

SB1447



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1447

Introduced 2/6/2013, 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, 2014.

LRB098 06888 HLH 36945 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 Until July 1, 2012, "cigarette", means any roll for smoking
11 made wholly or in part of tobacco irrespective of size or shape
12 and whether or not such tobacco is flavored, adulterated or
13 mixed with any other ingredient, and the wrapper or cover of
14 which is made of paper or any other substance or material
15 except tobacco.

16 "Cigarette", beginning on and after July 1, 2012, means any
17 roll for smoking made wholly or in part of tobacco irrespective
18 of size or shape and whether or not such tobacco is flavored,
19 adulterated, or mixed with any other ingredient, and the
20 wrapper or cover of which is made of paper.

21 "Cigarette", beginning on and after July 1, 2012, also
22 shall mean: Any roll for smoking made wholly or in part of
23 tobacco labeled as anything other than a cigarette or not
24 bearing a label, if it meets two or more of the following

1 criteria:

2 (a) the product is sold in packs similar to cigarettes;

3 (b) the product is available for sale in cartons of ten
4 packs;

5 (c) the product is sold in soft packs, hard packs,
6 flip-top boxes, clam shells, or other cigarette-type
7 boxes;

8 (d) the product is of a length and diameter similar to
9 commercially manufactured cigarettes;

10 (e) the product has a cellulose acetate or other
11 integrated filter;

12 (f) the product is marketed or advertised to consumers
13 as a cigarette or cigarette substitute; or

14 (g) other evidence that the product fits within the
15 definition of cigarette.

16 "Contraband cigarettes" means:

17 (a) cigarettes that do not bear a required tax stamp
18 under this Act;

19 (b) cigarettes for which any required federal taxes
20 have not been paid;

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

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

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

5 (f) cigarettes that have false manufacturing labels;

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

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

11 (i) cigarettes made or fabricated by a person holding a
12 cigarette machine operator license under Section 1-20 of
13 the Cigarette Machine Operators' Occupation Tax Act in the
14 possession of manufacturers, distributors, secondary
15 distributors, manufacturer representatives or other
16 retailers for the purpose of resale, regardless of whether
17 the tax has been paid on such cigarettes.

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

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

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

14 "Department" means the Department of Revenue.

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

18 "Original Package" means the individual packet, box or
19 other container whatsoever used to contain and to convey
20 cigarettes to the consumer.

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

22 (1) Any person engaged in the business of selling
23 cigarettes in this State who brings or causes to be brought
24 into this State from without this State any original
25 packages of cigarettes, on which original packages there is
26 no authorized evidence underneath a sealed transparent

1 wrapper showing that the tax liability imposed by this Act
2 has been paid or assumed by the out-of-State seller of such
3 cigarettes, for sale or other disposition in the course of
4 such business.

5 (2) Any person who makes, manufactures or fabricates
6 cigarettes in this State for sale in this State, except a
7 person who makes, manufactures or fabricates cigarettes as
8 a part of a correctional industries program for sale to
9 residents incarcerated in penal institutions or resident
10 patients of a State-operated mental health facility.

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

17 "Distributor" does not include any person who makes a sale
18 of cigarettes to a purchaser for use or consumption, and not
19 for resale.

20 "Place of business" shall mean and include any place where
21 cigarettes are sold or where cigarettes are manufactured,
22 stored or kept for the purpose of sale or consumption,
23 including any vessel, vehicle, airplane, train or vending
24 machine.

25 "Manufacturer representative" means a director, officer,
26 or employee of a manufacturer who has obtained authority from

1 the Department under Section 4f to maintain representatives in
2 Illinois that provide or sell original packages of cigarettes
3 made, manufactured, or fabricated by the manufacturer to
4 retailers in compliance with Section 4f of this Act to promote
5 cigarettes made, manufactured, or fabricated by the
6 manufacturer.

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

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

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

20 (2) who transfers cigarettes to a not-for-profit
21 research institution that conducts tests concerning the
22 health effects of tobacco products and who does not offer
23 the cigarettes for resale.

24 "Retailer" shall be construed to include any person who
25 engages in the making of transfers of the ownership of, or
26 title to, cigarettes to a purchaser, for use or consumption by

1 any other person to whom such purchaser may transfer the
2 cigarettes without a valuable consideration, except a person
3 who transfers to residents incarcerated in penal institutions
4 or resident patients of a State-operated mental health facility
5 ownership of cigarettes made, manufactured or fabricated as
6 part of a correctional industries program.

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

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

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

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

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

21 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
22 97-587, eff. 8-26-11; 97-688, eff. 6-14-12.)

