illinois that provide or sell original packages of cigarettes
23 made, manufactured, or fabricated by the manufacturer to
24 retailers in compliance with Section 4f of this Act to promote
25 cigarettes made, manufactured, or fabricated by the
26 manufacturer.

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

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

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

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

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

1 "Secondary distributor" means any person engaged in the
2 business of selling cigarettes who purchases stamped original
3 packages of cigarettes from a licensed distributor under this
4 Act or the Cigarette Use Tax Act, sells 75% or more of those
5 cigarettes to retailers for resale, and maintains an
6 established business where a substantial stock of cigarettes is
7 available to retailers for resale.

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

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

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

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

15 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
16 97-587, eff. 8-26-11.)

17 (35 ILCS 130/3-10)

18 Sec. 3-10. Cigarette enforcement.

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

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

24 (A) any cigarettes the package of which:

25 (i) bears any statement, label, stamp,

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

7 (ii) does not comply with:

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

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

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

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

26 (D) any cigarettes for which there has not been

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

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

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

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

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

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

25 (1) a copy of:

26 (A) the permit issued pursuant to the Internal

1 Revenue Code, 26 U.S.C. 5713, to the person importing
2 the cigarettes into the United States allowing the
3 person to import the cigarettes; and

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

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

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

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

1 with respect to such cigarettes; and

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

9 (c) Administrative sanctions.

10 (1) Upon finding that a distributor, secondary
11 distributor, retailer, or person has committed any of the
12 acts prohibited by subsection (a), knowing or having reason
13 to know that he or she has done so, or upon finding that a
14 distributor or person has failed to comply with any
15 requirement of subsection (b), the Department may revoke or
16 suspend the license or licenses of any distributor, ~~or~~
17 secondary distributor, or retailer pursuant to the
18 procedures set forth in Section 6 and impose, on the
19 distributor, secondary distributor, retailer, or person, a
20 civil penalty in an amount not to exceed the greater of
21 500% of the retail value of the cigarettes involved or
22 \$5,000.

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

1 to seizure and forfeiture as provided in this Act, and all
2 such cigarettes seized and forfeited shall be destroyed or
3 maintained and used in an undercover capacity. Such
4 cigarettes shall be deemed contraband whether the
5 violation of this Section is knowing or otherwise.

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

11 (d-1) Retailers issued a license under Section 4g of this
12 Act and secondary distributors shall not be liable under
13 subsections (c)(1) and (d) of this Section for unknowingly
14 possessing, selling, or distributing to consumers or users
15 cigarettes identified in subsection (a)(1) of this Section if
16 the cigarettes possessed, sold, or distributed by the licensed
17 retailer or secondary distributor were obtained from a
18 distributor licensed under this Act.

19 (d-2) Criminal Penalties. A distributor, secondary
20 distributor, retailer, or person who violates subsection (a),
21 or a distributor, secondary distributor, or person who violates
22 subsection (b) of this Section shall be guilty of a Class 4
23 felony.

24 (e) Unfair cigarette sales. For purposes of the Trademark
25 Registration and Protection Act and the Counterfeit Trademark
26 Act, cigarettes imported or reimported into the United States

1 for sale or distribution under any trade name, trade dress, or
2 trademark that is the same as, or is confusingly similar to,
3 any trade name, trade dress, or trademark used for cigarettes
4 manufactured in the United States for sale or distribution in
5 the United States shall be presumed to have been purchased
6 outside of the ordinary channels of trade.

7 (f) General provisions.

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

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

22 (3) In addition to any other remedy provided by law,
23 including enforcement as provided in subdivision (f)
24 ~~(a)~~(1), any person may bring an action for appropriate
25 injunctive or other equitable relief for a violation of
26 this Section; actual damages, if any, sustained by reason

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

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

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

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

10 (h) Applicability.

11 (1) This Section does not apply to:

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

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

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

24 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;
25 96-1027, eff. 7-12-10.)

1 (35 ILCS 130/4d)

2 Sec. 4d. Sales of cigarettes to and by retailers. In-state
3 makers, manufacturers, and fabricators licensed as
4 distributors under Section 4 of this Act and out-of-state
5 makers, manufacturers, and fabricators holding permits under
6 Section 4b of this Act may not sell original packages of
7 cigarettes to retailers. A retailer who is licensed under
8 Section 4g of this Act may sell only original packages of
9 cigarettes obtained from manufacturer representatives,
10 licensed secondary distributors, or licensed distributors
11 other than in-state makers, manufacturers, or fabricators
12 licensed as distributors under Section 4 of this Act and
13 out-of-state makers, manufacturers, or fabricators holding
14 permits under Section 4b of this Act.

15 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
16 97-587, eff. 8-26-11.)

17 (35 ILCS 130/4e)

18 Sec. 4e. Sales of cigarettes to and by secondary
19 distributors. In-state makers, manufacturers, and fabricators
20 licensed as distributors under Section 4 of this Act and
21 out-of-state makers, manufacturers, and fabricators holding
22 permits under Section 4b of this Act may not sell original
23 packages of cigarettes to secondary distributors. A secondary
24 distributor may sell only original packages of cigarettes
25 obtained from licensed distributors other than in-state

1 makers, manufacturers, or fabricators licensed as distributors
2 under Section 4 of this Act and out-of-state makers,
3 manufacturers, or fabricators holding permits under Section 4b
4 of this Act. Secondary distributors may sell cigarettes to
5 Illinois retailers issued a license under Section 4g of this
6 Act for resale, and are also authorized to make retail sales
7 of cigarettes at the location on the secondary distributor's
8 license as long as the secondary distributor obtains a license
9 under Section 4g of the Cigarette Tax Act and sells 75% or more
10 of the cigarettes sold at such location to retailers issued a
11 license under Section 4g of this Act for resale. All sales by
12 secondary distributors to retailers issued a license under
13 Section 4g of this Act must be made at the location on the
14 secondary distributor's license. Retailers issued a license
15 under Section 4g of this Act must take possession of all
16 cigarettes sold by the secondary distributor at the secondary
17 distributor's licensed address. Secondary distributors may not
18 make deliveries of cigarettes to retailers.

19 Secondary distributors may not file a claim for credit or
20 refund with the State under Section 9d of this Act.

21 (Source: P.A. 96-1027, eff. 7-12-10.)

22 (35 ILCS 130/4f)

23 Sec. 4f. Manufacturer representatives.

24 (a) No manufacturer may market cigarettes produced by the
25 manufacturer directly to retailers in this State issued a

1 license under Section 4g of this Act without first having
2 obtained authorization from the Department. Application for
3 authority to maintain representatives in this State to market
4 in this State cigarettes produced by the manufacturer shall be
5 made to the Department on a form furnished and prescribed by
6 the Department. Each applicant under this Section shall furnish
7 the following information to the Department on a form signed
8 and verified by the applicant under penalty of perjury:

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

10 (2) the address of every location from which the
11 applicant proposes to engage in business in this State;

12 (3) the number of manufacturer representatives the
13 applicant requests to maintain in this State; and

14 (4) any other additional information as the Department
15 may reasonably require.