23 (35 ILCS 130/3-10)

24 Sec. 3-10. Cigarette enforcement.

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

1 (1) to sell or distribute in this State; to acquire,
2 hold, own, possess, or transport, for sale or distribution
3 in this State; or to import, or cause to be imported into
4 this State for sale or distribution in this State:

5 (A) any cigarettes the package of which:

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

13 (ii) does not comply with:

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

23 (bb) all federal trademark and copyright
24 laws;

25 (B) any cigarettes imported into the United States
26 in violation of 26 U.S.C. 5754 or any other federal

1 law, or implementing federal regulations;

2 (C) any cigarettes that such person otherwise
3 knows or has reason to know the manufacturer did not
4 intend to be sold, distributed, or used in the United
5 States; or

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

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

15 (A) any statement, label, stamp, sticker, or
16 notice described in subdivision (a)(1)(A)(i) of this
17 Section;

18 (B) any health warning that is not specified in, or
19 does not conform with the requirements of, the federal
20 Cigarette Labeling and Advertising Act, 15 U.S.C.
21 1333; or

22 (3) to affix any stamp required pursuant to this Act to
23 the package of any cigarettes described in subdivision
24 (a)(1) of this Section or altered in violation of
25 subdivision (a)(2).

26 (b) Documentation. On the first business day of each month,

1 each person licensed to affix the State tax stamp to cigarettes
2 shall file with the Department, for all cigarettes imported
3 into the United States to which the person has affixed the tax
4 stamp in the preceding month:

5 (1) a copy of:

6 (A) the permit issued pursuant to the Internal
7 Revenue Code, 26 U.S.C. 5713, to the person importing
8 the cigarettes into the United States allowing the
9 person to import the cigarettes; and

10 (B) the customs form containing, with respect to
11 the cigarettes, the internal revenue tax information
12 required by the U.S. Bureau of Alcohol, Tobacco and
13 Firearms;

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

26 (3) a statement, signed by an officer of the

1 manufacturer or importer under penalty of perjury,
2 certifying that the manufacturer or importer has complied
3 with:

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

8 (B) the provisions of Exhibit T of the Master
9 Settlement Agreement entered in the case of People of
10 the State of Illinois v. Philip Morris, et al. (Circuit
11 Court of Cook County, No. 96-L13146), including a
12 statement indicating whether the manufacturer is, or
13 is not, a participating tobacco manufacturer within
14 the meaning of Exhibit T.

15 (c) Administrative sanctions.

16 (1) Upon finding that a distributor, secondary
17 distributor, retailer, or person has committed any of the
18 acts prohibited by subsection (a), knowing or having reason
19 to know that he or she has done so, or upon finding that a
20 distributor or person has failed to comply with any
21 requirement of subsection (b), the Department may revoke or
22 suspend the license or licenses of any distributor, ~~or~~
23 secondary distributor, or retailer pursuant to the
24 procedures set forth in Section 6 and impose, on the
25 distributor, secondary distributor, retailer, or person, a
26 civil penalty in an amount not to exceed the greater of

1 500% of the retail value of the cigarettes involved or
2 \$5,000.

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

12 (d) Unfair trade practices. In addition to any other
13 penalties provided for in this Act, a violation of subsection
14 (a) or subsection (b) of this Section shall constitute an
15 unlawful practice as provided in the Consumer Fraud and
16 Deceptive Business Practices Act.

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

25 (d-2) Criminal Penalties. A distributor, secondary
26 distributor, retailer, or person who violates subsection (a),

1 or a distributor, secondary distributor, or person who violates
2 subsection (b) of this Section shall be guilty of a Class 4
3 felony.

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

13 (f) General provisions.

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

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

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

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

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

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

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

16 (h) Applicability.

17 (1) This Section does not apply to:

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

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

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

4 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;
5 96-1027, eff. 7-12-10.)

6 (35 ILCS 130/4d)

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

20 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
21 97-587, eff. 8-26-11.)

22 (35 ILCS 130/4e)

23 Sec. 4e. Sales of cigarettes to and by secondary
24 distributors. In-state makers, manufacturers, and fabricators

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

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

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

2 (35 ILCS 130/4f)

3 Sec. 4f. Manufacturer representatives.

4 (a) No manufacturer may market cigarettes produced by the
5 manufacturer directly to retailers in this State issued a
6 license under Section 4g of this Act without first having
7 obtained authorization from the Department. Application for
8 authority to maintain representatives in this State to market
9 in this State cigarettes produced by the manufacturer shall be
10 made to the Department on a form furnished and prescribed by
11 the Department. Each applicant under this Section shall furnish
12 the following information to the Department on a form signed
13 and verified by the applicant under penalty of perjury:

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

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

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

19 (4) any other additional information as the Department
20 may reasonably require.