16 The following manufacturers are ineligible to receive
17 authorization to maintain manufacturer representatives in this
18 State:

19 (1) a manufacturer who owes, at the time of
20 application, any delinquent cigarette taxes that have been
21 determined by law to be due and unpaid, unless the
22 applicant has entered into an agreement approved by the
23 Department to pay the amount due;

24 (2) a manufacturer who has had a license revoked within
25 the past 2 years for misconduct relating to stolen or
26 contraband cigarettes or has been convicted of a state or

1 federal crime, punishable by imprisonment of one year or
2 more, relating to stolen or contraband cigarettes;

3 (3) a manufacturer who has been found, after notice and
4 a hearing, to have imported or caused to be imported into
5 the United States for sale or distribution any cigarette in
6 violation of 19 U.S.C. 1681a;

7 (4) a manufacturer who has been found, after notice and
8 a hearing, to have imported or caused to be imported into
9 the United States for sale or distribution or manufactured
10 for sale or distribution in the United States any cigarette
11 that does not fully comply with the Federal Cigarette
12 Labeling and Advertising Act (15 U.S.C. 1331, et seq.);

13 (5) a manufacturer who has been found, after notice and
14 a hearing, to have made a material false statement in an
15 application or has failed to produce records required to be
16 maintained by this Act;

17 (6) a manufacturer who has been found, after notice and
18 hearing, to have violated any Section of this Act; or

19 (7) a manufacturer licensed as a distributor under
20 Section 4 of this Act or holding a permit under Section 4b
21 of this Act.

22 The Department, upon receipt of an application from a
23 manufacturer who is eligible to maintain manufacturer
24 representatives in this State, shall notify the applicant in
25 writing, not more than 60 days after an application has been
26 received, that the applicant may or may not maintain the

1 requested number of manufacturer representatives in this
2 State. A copy of the notice authorizing a manufacturer to
3 maintain manufacturer representatives in this State shall be
4 available for inspection by the Department at each place of
5 business identified in the application and in the motor vehicle
6 operated by marketing representatives in the course of
7 performing his or her duties in this State on behalf of the
8 manufacturer.

9 A manufacturer representative shall notify the Department
10 of any change in the information contained on the application
11 form and shall do so within 30 days after any such change.

12 (b) Only directors, officers, and employees of the
13 manufacturer may act as manufacturer representatives in this
14 State. The manufacturer shall provide to the Department the
15 names and addresses of the manufacturer representatives
16 operating in this State and the make, model, and license plate
17 number of each motor vehicle operated by a manufacturer
18 representative in the course of performing his or her duties in
19 this State on behalf of the manufacturer. The following
20 individuals may not act as manufacturer representatives:

21 (1) an individual who owes any delinquent cigarette
22 taxes that have been determined by law to be due and
23 unpaid, unless the individual has entered into an agreement
24 approved by the Department to pay the amount due;

25 (2) an individual who has had a license revoked within
26 the past 2 years for misconduct relating to stolen or

1 contraband cigarettes or has been convicted of a state or
2 federal crime, punishable by imprisonment of one year or
3 more, relating to stolen or contraband cigarettes;

4 (3) an individual who has been found, after notice and
5 a hearing, to have made a material false statement in an
6 application or has failed to produce records required to be
7 maintained by this Act; or

8 (4) an individual who has been found, after notice and
9 hearing, to have violated any Section of this Act.

10 (c) Manufacturer representatives may sell to retailers in
11 this State who are licensed under Section 4g of this Act only
12 original packages of cigarettes made, manufactured, or
13 fabricated by the manufacturer and purchased or obtained from a
14 distributor licensed under this Act, or the Cigarette Tax Use
15 Act, and on which tax stamps have been affixed. Manufacturer
16 representatives may sell up to 600 stamped original packages of
17 cigarettes in a calendar year, for the purpose of promoting the
18 manufacturer's brands of cigarettes. A manufacturer
19 representative may not possess more than 500 stamped original
20 packages of cigarettes made, manufactured, or fabricated by the
21 manufacturer and purchased or obtained from a distributor
22 licensed under this Act or the Cigarette Use Tax Act. Any
23 original packages of cigarettes in the possession of a
24 manufacturer representative that (i) are not made,
25 manufactured, or fabricated by the manufacturer and purchased
26 or obtained from a distributor licensed under this Act or the

1 Cigarette Use Tax Act, other than cigarettes for personal use
2 and consumption, (ii) exceed the maximum quantity of 500
3 original packages of cigarettes, excluding packages of
4 cigarettes for personal use and consumption; (iii) violate
5 Section 3-10 of this Act; or (iv) do not have the proper tax
6 stamps affixed, are contraband and subject to seizure and
7 forfeiture.

8 Manufacturer representatives may sell, on behalf of
9 licensed distributors, stamped original packages of cigarettes
10 to retailers who are licensed under Section 4g of this Act ~~on~~
11 ~~behalf of licensed distributors~~. The manufacturer
12 representative shall provide the distributor with a signed
13 receipt for the cigarettes obtained from the distributor. The
14 distributor shall invoice the licensed retailer, and the
15 licensed retailer shall pay the distributor for all cigarettes
16 provided to licensed retailers by manufacturer representatives
17 on behalf of a distributor.

18 Manufacturer representatives may sell stamped original
19 packages of cigarettes to licensed retailers that are purchased
20 from licensed distributors. Distributors shall provide
21 manufacturer representatives with invoices for stamped
22 original packages of cigarettes sold to manufacturer
23 representatives. Manufacturer representatives shall invoice
24 licensed retailers, and the licensed retailers shall pay the
25 manufacturer representatives for all original packages of
26 cigarettes sold to licensed retailers.

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

12 (Source: P.A. 97-587, eff. 8-26-11.)

13 (35 ILCS 130/4g new)

14 Sec. 4g. Retailer's license. Beginning on January 1, 2013,
15 no person may engage in business as a retailer of cigarettes in
16 this State without first having obtained a license from the
17 Department. Application for license shall be made to the
18 Department on a form furnished and prescribed by the
19 Department. Each applicant for a license under this Section
20 shall furnish to the Department on the form signed and verified
21 by the applicant the following information:

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

23 (2) the address of the location at which the applicant
24 proposes to engage in business as a retailer of cigarettes
25 in this State; and

1 (3) such other additional information as the
2 Department may lawfully require by its rules and
3 regulations.

4 The annual license fee payable to the Department for each
5 retailer's license shall be \$250. The fee shall be deposited
6 into the Tax Compliance and Administration Fund and used
7 towards the cost of retail inspections. Each applicant for
8 license shall pay the fee to the Department at the time of
9 submitting his application for license to the Department. The
10 Department may, by rule, require an applicant for a license
11 under this Section to electronically file and pay the
12 application and fee.

13 Every applicant who is required to procure a retailer's
14 license shall file with his application a joint and several
15 bond. Such bond shall be executed to the Department of Revenue,
16 with good and sufficient surety or sureties residing or
17 licensed to do business within the State of Illinois, in an
18 amount of not less than \$2,500, conditioned upon the true and
19 faithful compliance by the licensee with all of the provisions
20 of this Act. Such bond, or a reissue thereof, or a substitute
21 therefore, shall be kept in effect during the entire period
22 covered by the license.

23 A separate application for license shall be made, a
24 separate annual license fee paid, and a separate bond filed,
25 for each place of business at which a person who is required to
26 procure a retailer's license under this Section proposes to

1 engage in business as a retailer in Illinois under this Act.

2 The following are ineligible to receive a retailer's
3 license under this Act:

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

6 (2) a person who has been convicted of a felony under
7 any federal or State law, if the Department, after
8 investigation and a hearing, if requested by the applicant,
9 determines that such person has not been sufficiently
10 rehabilitated to warrant the public trust;

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

16 (4) a person who possesses a distributor's license
17 under Sections 4 and 4b of this Act or Sections 4 and 7 of
18 the Cigarette Use Tax Act.