21 The following manufacturers are ineligible to receive
22 authorization to maintain manufacturer representatives in this
23 State:

24 (1) a manufacturer who owes, at the time of
25 application, any delinquent cigarette taxes that have been

1 determined by law to be due and unpaid, unless the
2 applicant has entered into an agreement approved by the
3 Department to pay the amount due;

4 (2) a manufacturer who has had a license revoked within
5 the past 2 years for misconduct relating to stolen or
6 contraband cigarettes or has been convicted of a state or
7 federal crime, punishable by imprisonment of one year or
8 more, relating to stolen or contraband cigarettes;

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

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

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

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

25 (7) a manufacturer licensed as a distributor under
26 Section 4 of this Act or holding a permit under Section 4b

1 of this Act.

2 The Department, upon receipt of an application from a
3 manufacturer who is eligible to maintain manufacturer
4 representatives in this State, shall notify the applicant in
5 writing, not more than 60 days after an application has been
6 received, that the applicant may or may not maintain the
7 requested number of manufacturer representatives in this
8 State. A copy of the notice authorizing a manufacturer to
9 maintain manufacturer representatives in this State shall be
10 available for inspection by the Department at each place of
11 business identified in the application and in the motor vehicle
12 operated by marketing representatives in the course of
13 performing his or her duties in this State on behalf of the
14 manufacturer.

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

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

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

5 (2) an individual who has had a license revoked within
6 the past 2 years for misconduct relating to stolen or
7 contraband cigarettes or has been convicted of a state or
8 federal crime, punishable by imprisonment of one year or
9 more, relating to stolen or contraband cigarettes;

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

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

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

1 manufacturer and purchased or obtained from a distributor
2 licensed under this Act or the Cigarette Use Tax Act. Any
3 original packages of cigarettes in the possession of a
4 manufacturer representative that (i) are not made,
5 manufactured, or fabricated by the manufacturer and purchased
6 or obtained from a distributor licensed under this Act or the
7 Cigarette Use Tax Act, other than cigarettes for personal use
8 and consumption, (ii) exceed the maximum quantity of 500
9 original packages of cigarettes, excluding packages of
10 cigarettes for personal use and consumption; (iii) violate
11 Section 3-10 of this Act; or (iv) do not have the proper tax
12 stamps affixed, are contraband and subject to seizure and
13 forfeiture.

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

24 Manufacturer representatives may sell stamped original
25 packages of cigarettes to licensed retailers that are purchased
26 from licensed distributors. Distributors shall provide

1 manufacturer representatives with invoices for stamped
2 original packages of cigarettes sold to manufacturer
3 representatives. Manufacturer representatives shall invoice
4 licensed retailers, and the licensed retailers shall pay the
5 manufacturer representatives for all original packages of
6 cigarettes sold to licensed retailers.

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

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

19 (35 ILCS 130/4g new)

20 Sec. 4g. Retailer's license. Beginning on January 1, 2014,
21 no person may engage in business as a retailer of cigarettes in
22 this State without first having obtained a license from the
23 Department. Application for license shall be made to the
24 Department on a form furnished and prescribed by the
25 Department. Each applicant for a license under this Section

1 shall furnish to the Department on the form signed and verified
2 by the applicant the following information:

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

4 (2) the address of the location at which the applicant
5 proposes to engage in business as a retailer of cigarettes
6 in this State; and

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

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

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

1 therefore, shall be kept in effect during the entire period
2 covered by the license.

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

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

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

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

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

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

25 The Department, upon receipt of an application, license fee
26 and bond in proper form, from a person who is eligible to

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

20 Any person aggrieved by any decision of the Department
21 under this subsection may, within 20 days after notice of the
22 decision, protest and request a hearing. Upon receiving a
23 request for a hearing, the Department shall give notice to the
24 person requesting the hearing of the time and place fixed for
25 the hearing and shall hold a hearing in conformity with the
26 provisions of this Act and then issue its final administrative

1 decision in the matter to that person. In the absence of a
2 protest and request for a hearing within 20 days, the
3 Department's decision shall become final without any further
4 determination being made or notice given.

5 (35 ILCS 130/4h new)

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

11 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

12 Sec. 6. Revocation, cancellation, or suspension of
13 license. The Department may, after notice and hearing as
14 provided for by this Act, revoke, cancel or suspend the license
15 of any distributor, ~~or~~ secondary distributor or retailer for
16 the violation of any provision of this Act, or for
17 noncompliance with any provision herein contained, or for any
18 noncompliance with any lawful rule or regulation promulgated by
19 the Department under Section 8 of this Act, or because the
20 licensee is determined to be ineligible for a distributor's
21 license for any one or more of the reasons provided for in
22 Section 4 of this Act, or because the licensee is determined to
23 be ineligible for a secondary distributor's license for any one
24 or more of the reasons provided for in Section 4c of this Act,

1 or because the licensee is determined to be ineligible for a
2 retailer's license for any one or more of the reasons provided
3 for in Section 4g of this Act. However, no such license shall
4 be revoked, cancelled or suspended, except after a hearing by
5 the Department with notice to the distributor, ~~or~~ secondary
6 distributor, or retailer, as aforesaid, and affording such
7 distributor, ~~or~~ secondary distributor, or retailer a
8 reasonable opportunity to appear and defend, and any
9 distributor, ~~or~~ secondary distributor, or retailer aggrieved
10 by any decision of the Department with respect thereto may have
11 the determination of the Department judicially reviewed, as
12 herein provided.

13 The Department may revoke, cancel, or suspend the license
14 of any distributor for a violation of the Tobacco Product
15 Manufacturers' Escrow Enforcement Act as provided in Section 30
16 of that Act. The Department may revoke, cancel, or suspend the
17 license of any secondary distributor for a violation of
18 subsection (e) of Section 15 of the Tobacco Product
19 Manufacturers' Escrow Enforcement Act.

20 Any distributor, ~~or~~ secondary distributor, or retailer
21 aggrieved by any decision of the Department under this Section
22 may, within 20 days after notice of the decision, protest and
23 request a hearing. Upon receiving a request for a hearing, the
24 Department shall give notice in writing to the distributor, ~~or~~
25 secondary distributor, or retailer requesting the hearing that
26 contains a statement of the charges preferred against the

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

9 No license so revoked, as aforesaid, shall be reissued to
10 any such distributor, ~~or~~ secondary distributor, or retailer
11 within a period of 6 months after the date of the final
12 determination of such revocation. No such license shall be
13 reissued at all so long as the person who would receive the
14 license is ineligible to receive a distributor's license under
15 this Act for any one or more of the reasons provided for in
16 Section 4 of this Act, ~~or~~ is ineligible to receive a secondary
17 distributor's license under this Act for any one or more of the
18 reasons provided for in Section 4c of this Act, or is
19 determined to be ineligible for a retailer's license under the
20 Act for any one or more of the reasons provided for in Section
21 4g of this Act.

22 The Department upon complaint filed in the circuit court
23 may by injunction restrain any person who fails, or refuses, to
24 comply with any of the provisions of this Act from acting as a
25 distributor, ~~or~~ secondary distributor, or retailer of
26 cigarettes in this State.

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

2 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

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

1 service and witness fees. A subpoena or subpoena duces tecum so
2 issued shall be served in the same manner as a subpoena or
3 subpoena duces tecum issued out of a court.

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

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

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

23 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

24 Sec. 8. The Department may make, promulgate and enforce
25 such reasonable rules and regulations relating to the

1 administration and enforcement of this Act as may be deemed
2 expedient.

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

10 Hearings provided for in this Act, other than hearings
11 before the Illinois Independent Tax Tribunal, shall be held:

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

14 (2) At the Department's office nearest the taxpayer's
15 or licensee's principal place of business, if the
16 taxpayer's or licensee's principal place of business is in
17 Illinois but outside Cook County;

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

20 The Circuit Court of the County wherein the hearing is held
21 has power to review all final administrative decisions of the
22 Department in administering this Act. The provisions of the
23 Administrative Review Law, and all amendments and
24 modifications thereof, and the rules adopted pursuant thereto,
25 shall apply to and govern all proceedings for the judicial
26 review of final administrative decisions of the Department

1 under this Act. The term "administrative decision" is defined
2 as in Section 3-101 of the Code of Civil Procedure.

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

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

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

15 Hearings to contest an administrative decision under this
16 Act conducted as a result of a protest filed with the Illinois
17 Independent Tax Tribunal on or after July 1, 2013 shall be
18 conducted pursuant to the provisions of the Illinois
19 Independent Tax Tribunal Act of 2012.

20 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11;
21 97-1129, eff. 8-28-12.)

22 (35 ILCS 130/9g new)

23 Sec. 9g. Retailers; reports. Every retailer who is required
24 to procure a license under this Act shall, on or before the
25 15th day of each calendar month, file a report with the

1 Department, showing the quantity of cigarettes purchased from
2 licensed distributors, secondary distributors, and
3 manufacturer with authority to maintain manufacturer
4 representatives during the preceding calendar month, either
5 within or outside this State, and the quantity of cigarettes
6 sold to consumers or otherwise disposed of during the preceding
7 calendar month. Such reports shall be filed in the form
8 prescribed by the Department and shall contain such other
9 information as the Department may reasonably require. The
10 report shall be filed electronically and be accompanied by
11 appropriate computer generated magnetic media supporting
12 schedule data in the format required by the Department, unless,
13 as provided by rule, the Department grants an exception upon
14 petition of retailer.

15 A certification by the Director of the Department that a
16 report has not been filed, or that information has not been
17 supplied pursuant to the provisions of this Act, shall be prima
18 facie evidence thereof.