19 The Department, upon receipt of an application, license fee
20 and bond in proper form, from a person who is eligible to
21 receive a retailer's license under this Act, shall issue to
22 such applicant a license in form as prescribed by the
23 Department. That license shall permit the applicant to whom it
24 is issued to engage in business as a retailer under this Act at
25 the place shown in his or her application. All licenses issued
26 by the Department under this Section shall be valid for a

1 period not to exceed one year after issuance unless sooner
2 revoked, canceled, or suspended as provided in this Act. No
3 license issued under this Section is transferable or
4 assignable. The license shall be conspicuously displayed in the
5 place of business conducted by the licensee in Illinois under
6 such license. The Department shall not issue a retailer's
7 license to a retailer unless the retailer is also registered
8 under the Retailers' Occupation Tax Act. A person who obtains a
9 license as a retailer who ceases to do business as specified in
10 the license, or who never commenced business, or who obtains a
11 distributor's license, or whose license is suspended or
12 revoked, shall immediately surrender the license to the
13 Department.

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

1 Sec. 4h. Purchases of cigarettes by licensed retailers. A
2 person who possesses a retailer's license under Section 4g of
3 this Act shall obtain cigarettes for sale only from a licensed
4 distributor, secondary distributor, or manufacturer
5 representative.

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

7 Sec. 6. Revocation, cancellation, or suspension of
8 license. The Department may, after notice and hearing as
9 provided for by this Act, revoke, cancel or suspend the license
10 of any distributor, ~~or~~ secondary distributor or retailer for
11 the violation of any provision of this Act, or for
12 noncompliance with any provision herein contained, or for any
13 noncompliance with any lawful rule or regulation promulgated by
14 the Department under Section 8 of this Act, or because the
15 licensee is determined to be ineligible for a distributor's
16 license for any one or more of the reasons provided for in
17 Section 4 of this Act, or because the licensee is determined to
18 be ineligible for a secondary distributor's license for any one
19 or more of the reasons provided for in Section 4c of this Act, or
20 because the licensee is determined to be ineligible for a
21 retailer's license for any one or more of the reasons provided
22 for in Section 4g of this Act. However, no such license shall
23 be revoked, cancelled or suspended, except after a hearing by
24 the Department with notice to the distributor, ~~or~~ secondary
25 distributor, or retailer, as aforesaid, and affording such

1 distributor, ~~or~~ secondary distributor, or retailer a
2 reasonable opportunity to appear and defend, and any
3 distributor, ~~or~~ secondary distributor, or retailer aggrieved
4 by any decision of the Department with respect thereto may have
5 the determination of the Department judicially reviewed, as
6 herein provided.

7 The Department may revoke, cancel, or suspend the license
8 of any distributor for a violation of the Tobacco Product
9 Manufacturers' Escrow Enforcement Act as provided in Section 30
10 of that Act. The Department may revoke, cancel, or suspend the
11 license of any secondary distributor for a violation of
12 subsection (e) of Section 15 of the Tobacco Product
13 Manufacturers' Escrow Enforcement Act.

14 Any distributor, ~~or~~ secondary distributor, or retailer
15 aggrieved by any decision of the Department under this Section
16 may, within 20 days after notice of the decision, protest and
17 request a hearing. Upon receiving a request for a hearing, the
18 Department shall give notice in writing to the distributor, ~~or~~
19 secondary distributor, or retailer requesting the hearing that
20 contains a statement of the charges preferred against the
21 distributor, ~~or~~ secondary distributor, or retailer and that
22 states the time and place fixed for the hearing. The Department
23 shall hold the hearing in conformity with the provisions of
24 this Act and then issue its final administrative decision in
25 the matter to the distributor, ~~or~~ secondary distributor, or
26 retailer. In the absence of a protest and request for a hearing

1 within 20 days, the Department's decision shall become final
2 without any further determination being made or notice given.

3 No license so revoked, as aforesaid, shall be reissued to
4 any such distributor, ~~or~~ secondary distributor, or retailer
5 within a period of 6 months after the date of the final
6 determination of such revocation. No such license shall be
7 reissued at all so long as the person who would receive the
8 license is ineligible to receive a distributor's license under
9 this Act for any one or more of the reasons provided for in
10 Section 4 of this Act, ~~or~~ is ineligible to receive a secondary
11 distributor's license under this Act for any one or more of the
12 reasons provided for in Section 4c of this Act, or is
13 determined to be ineligible for a retailer's license under the
14 Act for any one or more of the reasons provided for in Section
15 4g of this Act.

16 The Department upon complaint filed in the circuit court
17 may by injunction restrain any person who fails, or refuses, to
18 comply with any of the provisions of this Act from acting as a
19 distributor, ~~or~~ secondary distributor, or retailer of
20 cigarettes in this State.

21 (Source: P.A. 96-1027, eff. 7-12-10.)

22 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

23 Sec. 7. The Department or any officer or employee of the
24 Department designated, in writing, by the Director thereof,
25 shall at its or his or her own instance, or on the written

1 request of any distributor, secondary distributor, retailer,
2 manufacturer with authority to maintain manufacturer
3 representatives, or other interested party to the proceeding,
4 issue subpoenas requiring the attendance of and the giving of
5 testimony by witnesses, and subpoenas duces tecum requiring the
6 production of books, papers, records or memoranda. All
7 subpoenas and subpoenas duces tecum issued under the terms of
8 this Act may be served by any person of full age. The fees of
9 witnesses for attendance and travel shall be the same as the
10 fees of witnesses before the circuit court of this State; such
11 fees to be paid when the witness is excused from further
12 attendance. When the witness is subpoenaed at the instance of
13 the Department or any officer or employee thereof, such fees
14 shall be paid in the same manner as other expenses of the
15 Department, and when the witness is subpoenaed at the instance
16 of any other party to any such proceeding, the cost of service
17 of the subpoena or subpoena duces tecum and the fee of the
18 witness shall be borne by the party at whose instance the
19 witness is summoned. In such case the Department, in its
20 discretion, may require a deposit to cover the cost of such
21 service and witness fees. A subpoena or subpoena duces tecum so
22 issued shall be served in the same manner as a subpoena or
23 subpoena duces tecum issued out of a court.

24 Any circuit court of this State, upon the application of
25 the Department or any officer or employee thereof, or upon the
26 application of any other party to the proceeding, may, in its

1 discretion, compel the attendance of witnesses, the production
2 of books, papers, records or memoranda and the giving of
3 testimony before the Department or any officer or employee
4 thereof conducting an investigation or holding a hearing
5 authorized by this Act, by an attachment for contempt, or
6 otherwise, in the same manner as production of evidence may be
7 compelled before the court.

8 The Department or any officer or employee thereof, or any
9 other party in an investigation or hearing before the
10 Department, may cause the depositions of witnesses within the
11 State to be taken in the manner prescribed by law for like
12 depositions, or depositions for discovery in civil actions in
13 courts of this State, and to that end compel the attendance of
14 witnesses and the production of books, papers, records or
15 memoranda, in the same manner hereinbefore provided.

16 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

17 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

18 Sec. 8. The Department may make, promulgate and enforce
19 such reasonable rules and regulations relating to the
20 administration and enforcement of this Act as may be deemed
21 expedient.

22 Whenever notice is required by this Act, such notice may be
23 given by United States certified or registered mail, addressed
24 to the person concerned at his last known address, and proof of
25 such mailing shall be sufficient for the purposes of this Act.

1 Notice of any hearing provided for by this Act shall be so
2 given not less than 7 days prior to the day fixed for the
3 hearing.

4 Hearings provided for in this Act shall be held:

5 (1) In Cook County, if the taxpayer's or licensee's
6 principal place of business is in that county;

7 (2) At the Department's office nearest the taxpayer's
8 or licensee's principal place of business, if the
9 taxpayer's or licensee's principal place of business is in
10 Illinois but outside Cook County;

11 (3) In Sangamon County, if the taxpayer's or licensee's
12 principal place of business is outside Illinois.