19 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

20 Sec. 10. The Department, or any officer or employee
21 designated in writing by the Director thereof, for the purpose
22 of administering and enforcing the provisions of this Act, may
23 hold investigations and, except as otherwise provided in the
24 Illinois Independent Tax Tribunal Act of 2012, may hold
25 hearings concerning any matters covered by this Act, and may

1 examine books, papers, records or memoranda bearing upon the
2 sale or other disposition of cigarettes by a distributor,
3 secondary distributor, retailer, manufacturer with authority
4 to maintain manufacturer representatives under Section 4f of
5 this Act, or manufacturer representative, and may issue
6 subpoenas requiring the attendance of a distributor, secondary
7 distributor, retailer, manufacturer with authority to maintain
8 manufacturer representatives under Section 4f of this Act, or
9 manufacturer representative, or any officer or employee of a
10 distributor, secondary distributor, retailer, manufacturer
11 with authority to maintain manufacturer representatives under
12 Section 4f of this Act, or any person having knowledge of the
13 facts, and may take testimony and require proof, and may issue
14 subpoenas duces tecum to compel the production of relevant
15 books, papers, records and memoranda, for the information of
16 the Department.

17 All hearings to contest administrative decisions of the
18 Department conducted as a result of a protest filed with the
19 Illinois Independent Tax Tribunal on or after July 1, 2013
20 shall be subject to the provisions of the Illinois Independent
21 Tax Tribunal Act of 2012.

22 In the conduct of any investigation or hearing provided for
23 by this Act, neither the Department, nor any officer or
24 employee thereof, shall be bound by the technical rules of
25 evidence, and no informality in the proceedings nor in the
26 manner of taking testimony shall invalidate any rule, order,

1 decision or regulation made, approved or confirmed by the
2 Department.

3 The Director of Revenue, or any duly authorized officer or
4 employee of the Department, shall have the power to administer
5 oaths to such persons required by this Act to give testimony
6 before the said Department.

7 The books, papers, records and memoranda of the Department,
8 or parts thereof, may be proved in any hearing, investigation
9 or legal proceeding by a reproduced copy thereof under the
10 certificate of the Director of Revenue. Such reproduced copy
11 shall, without further proof, be admitted into evidence before
12 the Department or in any legal proceeding.

13 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11;
14 97-1129, eff. 8-28-12.)

15 (35 ILCS 130/11c new)

16 Sec. 11c. Retailers; records. Every retailer who is
17 required to procure a license under this Act, shall keep within
18 Illinois, at his business address identified under Section 4g
19 of this Act, complete and accurate records of cigarettes
20 purchased, sold, or otherwise disposed of, and shall preserve
21 and keep within Illinois at his business address all invoices,
22 sales records, copies of bills of sale, inventory at the close
23 of each period for which a report is required of all cigarettes
24 on hand, and other pertinent papers and documents relating to
25 the purchase, sale, or disposition of cigarettes. All books and

1 records and other papers and documents that are required by
2 this Act to be kept shall be kept in the English language, and
3 shall, at all times during the usual business hours of the day,
4 be subject to inspection by the Department or its duly
5 authorized agents and employees. The Department may adopt rules
6 that establish requirements, including record forms and
7 formats, for records required to be kept and maintained by.

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

24 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

25 Sec. 23. Every distributor, secondary distributor,

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

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

15 (35 ILCS 130/26) (from Ch. 120, par. 453.26)

16 Sec. 26. Whoever acts as a distributor, ~~or~~ secondary
17 distributor, retailer, or manufacturer representative of
18 original packages without having a license, as required by this
19 Act, shall be guilty of a Class 4 felony.

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

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

23 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

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

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

16 Until July 1, 2012, "cigarette" means any roll for smoking
17 made wholly or in part of tobacco irrespective of size or shape
18 and whether or not such tobacco is flavored, adulterated or
19 mixed with any other ingredient, and the wrapper or cover of
20 which is made of paper or any other substance or material
21 except tobacco.

22 "Cigarette", beginning on and after July 1, 2012, means any
23 roll for smoking made wholly or in part of tobacco irrespective
24 of size or shape and whether or not such tobacco is flavored,
25 adulterated or mixed with any other ingredient, and the wrapper
26 or cover of which is made of paper.

1 "Cigarette", beginning on and after July 1, 2012, also
2 shall mean: Any roll for smoking made wholly or in part of
3 tobacco labeled as anything other than a cigarette or not
4 bearing a label, if it meets two or more of the following
5 criteria:

6 (a) the product is sold in packs similar to cigarettes;

7 (b) the product is available for sale in cartons of ten
8 packs;

9 (c) the product is sold in soft packs, hard packs,
10 flip-top boxes, clam shells, or other cigarette-type
11 boxes;

12 (d) the product is of a length and diameter similar to
13 commercially manufactured cigarettes;

14 (e) the product has a cellulose acetate or other
15 integrated filter;

16 (f) the product is marketed or advertised to consumers
17 as a cigarette or cigarette substitute; or

18 (g) other evidence that the product fits within the
19 definition of cigarette.