13 The Circuit Court of the County wherein the hearing is held
14 has power to review all final administrative decisions of the
15 Department in administering this Act. The provisions of the
16 Administrative Review Law, and all amendments and
17 modifications thereof, and the rules adopted pursuant thereto,
18 shall apply to and govern all proceedings for the judicial
19 review of final administrative decisions of the Department
20 under this Act. The term "administrative decision" is defined
21 as in Section 3-101 of the Code of Civil Procedure.

22 Service upon the Director of Revenue or Assistant Director
23 of Revenue of summons issued in any action to review a final
24 administrative decision shall be service upon the Department.
25 The Department shall certify the record of its proceedings if
26 the distributor, secondary distributor, retailer, or

1 manufacturer with authority to maintain manufacturer
2 representatives pays to it the sum of 75¢ per page of testimony
3 taken before the Department and 25¢ per page of all other
4 matters contained in such record, except that these charges may
5 be waived where the Department is satisfied that the aggrieved
6 party is a poor person who cannot afford to pay such charges.
7 Before the delivery of such record to the person applying for
8 it, payment of these charges must be made, and if the record is
9 not paid for within 30 days after notice that such record is
10 available, the complaint may be dismissed by the court upon
11 motion of the Department.

12 No stay order shall be entered by the Circuit Court unless
13 the distributor, secondary distributor, retailer, or
14 manufacturer with authority to maintain manufacturer
15 representatives files with the court a bond in an amount fixed
16 and approved by the court, to indemnify the State against all
17 loss and injury which may be sustained by it on account of the
18 review proceedings and to secure all costs which may be
19 occasioned by such proceedings.

20 Whenever any proceeding provided by this Act is begun
21 before the Department, either by the Department or by a person
22 subject to this Act, and such person thereafter dies or becomes
23 a person under legal disability before such proceeding is
24 concluded, the legal representative of the deceased person or
25 of the person under legal disability shall notify the
26 Department of such death or legal disability. Such legal

1 representative, as such, shall then be substituted by the
2 Department for such person. If the legal representative fails
3 to notify the Department of his or her appointment as such
4 legal representative, the Department may, upon its own motion,
5 substitute such legal representative in the proceeding pending
6 before the Department for the person who died or became a
7 person under legal disability.

8 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

9 (35 ILCS 130/9g new)

10 Sec. 9g. Retailers; reports. Every retailer who is required
11 to procure a license under this Act shall, on or before the
12 15th day of each calendar month, file a report with the
13 Department, showing the quantity of cigarettes purchased from
14 licensed distributors, secondary distributors, and
15 manufacturer with authority to maintain manufacturer
16 representatives during the preceding calendar month, either
17 within or outside this State, and the quantity of cigarettes
18 sold to consumers or otherwise disposed of during the preceding
19 calendar month. Such reports shall be filed in the form
20 prescribed by the Department and shall contain such other
21 information as the Department may reasonably require. The
22 report shall be filed electronically and be accompanied by
23 appropriate computer generated magnetic media supporting
24 schedule data in the format required by the Department, unless,
25 as provided by rule, the Department grants an exception upon

1 petition of retailer.

2 A certification by the Director of the Department that a
3 report has not been filed, or that information has not been
4 supplied pursuant to the provisions of this Act, shall be prima
5 facie evidence thereof.

6 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

7 Sec. 10. The Department, or any officer or employee
8 designated in writing by the Director thereof, for the purpose
9 of administering and enforcing the provisions of this Act, may
10 hold investigations and hearings concerning any matters
11 covered by this Act, and may examine books, papers, records or
12 memoranda bearing upon the sale or other disposition of
13 cigarettes by a distributor, secondary distributor, retailer,
14 manufacturer with authority to maintain manufacturer
15 representatives under Section 4f of this Act, or manufacturer
16 representative, and may issue subpoenas requiring the
17 attendance of a distributor, secondary distributor, retailer,
18 manufacturer with authority to maintain manufacturer
19 representatives under Section 4f of this Act, or manufacturer
20 representative, or any officer or employee of a distributor,
21 secondary distributor, retailer, manufacturer with authority
22 to maintain manufacturer representatives under Section 4f of
23 this Act, or any person having knowledge of the facts, and may
24 take testimony and require proof, and may issue subpoenas duces
25 tecum to compel the production of relevant books, papers,

1 records and memoranda, for the information of the Department.

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

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

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

19 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

20 (35 ILCS 130/11c new)

21 Sec. 11c. Retailers; records. Every retailer who is
22 required to procure a license under this Act, shall keep within
23 Illinois, at his business address identified under Section 4g
24 of this Act, complete and accurate records of cigarettes
25 purchased, sold, or otherwise disposed of, and shall preserve

1 and keep within Illinois at his business address all invoices,
2 sales records, copies of bills of sale, inventory at the close
3 of each period for which a report is required of all cigarettes
4 on hand, and other pertinent papers and documents relating to
5 the purchase, sale, or disposition of cigarettes. All books and
6 records and other papers and documents that are required by
7 this Act to be kept shall be kept in the English language, and
8 shall, at all times during the usual business hours of the day,
9 be subject to inspection by the Department or its duly
10 authorized agents and employees. The Department may adopt rules
11 that establish requirements, including record forms and
12 formats, for records required to be kept and maintained by.

13 For purposes of this Section, "records" means all data
14 maintained by the retailer, including data on paper, microfilm,
15 microfiche or any type of machine sensible data compilation.
16 Those books, records, papers, and documents shall be preserved
17 for a period of at least 3 years after the date of the
18 documents, or the date of the entries appearing in the records,
19 unless the Department, in writing, authorizes their
20 destruction or disposal at an earlier date. At all times during
21 the usual business hours of the day, any duly authorized agent
22 or employee of the Department may enter any place of business
23 of the retailer without a search warrant and may inspect the
24 premises to determine whether any of the provisions of this Act
25 are being violated. If such agent or employee is denied free
26 access or is hindered or interfered with in making such

1 examination as herein provided, the license of the retailer
2 shall be subject to suspension or revocation by the Department.

3 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

4 Sec. 23. Every distributor, secondary distributor,
5 retailer, manufacturer with authority to maintain manufacturer
6 representatives under Section 4f of this Act and their
7 manufacturer representatives, or other person who shall
8 knowingly and wilfully sell or offer for sale any original
9 package, as defined in this Act, having affixed thereto any
10 fraudulent, spurious, imitation or counterfeit stamp, or stamp
11 which has been previously affixed, or affixes a stamp which has
12 previously been affixed to an original package, or who shall
13 knowingly and wilfully sell or offer for sale any original
14 package, as defined in this Act, having imprinted thereon
15 underneath the sealed transparent wrapper thereof any
16 fraudulent, spurious, imitation or counterfeit tax imprint,
17 shall be deemed guilty of a Class 2 felony.

18 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

19 (35 ILCS 130/26) (from Ch. 120, par. 453.26)

20 Sec. 26. Whoever acts as a distributor, ~~or~~ secondary
21 distributor, retailer, or manufacturer representative of
22 original packages without having a license, as required by this
23 Act, shall be guilty of a Class 4 felony.

24 (Source: P.A. 96-1027, eff. 7-12-10.)

1 Section 15. The Illinois Cigarette Use Tax Act is amended
2 by changing Sections 1, 2-10, 3-10, 4d, and 4e as follows:

3 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

6 "Use" means the exercise by any person of any right or
7 power over cigarettes incident to the ownership or possession
8 thereof, other than the making of a sale thereof in the course
9 of engaging in a business of selling cigarettes and shall
10 include the keeping or retention of cigarettes for use, except
11 that "use" does not include the use of cigarettes by a
12 not-for-profit research institution conducting tests
13 concerning the health effects of tobacco products, provided the
14 cigarettes are not offered for resale.

15 "Brand Style" means a variety of cigarettes distinguished
16 by the tobacco used, tar and nicotine content, flavoring used,
17 size of the cigarette, filtration on the cigarette or
18 packaging.

19 "Cigarette", through December 31, 2012, means any roll for
20 smoking made wholly or in part of tobacco irrespective of size
21 or shape and whether or not such tobacco is flavored,
22 adulterated or mixed with any other ingredient, and the wrapper
23 or cover of which is made of paper or any other substance or
24 material except tobacco.

1 "Cigarette", beginning on and after January 1, 2013, means
2 any roll for smoking made wholly or in part of tobacco
3 irrespective of size or shape and whether or not such tobacco
4 is flavored, adulterated or mixed with any other ingredient,
5 and the wrapper or cover of which is made of paper.

6 "Cigarette" beginning on and after January 1, 2013, also
7 means: any roll for smoking made wholly or in part of tobacco
8 labeled as anything other than a cigarette or not bearing a
9 label, if it meets two or more of the following criteria:

10 (1) the product is sold in packs similar to cigarettes;

11 (2) the product is available for sale in cartons of ten
12 packs;

13 (3) the product is sold in soft packs, hard packs,
14 flip-top boxes, clam shells, or other cigarette-type
15 boxes;

16 (4) the product is of a length and diameter found in
17 commercially-manufactured cigarettes;

18 (5) the product has a cellulose acetate or other
19 integrated filter;

20 (6) the product weighs less than three pounds per
21 thousand sticks;

22 (7) the product is marketed or advertised to consumers
23 as a cigarette or cigarette substitute; or

24 (8) other evidence that the product fits within the
25 definition of cigarette.

26 "Contraband cigarettes" means:

1 (a) cigarettes that do not bear a required tax stamp
2 under this Act;

3 (b) cigarettes for which any required federal taxes
4 have not been paid;

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

6 (d) cigarettes that are manufactured, fabricated,
7 assembled, processed, packaged, or labeled by any person
8 other than (i) the owner of the trademark rights in the
9 cigarette brand or (ii) a person that is directly or
10 indirectly authorized by such owner;

11 (e) cigarettes imported into the United States, or
12 otherwise distributed, in violation of the federal
13 Imported Cigarette Compliance Act of 2000 (Title IV of
14 Public Law 106-476);

15 (f) cigarettes that have false manufacturing labels;

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

18 (h) cigarettes that are improperly tax stamped,
19 including cigarettes that bear a tax stamp of another state
20 or taxing jurisdiction.

21 "Person" means any natural individual, firm, partnership,
22 association, joint stock company, joint adventure, public or
23 private corporation, however formed, limited liability
24 company, or a receiver, executor, administrator, trustee,
25 guardian or other representative appointed by order of any
26 court.

1 "Department" means the Department of Revenue.

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

5 "Original Package" means the individual packet, box or
6 other container whatsoever used to contain and to convey
7 cigarettes to the consumer.

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

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

17 b. Any person who makes, manufactures or fabricates
18 cigarettes in this State for sale, except a person who
19 makes, manufactures or fabricates cigarettes for sale to
20 residents incarcerated in penal institutions or resident
21 patients or a State-operated mental health facility.

22 c. Any person who makes, manufactures or fabricates
23 cigarettes outside this State, which cigarettes are placed
24 in original packages contained in sealed transparent
25 wrappers, for delivery or shipment into this State, and who
26 elects to qualify and is accepted by the Department as a

1 distributor under Section 7 of this Act.

2 "Distributor" does not include any person who transfers
3 cigarettes to a not-for-profit research institution that
4 conducts tests concerning the health effects of tobacco
5 products and who does not offer the cigarettes for resale.

6 "Distributor" does not include any person who makes a sale
7 of cigarettes to a purchaser for use or consumption, and not
8 for resale.

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

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

22 "Prior Continuous Compliance Taxpayer" means any person
23 who is licensed under this Act and who, having been a licensee
24 for a continuous period of 5 years, is determined by the
25 Department not to have been either delinquent or deficient in
26 the payment of tax liability during that period or otherwise in

1 violation of this Act. Also, any taxpayer who has, as verified
2 by the Department, continuously complied with the condition of
3 his bond or other security under provisions of this Act of a
4 period of 5 consecutive years shall be considered to be a
5 "prior continuous compliance taxpayer". In calculating the
6 consecutive period of time described herein for qualification
7 as a "prior continuous compliance taxpayer", a consecutive
8 period of time of qualifying compliance immediately prior to
9 the effective date of this amendatory Act of 1987 shall be
10 credited to any licensee who became licensed on or before the
11 effective date of this amendatory Act of 1987.

12 "Secondary distributor" means any person engaged in the
13 business of selling cigarettes who purchases stamped original
14 packages of cigarettes from a licensed distributor under this
15 Act or the Cigarette Tax Act, sells 75% or more of those
16 cigarettes to retailers for resale, and maintains an
17 established business where a substantial stock of cigarettes is
18 available to retailers for resale.

19 "Secondary distributor maintaining a place of business in
20 this State", or any like term, means any secondary distributor
21 having or maintaining within this State, directly or by a
22 subsidiary, an office, distribution house, sales house,
23 warehouse, or other place of business, or any agent operating
24 within this State under the authority of the secondary
25 distributor or its subsidiary, irrespective of whether such
26 place of business or agent is located here permanently or

1 temporarily, or whether such secondary distributor or
2 subsidiary is licensed to transact business within this State.

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

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

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

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

10 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
11 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

12 (35 ILCS 135/3-10)

13 Sec. 3-10. Cigarette enforcement.

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

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

19 (A) any cigarettes the package of which:

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

1 U.S.", or similar wording; or

2 (ii) does not comply with:

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

12 (bb) all federal trademark and copyright
13 laws;

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

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

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

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

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

7 (B) any health warning that is not specified in, or
8 does not conform with the requirements of, the federal
9 Cigarette Labeling and Advertising Act, 15 U.S.C.
10 1333; or

11 (3) to affix any stamp required pursuant to this Act to
12 the package of any cigarettes described in subdivision
13 (a)(1) of this Section or altered in violation of
14 subdivision (a)(2).

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

20 (1) a copy of:

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

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

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

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

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

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

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

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

4 (c) Administrative sanctions.

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

18 (2) Cigarettes that are acquired, held, owned,
19 possessed, transported in, imported into, or sold or
20 distributed in this State in violation of this Section
21 shall be deemed contraband under this Act and are subject
22 to seizure and forfeiture as provided in this Act, and all
23 such cigarettes seized and forfeited shall be destroyed or
24 maintained and used in an undercover capacity. Such
25 cigarettes shall be deemed contraband whether the
26 violation of this Section is knowing or otherwise.

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

6 (d-1) Retailers who are licensed under Section 4g of the
7 Cigarette Tax Act and secondary distributors shall not be
8 liable under subsections (c)(1) and (d) of this Section for
9 unknowingly possessing, selling, or distributing to consumers
10 or users cigarettes identified in subsection (a)(1) of this
11 Section if the cigarettes possessed, sold, or distributed by
12 the licensed retailer were obtained from a distributor or
13 secondary distributor licensed under this Act or the Cigarette
14 Tax Act.

15 (d-2) Criminal Penalties. A distributor, secondary
16 distributor, retailer, or person who violates subsection (a),
17 or a distributor, secondary distributor, or person who violates
18 subsection (b) of this Section shall be guilty of a Class 4
19 felony.