20 "Contraband cigarettes" means:

21 (a) cigarettes that do not bear a required tax stamp
22 under this Act;

23 (b) cigarettes for which any required federal taxes
24 have not been paid;

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

26 (d) cigarettes that are manufactured, fabricated,

1 assembled, processed, packaged, or labeled by any person
2 other than (i) the owner of the trademark rights in the
3 cigarette brand or (ii) a person that is directly or
4 indirectly authorized by such owner;

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

9 (f) cigarettes that have false manufacturing labels;

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

12 (h) cigarettes that are improperly tax stamped,
13 including cigarettes that bear a tax stamp of another state
14 or taxing jurisdiction; or

15 (i) cigarettes made or fabricated by a person holding a
16 cigarette machine operator license under Section 1-20 of
17 the Cigarette Machine Operators' Occupation Tax Act in the
18 possession of manufacturers, distributors, secondary
19 distributors, manufacturer representatives or other
20 retailers for the purpose of resale, regardless of whether
21 the tax has been paid on such cigarettes.

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

1 court.

2 "Department" means the Department of Revenue.

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

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

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

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

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

23 c. Any person who makes, manufactures or fabricates
24 cigarettes outside this State, which cigarettes are placed
25 in original packages contained in sealed transparent
26 wrappers, for delivery or shipment into this State, and who

1 elects to qualify and is accepted by the Department as a
2 distributor under Section 7 of this Act.

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

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

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

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

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

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

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

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

1 place of business or agent is located here permanently or
2 temporarily, or whether such secondary distributor or
3 subsidiary is licensed to transact business within this State.

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

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

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

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

11 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
12 97-688, eff. 6-14-12.)

13 (35 ILCS 135/3-10)

14 Sec. 3-10. Cigarette enforcement.

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

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

20 (A) any cigarettes the package of which:

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

1 Export Only", "U.S. Tax Exempt", "For Use Outside
2 U.S.", or similar wording; or

3 (ii) does not comply with:

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

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

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

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

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

1 and Advertising Act, 15 U.S.C. 1335a;

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

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

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

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

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

21 (1) a copy of:

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

26 (B) the customs form containing, with respect to

1 the cigarettes, the internal revenue tax information
2 required by the U.S. Bureau of Alcohol, Tobacco and
3 Firearms;

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

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

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

24 (B) the provisions of Exhibit T of the Master
25 Settlement Agreement entered in the case of People of
26 the State of Illinois v. Philip Morris, et al. (Circuit

1 Court of Cook County, No. 96-L13146), including a
2 statement indicating whether the manufacturer is, or
3 is not, a participating tobacco manufacturer within
4 the meaning of Exhibit T.

5 (c) Administrative sanctions.

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

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

1 violation of this Section is knowing or otherwise.

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

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

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

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

1 manufactured in the United States for sale or distribution in
2 the United States shall be presumed to have been purchased
3 outside of the ordinary channels of trade.

4 (f) General provisions.

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

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

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

1 finds that the violation is flagrant, it may increase
2 recovery to an amount not in excess of 3 times the actual
3 damages sustained by reason of the violation.

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

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

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

7 (h) Applicability.

8 (1) This Section does not apply to:

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

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

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

21 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;
22 96-1027, eff. 7-12-10.)

23 (35 ILCS 135/4d)

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

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

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

12 (35 ILCS 135/4e)

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

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

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

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

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

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

24 (35 ILCS 143/10-5)

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

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

5 "Cigarette" has the meaning ascribed to the term in Section
6 1 of the Cigarette Tax Act.

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

12 "Department" means the Illinois Department of Revenue.

13 "Distributor" means any of the following:

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

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

1 subsidiary, irrespective of whether the place of business
2 or agent or other representative is located here
3 permanently or temporarily.

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

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

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

18 Beginning on January 1, 2013, "moist snuff" means any
19 finely cut, ground, or powdered tobacco that is not intended to
20 be smoked, but shall not include any finely cut, ground, or
21 powdered tobacco that is intended to be placed in the nasal
22 cavity.

23 "Person" means any natural individual, firm, partnership,
24 association, joint stock company, joint venture, limited
25 liability company, or public or private corporation, however
26 formed, or a receiver, executor, administrator, trustee,

1 conservator, or other representative appointed by order of any
2 court.

3 "Place of business" means and includes any place where
4 tobacco products are sold or where tobacco products are
5 manufactured, stored, or kept for the purpose of sale or
6 consumption, including any vessel, vehicle, airplane, train,
7 or vending machine.

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

11 "Sale" means any transfer, exchange, or barter in any
12 manner or by any means whatsoever for a consideration and
13 includes all sales made by persons.