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

1 the United States shall be presumed to have been purchased
2 outside of the ordinary channels of trade.

3 (f) General provisions.

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

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

18 (3) In addition to any other remedy provided by law,
19 including enforcement as provided in subdivision (f)
20 ~~(a)~~(1), any person may bring an action for appropriate
21 injunctive or other equitable relief for a violation of
22 this Section; actual damages, if any, sustained by reason
23 of the violation; and, as determined by the court, interest
24 on the damages from the date of the complaint, taxable
25 costs, and reasonable attorney's fees. If the trier of fact
26 finds that the violation is flagrant, it may increase

1 recovery to an amount not in excess of 3 times the actual
2 damages sustained by reason of the violation.

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

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

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

6 (h) Applicability.

7 (1) This Section does not apply to:

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

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

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

20 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;
21 96-1027, eff. 7-12-10.)

22 (35 ILCS 135/4d)

23 Sec. 4d. Sales of cigarettes to and by retailers. In-state
24 makers, manufacturers, or fabricators licensed as distributors
25 under Section 4 of this Act and out-of-state makers,

1 manufacturers, or fabricators holding permits under Section 7
2 of this Act may not sell original packages of cigarettes to
3 retailers. A retailer who is licensed under Section 4g of the
4 Cigarette Tax Act may sell only original packages of cigarettes
5 obtained from licensed secondary distributors or licensed
6 distributors other than in-state makers, manufacturers, or
7 fabricators licensed as distributors under Section 4 of this
8 Act and out-of-state makers, manufacturers, or fabricators
9 holding permits under Section 7 of this Act.

10 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

11 (35 ILCS 135/4e)

12 Sec. 4e. Sales of cigarettes to and by secondary
13 distributors. In-state makers, manufacturers, and fabricators
14 licensed as distributors under Section 4 of this Act and
15 out-of-state makers, manufacturers, and fabricators holding
16 permits under Section 7 of this Act may not sell original
17 packages of cigarettes to secondary distributors. A secondary
18 distributor may sell only original packages of cigarettes
19 obtained from licensed distributors other than in-state
20 makers, manufacturers, or fabricators licensed as distributors
21 under Section 4 of this Act and out-of-state makers,
22 manufacturers, or fabricators holding permits under Section 7
23 of this Act. Secondary distributors may sell cigarettes to
24 Illinois retailers who are licensed under Section 4g of the
25 Cigarette Tax Act for resale, and are also authorized to make

1 retail sales of cigarettes at the location on the secondary
2 distributor's license as long as the secondary distributor
3 obtains a license under Section 4g of the Cigarette Tax Act and
4 sells 75% or more of the cigarettes sold at such location to
5 retailers who are licensed under Section 4g of the Cigarette
6 Tax Act for resale.

7 All sales by secondary distributors to Illinois retailers
8 who are licensed under Section 4g of the Cigarette Tax Act must
9 be made at the location on the secondary distributor's license.
10 Retailers who are issued a license under Section 4g of the
11 Cigarette Tax Act must take possession of all cigarettes sold
12 by the secondary distributor at the secondary distributor's
13 licensed address. Secondary distributors may not make
14 deliveries of cigarettes to Illinois retailers who are licensed
15 under Section 4g of the Cigarette Tax Act.

16 Secondary distributors may not file a claim for credit or
17 refund with the State under Section 14a of this Act.

18 (Source: P.A. 96-1027, eff. 7-12-10.)

19 Section 20. The Illinois Tobacco Products Tax Act is
20 amended by changing Sections 10-5, 10-20, 10-25, 10-35, and
21 10-50 and by adding Sections 10-21, 10-22, 10-36, and 10-53 as
22 follows:

23 (35 ILCS 143/10-5)

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

1 "Business" means any trade, occupation, activity, or
2 enterprise engaged in, at any location whatsoever, for the
3 purpose of selling tobacco products.

4 "Cigarette" has the meaning ascribed to the term in Section
5 1 of the Cigarette Tax Act.

6 "Correctional Industries program" means a program run by a
7 State penal institution in which residents of the penal
8 institution produce tobacco products for sale to persons
9 incarcerated in penal institutions or resident patients of a
10 State operated mental health facility.

11 "Department" means the Illinois Department of Revenue.

12 "Distributor" means any of the following:

13 (1) Any manufacturer or wholesaler in this State
14 engaged in the business of selling tobacco products who
15 sells, exchanges, or distributes tobacco products to
16 retailers or consumers in this State.

17 (2) Any manufacturer or wholesaler engaged in the
18 business of selling tobacco products from without this
19 State who sells, exchanges, distributes, ships, or
20 transports tobacco products to retailers or consumers
21 located in this State, so long as that manufacturer or
22 wholesaler has or maintains within this State, directly or
23 by subsidiary, an office, sales house, or other place of
24 business, or any agent or other representative operating
25 within this State under the authority of the person or
26 subsidiary, irrespective of whether the place of business

1 or agent or other representative is located here
2 permanently or temporarily.

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

6 "Distributor" does not include any person, wherever
7 resident or located, who makes, manufactures, or fabricates
8 tobacco products as part of a Correctional Industries program
9 for sale to residents incarcerated in penal institutions or
10 resident patients of a State operated mental health facility.

11 "Manufacturer" means any person, wherever resident or
12 located, who manufactures and sells tobacco products, except a
13 person who makes, manufactures, or fabricates tobacco products
14 as a part of a Correctional Industries program for sale to
15 persons incarcerated in penal institutions or resident
16 patients of a State operated mental health facility.

17 "Person" means any natural individual, firm, partnership,
18 association, joint stock company, joint venture, limited
19 liability company, or public or private corporation, however
20 formed, or a receiver, executor, administrator, trustee,
21 conservator, or other representative appointed by order of any
22 court.

23 "Place of business" means and includes any place where
24 tobacco products are sold or where tobacco products are
25 manufactured, stored, or kept for the purpose of sale or
26 consumption, including any vessel, vehicle, airplane, train,

1 or vending machine.

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

5 "Sale" means any transfer, exchange, or barter in any
6 manner or by any means whatsoever for a consideration and
7 includes all sales made by persons.

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

24 "Wholesale price" means the established list price for
25 which a manufacturer sells tobacco products to a distributor,
26 before the allowance of any discount, trade allowance, rebate,

1 or other reduction. In the absence of such an established list
2 price, the manufacturer's invoice price at which the
3 manufacturer sells the tobacco product to unaffiliated
4 distributors, before any discounts, trade allowances, rebates,
5 or other reductions, shall be presumed to be the wholesale
6 price.

7 "Wholesaler" means any person, wherever resident or
8 located, engaged in the business of selling tobacco products to
9 others for the purpose of resale.

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

11 (35 ILCS 143/10-20)

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

21 (1) The name of the applicant.

22 (2) The address of the location at which the applicant
23 proposes to engage in business as a distributor of tobacco
24 products.

25 (3) Other information the Department may reasonably

1 require.

2 Except as otherwise provided in this Section, every
3 applicant who is required to procure a distributor's license
4 shall file with his or her application a joint and several
5 bond. The bond shall be executed to the Department of Revenue,
6 with good and sufficient surety or sureties residing or
7 licensed to do business within the State of Illinois,
8 conditioned upon the true and faithful compliance by the
9 licensee with all of the provisions of this Act. The Department
10 shall fix the amount of the bond for each applicant, taking
11 into consideration the amount of money expected to become due
12 from the applicant under this Act. The amount of bond required
13 by the Department shall be an amount that, in its opinion, will
14 protect the State of Illinois against failure to pay the amount
15 that may become due from the applicant under this Act, but the
16 amount of the security required by the Department shall not
17 exceed 3 times the amount of the applicant's average monthly
18 tax liability, or \$50,000, whichever amount is lower. The bond,
19 a reissue, or a substitute shall be kept in full force and
20 effect during the entire period covered by the license. A
21 separate application for license shall be made, and bond filed,
22 for each place of business at which a person who is required to
23 procure a distributor's license proposes to engage in business
24 as a distributor under this Act.

25 The Department, upon receipt of an application and bond in
26 proper form, shall issue to the applicant a license, in a form

1 prescribed by the Department, which shall permit the applicant
2 to whom it is issued to engage in business as a distributor at
3 the place shown on his or her application. The license shall be
4 issued by the Department without charge or cost to the
5 applicant. No license issued under this Act is transferable or
6 assignable. The license shall be conspicuously displayed in the
7 place of business conducted by the licensee under the license.

8 The bonding requirement in this Section does not apply to
9 an applicant for a distributor's license who is already bonded
10 under the Cigarette Tax Act or the Cigarette Use Tax Act.
11 Licenses issued by the Department under this Act shall be valid
12 for a period not to exceed one year after issuance unless
13 sooner revoked, canceled, or suspended as provided in this Act.

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

17 The Department may, in its discretion, upon application,
18 authorize the payment of the tax imposed under Section 10-10 by
19 any distributor or manufacturer not otherwise subject to the
20 tax imposed under this Act who, to the satisfaction of the
21 Department, furnishes adequate security to ensure payment of
22 the tax. The distributor or manufacturer shall be issued,
23 without charge, a license to remit the tax. When so authorized,
24 it shall be the duty of the distributor or manufacturer to
25 remit the tax imposed upon the wholesale price of tobacco
26 products sold or otherwise disposed of to retailers or

1 consumers located in this State, in the same manner and subject
2 to the same requirements as any other distributor or
3 manufacturer licensed under this Act.

4 The Department may revoke, suspend, or cancel the license
5 of a distributor of roll-your-own tobacco (as that term is used
6 in Section 10 of the Tobacco Product Manufacturers' Escrow Act)
7 under this Act if the tobacco product manufacturer, as defined
8 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,
9 that made or sold the roll-your-own tobacco has failed to
10 become a participating manufacturer, as defined in subdivision
11 (a)(1) of Section 15 of the Tobacco Product Manufacturers'
12 Escrow Act, or has failed to create a qualified escrow fund for
13 any roll-your-own tobacco manufactured by the tobacco product
14 manufacturer and sold in this State or otherwise failed to
15 bring itself into compliance with subdivision (a)(2) of Section
16 15 of the Tobacco Product Manufacturers' Escrow Act.

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

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

2 (35 ILCS 143/10-21 new)

3 Sec. 10-21. Retailer's license. Beginning on January 1,
4 2013, no person may engage in business as a retailer of tobacco
5 products in this State without first having obtained a license
6 from the Department. Application for license shall be made to
7 the Department on a form furnished and prescribed by the
8 Department. Each applicant for a license under this Section
9 shall furnish to the Department on the form signed and verified
10 by the applicant the following information:

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

12 (2) the address of the location at which the applicant
13 proposes to engage in business as a retailer of tobacco
14 products in this State;

15 (3) such other additional information as the Department may
16 lawfully require by its rules and regulations.

17 The annual license fee payable to the Department for each
18 retailer's license shall be \$250. The fee will be deposited
19 into the Tax Compliance and Administration Fund and used
20 towards the cost of retail inspections. Each applicant for
21 license shall pay such fee to the Department at the time of
22 submitting his application for license to the Department. The
23 Department may, by rule, require an applicant for a license
24 under this Section to electronically file and pay the
25 application and fee.

1 Every applicant who is required to procure a retailer's
2 license shall file with his application a joint and several
3 bond. Such bond shall be executed to the Department of Revenue,
4 with good and sufficient surety or sureties residing or
5 licensed to do business within the State of Illinois, in an
6 amount of not less than \$2,500, conditioned upon the true and
7 faithful compliance by the licensee with all of the provisions
8 of this Act. Such bond, or a reissue thereof, or a substitute
9 therefore, shall be kept in effect during the entire period
10 covered by the license.

11 A separate application for license shall be made, a
12 separate annual license fee paid and a separate bond filed, for
13 each place of business at which a person who is required to
14 procure a retailer's license under this Section proposes to
15 engage in business as a retailer in Illinois under this Act.

16 The following are ineligible to receive a retailer's
17 license under this Act:

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

20 (2) a person who has been convicted of a felony under
21 any Federal or State law, if the Department, after
22 investigation and a hearing, if requested by the applicant,
23 determines that such person has not been sufficiently
24 rehabilitated to warrant the public trust; and

25 (3) a corporation, if any officer, manager or director
26 thereof, or any stockholder or stockholders owning in the

1 aggregate more than 5% of the stock of such corporation,
2 would not be eligible to receive a license under this Act
3 for any reason.

4 The Department, upon receipt of an application, license fee
5 and bond in proper form, from a person who is eligible to
6 receive a retailer's license under this Act, shall issue to
7 such applicant a license in form as prescribed by the
8 Department, which license shall permit the applicant to which
9 it is issued to engage in business as a retailer under this Act
10 at the place shown in his application. All licenses issued by
11 the Department under this Section shall be valid for a period
12 not to exceed one year after issuance unless sooner revoked,
13 canceled or suspended as provided in this Act. No license
14 issued under this Section is transferable or assignable. Such
15 license shall be conspicuously displayed in the place of
16 business conducted by the licensee in Illinois under such
17 license. A person who obtains a license as a retailer who
18 ceases to do business as specified in the license, or who never
19 commenced business, or who obtains a distributor's license, or
20 whose license is suspended or revoked, shall immediately
21 surrender the license to the Department. The Department shall
22 not issue a license to a retailer unless the retailer is also
23 validly registered under the Retailers Occupation Tax Act.

24 A retailer as defined under this Act need not obtain an
25 additional license under this Act, but shall be deemed to be
26 sufficiently licensed by virtue of his being properly licensed

1 as a retailer under Section 4g of the Cigarette Tax Act.

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

13 (35 ILCS 143/10-22 new)

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

18 (35 ILCS 143/10-25)

19 Sec. 10-25. License actions.

20 (a) The Department may, after notice and a hearing, revoke,
21 cancel, or suspend the license of any distributor or retailer
22 who violates any of the provisions of this Act. The notice
23 shall specify the alleged violation or violations upon which
24 the revocation, cancellation, or suspension proceeding is

1 based.

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

6 (c) The Department shall suspend for 7 days the license of
7 a retailer for a first violation of the Sale of Tobacco to
8 Minors Act, as provided in Section 3 of that Act.

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

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

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

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

1 (35 ILCS 143/10-35)

2 Sec. 10-35. Record keeping.

3 (a) Every distributor, as defined in Section 10-5, shall
4 keep complete and accurate records of tobacco products held,
5 purchased, manufactured, brought in or caused to be brought in
6 from without the State, and tobacco products sold, or otherwise
7 disposed of, and shall preserve and keep all invoices, bills of
8 lading, sales records, and copies of bills of sale, the
9 wholesale price for tobacco products sold or otherwise disposed
10 of, an inventory of tobacco products prepared as of December 31
11 of each year or as of the last day of the distributor's fiscal
12 year if he or she files federal income tax returns on the basis
13 of a fiscal year, and other pertinent papers and documents
14 relating to the manufacture, purchase, sale, or disposition of
15 tobacco products. Every sales invoice issued by a licensed
16 distributor to a retailer in this State shall contain the
17 distributor's Tobacco Products License number.