14 "Tobacco products" means any cigars; cheroots; stogies;
15 periques; granulated, plug cut, crimp cut, ready rubbed, and
16 other smoking tobacco; snuff (including moist snuff) or snuff
17 flour; cavendish; plug and twist tobacco; fine-cut and other
18 chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
19 and sweeping of tobacco; and other kinds and forms of tobacco,
20 prepared in such manner as to be suitable for chewing or
21 smoking in a pipe or otherwise, or both for chewing and
22 smoking; but does not include cigarettes as defined in Section
23 1 of the Cigarette Tax Act or tobacco purchased for the
24 manufacture of cigarettes by cigarette distributors and
25 manufacturers defined in the Cigarette Tax Act and persons who
26 make, manufacture, or fabricate cigarettes as a part of a

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

4 "Wholesale price" means the established list price for
5 which a manufacturer sells tobacco products to a distributor,
6 before the allowance of any discount, trade allowance, rebate,
7 or other reduction. In the absence of such an established list
8 price, the manufacturer's invoice price at which the
9 manufacturer sells the tobacco product to unaffiliated
10 distributors, before any discounts, trade allowances, rebates,
11 or other reductions, shall be presumed to be the wholesale
12 price.

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

16 (Source: P.A. 97-688, eff. 6-14-12.)

17 (35 ILCS 143/10-20)

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

1 information:

2 (1) The name of the applicant.

3 (2) The address of the location at which the applicant
4 proposes to engage in business as a distributor of tobacco
5 products.

6 (3) Other information the Department may reasonably
7 require.

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

1 separate application for license shall be made, and bond filed,
2 for each place of business at which a person who is required to
3 procure a distributor's license proposes to engage in business
4 as a distributor under this Act.

5 The Department, upon receipt of an application and bond in
6 proper form, shall issue to the applicant a license, in a form
7 prescribed by the Department, which shall permit the applicant
8 to whom it is issued to engage in business as a distributor at
9 the place shown on his or her application. The license shall be
10 issued by the Department without charge or cost to the
11 applicant. No license issued under this Act is transferable or
12 assignable. The license shall be conspicuously displayed in the
13 place of business conducted by the licensee under the license.

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

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

23 The Department may, in its discretion, upon application,
24 authorize the payment of the tax imposed under Section 10-10 by
25 any distributor or manufacturer not otherwise subject to the
26 tax imposed under this Act who, to the satisfaction of the

1 Department, furnishes adequate security to ensure payment of
2 the tax. The distributor or manufacturer shall be issued,
3 without charge, a license to remit the tax. When so authorized,
4 it shall be the duty of the distributor or manufacturer to
5 remit the tax imposed upon the wholesale price of tobacco
6 products sold or otherwise disposed of to retailers or
7 consumers located in this State, in the same manner and subject
8 to the same requirements as any other distributor or
9 manufacturer licensed under this Act.

10 The Department may revoke, suspend, or cancel the license
11 of a distributor of roll-your-own tobacco (as that term is used
12 in Section 10 of the Tobacco Product Manufacturers' Escrow Act)
13 under this Act if the tobacco product manufacturer, as defined
14 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,
15 that made or sold the roll-your-own tobacco has failed to
16 become a participating manufacturer, as defined in subdivision
17 (a)(1) of Section 15 of the Tobacco Product Manufacturers'
18 Escrow Act, or has failed to create a qualified escrow fund for
19 any roll-your-own tobacco manufactured by the tobacco product
20 manufacturer and sold in this State or otherwise failed to
21 bring itself into compliance with subdivision (a)(2) of Section
22 15 of the Tobacco Product Manufacturers' Escrow Act.

23 Any person aggrieved by any decision of the Department
24 under this Section may, within 20 days after notice of that
25 decision, protest and request a hearing, whereupon the
26 Department must give notice to that person of the time and

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

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

8 (35 ILCS 143/10-21 new)

9 Sec. 10-21. Retailer's license. Beginning on January 1,
10 2014, no person may engage in business as a retailer of tobacco
11 products in this State without first having obtained a license
12 from the Department. Application for license shall be made to
13 the Department on a form furnished and prescribed by the
14 Department. Each applicant for a license under this Section
15 shall furnish to the Department on the form signed and verified
16 by the applicant the following information:

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

18 (2) the address of the location at which the applicant
19 proposes to engage in business as a retailer of tobacco
20 products in this State;

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

24 The annual license fee payable to the Department for each
25 retailer's license shall be \$250. The fee will be deposited

1 into the Tax Compliance and Administration Fund and used
2 towards the cost of retail inspections. Each applicant for
3 license shall pay such fee to the Department at the time of
4 submitting his application for license to the Department. The
5 Department may, by rule, require an applicant for a license
6 under this Section to electronically file and pay the
7 application and fee.

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

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

23 The following are ineligible to receive a retailer's
24 license under this Act:

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

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

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

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

1 whose license is suspended or revoked, shall immediately
2 surrender the license to the Department. The Department shall
3 not issue a license to a retailer unless the retailer is also
4 validly registered under the Retailers Occupation Tax Act.

5 A retailer as defined under this Act need not obtain an
6 additional license under this Act, but shall be deemed to be
7 sufficiently licensed by virtue of his being properly licensed
8 as a retailer under Section 4g of the Cigarette Tax Act.

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

20 (35 ILCS 143/10-22 new)

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

1 (35 ILCS 143/10-25)

2 Sec. 10-25. License actions.

3 (a) The Department may, after notice and a hearing, revoke,
4 cancel, or suspend the license of any distributor or retailer
5 who violates any of the provisions of this Act. The notice
6 shall specify the alleged violation or violations upon which
7 the revocation, cancellation, or suspension proceeding is
8 based.

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

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

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

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

22 The Department may, by application to any circuit court,
23 obtain an injunction restraining any person who engages in
24 business as a distributor of tobacco products without a license
25 (either because his or her license has been revoked, canceled,
26 or suspended or because of a failure to obtain a license in the

1 first instance) from engaging in that business until that
2 person, as if that person were a new applicant for a license,
3 complies with all of the conditions, restrictions, and
4 requirements of Section 10-20 of this Act and qualifies for and
5 obtains a license. Refusal or neglect to obey the order of the
6 court may result in punishment for contempt.

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

8 (35 ILCS 143/10-35)

9 Sec. 10-35. Record keeping.

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

25 (b) Every retailer, as defined in Section 10-5, shall keep

1 within Illinois, at his or her licensed address, complete and
2 accurate records of tobacco products held, purchased, sold, or
3 otherwise disposed of, and shall preserve and keep all
4 invoices, bills of lading, sales records, and copies of bills
5 of sale, returns and other pertinent papers and documents
6 relating to the purchase, sale, or disposition of tobacco
7 products.

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

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

17 (35 ILCS 143/10-36 new)

18 Sec. 10-36. Proof of payment of tax imposed by this Act.
19 Every licensed distributor of tobacco products in this State is
20 required to show proof of the tax having been paid as required
21 by this Act by displaying its Tobacco Products License number
22 on every sales invoice issued to a retailer in this State. No
23 retailer shall possess tobacco products without either a proper
24 invoice indicating that the tobacco products tax was paid by a
25 distributor for the tobacco products in the retailer's

1 possession or other proof that the tax was paid by the retailer
2 if it has purchased tobacco products on which tax has not been
3 paid as required by this Act. Failure to comply with the
4 provisions of this paragraph may be grounds for revocation of a
5 distributor's or retailer's license in accordance with Section
6 10-25 of this Act or Section 6 of the Cigarette Tax Act. In
7 addition, the Department may impose a civil penalty not to
8 exceed \$1000 for each violation, which shall be deposited into
9 the Tax Compliance and Administration Fund.

10 (35 ILCS 143/10-50)

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

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

1 administration and enforcement of this Act is guilty of a Class
2 4 felony. A person commits a separate offense on each day that
3 he or she engages in business in violation of Sections ~~Section~~
4 10-20, 10-21, and 10-22 of this Act.

5 Any person who violates any provision of Sections 10 20,
6 10-21 and 10-22 of this Act, fails to keep books and records as
7 required under this Act, or willfully violates a rule or
8 regulation of the Department for the administration and
9 enforcement of this Act is guilty of a business offense and may
10 be fined up to \$5000. A person commits a separate offense on
11 each day that he or she engages in business in violation of
12 Sections 10 20, 10-21 and 10-22 of this Act.

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

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

1 this Act is guilty of a Class 3 felony.

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

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

23 When the amount due is \$300 or more, any retailer who fails
24 to file a return, willfully fails or refuses to make any
25 payment to the Department of the tax imposed by this Act, or
26 files a fraudulent return, or any officer or agent of a

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

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

15 Any taxpayer or agent of a taxpayer who with the intent to
16 defraud purports to make a payment due to the Department by
17 issuing or delivering a check or other order upon a real or
18 fictitious depository for the payment of money, knowing that it
19 will not be paid by the depository, is guilty of a deceptive
20 practice in violation of Section 17-1 of the Criminal Code of
21 1961.

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

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

1 (35 ILCS 143/10-53 new)

2 Sec. 10-53. Acting as a retailer of tobacco products
3 without a license. Any person who knowingly acts as a retailer
4 of tobacco products in this State without first having obtained
5 a license to do so in compliance with Section 10-21 of this Act
6 or a license in compliance with Section 4g of the Cigarette Tax
7 Act shall be guilty of a Class 4 felony. Each day such person
8 operates as a retailer without a license constitutes a separate
9 offense.

10 Section 99. Effective date. This Act takes effect July 1,
11 2014.

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3	20 ILCS 2505/2505-380	was 20 ILCS 2505/39b47
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5	35 ILCS 130/3-10	
6	35 ILCS 130/4d	
7	35 ILCS 130/4e	
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9	35 ILCS 130/4g new	
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11	35 ILCS 130/6	from Ch. 120, par. 453.6
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14	35 ILCS 130/9g new	
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