18 (b) Every retailer, as defined in Section 10-5, shall keep
19 within Illinois, at his or her licensed address, complete and
20 accurate records of tobacco products held, purchased, sold, or
21 otherwise disposed of, and shall preserve and keep all
22 invoices, bills of lading, sales records, and copies of bills
23 of sale, returns and other pertinent papers and documents
24 relating to the purchase, sale, or disposition of tobacco
25 products.

1 (c) Books, records, papers, and documents that are required
2 by this Act to be kept shall, at all times during the usual
3 business hours of the day, be subject to inspection by the
4 Department or its duly authorized agents and employees. The
5 books, records, papers, and documents for any period with
6 respect to which the Department is authorized to issue a notice
7 of tax liability shall be preserved until the expiration of
8 that period.

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

10 (35 ILCS 143/10-36 new)

11 Sec. 10-36. Proof of payment of tax imposed by this Act.
12 Every licensed distributor of tobacco products in this State is
13 required to show proof of the tax having been paid as required
14 by this Act by displaying its Tobacco Products License number
15 on every sales invoice issued to a retailer in this State. No
16 retailer shall possess tobacco products without either a proper
17 invoice indicating that the tobacco products tax was paid by a
18 distributor for the tobacco products in the retailer's
19 possession or other proof that the tax was paid by the retailer
20 if it has purchased tobacco products on which tax has not been
21 paid as required by this Act. Failure to comply with the
22 provisions of this paragraph may be grounds for revocation of a
23 distributor's or retailer's license in accordance with Section
24 10-25 of this Act or Section 6 of the Cigarette Tax Act. In
25 addition, the Department may impose a civil penalty not to

1 exceed \$1000 for each violation, which shall be deposited into
2 the Tax Compliance and Administration Fund.

3 (35 ILCS 143/10-50)

4 Sec. 10-50. Violations and penalties. When the amount due
5 is under \$300, any distributor who fails to file a return,
6 willfully ~~wilfully~~ fails or refuses to make any payment to the
7 Department of the tax imposed by this Act, or files a
8 fraudulent return, or any officer or agent of a corporation
9 engaged in the business of distributing tobacco products to
10 retailers and consumers located in this State who signs a
11 fraudulent return filed on behalf of the corporation, or any
12 accountant or other agent who knowingly enters false
13 information on the return of any taxpayer under this Act is
14 guilty of a Class 4 felony.

15 Any person who violates any provision of Sections ~~Section~~
16 10-20, 10-21, and 10-22 of this Act, fails to keep books and
17 records as required under this Act, or willfully ~~wilfully~~
18 violates a rule or regulation of the Department for the
19 administration and enforcement of this Act is guilty of a Class
20 4 felony. A person commits a separate offense on each day that
21 he or she engages in business in violation of Sections ~~Section~~
22 10-20, 10-21, and 10-22 of this Act.

23 Any person who violates any provision of Sections 10 20,
24 10-21 and 10-22 of this Act, fails to keep books and records as
25 required under this Act, or willfully violates a rule or

1 regulation of the Department for the administration and
2 enforcement of this Act is guilty of a business offense and may
3 be fined up to \$5000. A person commits a separate offense on
4 each day that he or she engages in business in violation of
5 Sections 10 20, 10-21 and 10-22 of this Act.

6 When the amount due is under \$300, any person who accepts
7 money that is due to the Department under this Act from a
8 taxpayer for the purpose of acting as the taxpayer's agent to
9 make the payment to the Department, but who fails to remit the
10 payment to the Department when due, is guilty of a Class 4
11 felony.

12 When the amount due is \$300 or more, any distributor who
13 files, or causes to be filed, a fraudulent return, or any
14 officer or agent of a corporation engaged in the business of
15 distributing tobacco products to retailers and consumers
16 located in this State who files or causes to be filed or signs
17 or causes to be signed a fraudulent return filed on behalf of
18 the corporation, or any accountant or other agent who knowingly
19 enters false information on the return of any taxpayer under
20 this Act is guilty of a Class 3 felony.

21 When the amount due is \$300 or more, any person engaged in
22 the business of distributing tobacco products to retailers and
23 consumers located in this State who fails to file a return,
24 willfully ~~willfully~~ fails or refuses to make any payment to the
25 Department of the tax imposed by this Act, or accepts money
26 that is due to the Department under this Act from a taxpayer

1 for the purpose of acting as the taxpayer's agent to make
2 payment to the Department but fails to remit such payment to
3 the Department when due is guilty of a Class 3 felony.

4 When the amount due is under \$300, any retailer who fails
5 to file a return, willfully fails or refuses to make any
6 payment to the Department of the tax imposed by this Act, or
7 files a fraudulent return, or any officer or agent of a
8 corporation engaged in the retail business of selling tobacco
9 products to purchasers of tobacco products for use and
10 consumption located in this State who signs a fraudulent return
11 filed on behalf of the corporation, or any accountant or other
12 agent who knowingly enters false information on the return of
13 any taxpayer under this Act is guilty of a Class A misdemeanor
14 for a first offense and a Class 4 felony for each subsequent
15 offense.

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

26 Any person whose principal place of business is in this

1 State and who is charged with a violation under this Section
2 shall be tried in the county where his or her principal place
3 of business is located unless he or she asserts a right to be
4 tried in another venue. If the taxpayer does not have his or
5 her principal place of business in this State, however, the
6 hearing must be held in Sangamon County unless the taxpayer
7 asserts a right to be tried in another venue.

8 Any taxpayer or agent of a taxpayer who with the intent to
9 defraud purports to make a payment due to the Department by
10 issuing or delivering a check or other order upon a real or
11 fictitious depository for the payment of money, knowing that it
12 will not be paid by the depository, is guilty of a deceptive
13 practice in violation of Section 17-1 of the Criminal Code of
14 1961.

15 A prosecution for a violation described in this Section may
16 be commenced within 3 years after the commission of the act
17 constituting the violation.

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

19 (35 ILCS 143/10-53 new)

20 Sec. 10-53. Acting as a retailer of tobacco products
21 without a license. Any person who knowingly acts as a retailer
22 of tobacco products in this State without first having obtained
23 a license to do so in compliance with Section 10-21 of this Act
24 or a license in compliance with Section 4g of the Cigarette Tax
25 Act shall be guilty of a Class 4 felony. Each day such person

1 operates as a retailer without a license constitutes a separate
2 offense.

3 Section 99. Effective date. This Act takes effect July 1,
4 2013.

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2	Statutes amended in order of appearance	
3	20 ILCS 2505/2505-380	was 20 ILCS 2505/39b47
4	35 ILCS 130/1	from Ch. 120, par. 453.1
5	35 ILCS 130/3-10	
6	35 ILCS 130/4d	
7	35 ILCS 130/4e	
8	35 ILCS 130/4f	
9	35 ILCS 130/4g new	
10	35 ILCS 130/4h new	
11	35 ILCS 130/6	from Ch. 120, par. 453.6
12	35 ILCS 130/7	from Ch. 120, par. 453.7
13	35 ILCS 130/8	from Ch. 120, par. 453.8
14	35 ILCS 130/9g new	
15	35 ILCS 130/10	from Ch. 120, par. 453.10
16	35 ILCS 130/11c new	
17	35 ILCS 130/23	from Ch. 120, par. 453.23
18	35 ILCS 130/26	from Ch. 120, par. 453.26
19	35 ILCS 135/1	from Ch. 120, par. 453.31
20	35 ILCS 135/3-10	
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23	35 ILCS 143/10-5	
24	35 ILCS 143/10-20	
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- 1 35 ILCS 143/10-22 new
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- 4 35 ILCS 143/10-36 new
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