

AN ACT concerning regulation.

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

Section 5. The Department of Revenue Law of the Civil Administrative Code of Illinois is amended by changing Section 2505-380 as follows:

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

Sec. 2505-380. Revocation of or refusal to issue or reissue a certificate of registration, permit, or license.

(a) The Department has the power, after notice and an opportunity for a hearing, to revoke a certificate of registration, permit, or license issued by the Department if the holder of the certificate of registration, permit, or license fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the tax or fee Act under which the certificate of registration, permit, or license is required or any other tax or fee Act administered by the Department.

(b) The Department may refuse to issue, reissue, or renew a certificate of registration, permit, or license authorized to be issued by the Department if a person who is named as the owner, a partner, a corporate officer, or, in the case of a

limited liability company, a manager or member, of the applicant on the application for the certificate of registration, permit or license, is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the application for the certificate of registration, permit, or license of a person that is in default for moneys due under the tax or fee Act upon which the certificate of registration, permit, or license is required or any other tax or fee Act administered by the Department. For purposes of this Section only, in determining whether a person is in default for moneys due, the Department shall include only amounts established as a final liability within the 20 years prior to the date of the Department's notice of refusal to issue or reissue the certificate of registration, permit, or license. For purposes of this Section, "person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

(c) When revoking or refusing to issue or reissue a certificate of registration, permit, or license issued by the Department, the procedure for notice and hearing used shall be the procedure provided under the Act pursuant to which the certificate of registration, permit, or license was issued.

(Source: P.A. 98-496, eff. 1-1-14.)

Section 10. The Cigarette Tax Act is amended by changing Sections 3-10, 4d, 4e, 4f, 6, 7, 8, 10, 11, 11a, 11b, 23, 24, and 26 and by adding Sections 4g, 4h, and 11c as follows:

(35 ILCS 130/3-10)

Sec. 3-10. Cigarette enforcement.

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

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

(A) any cigarettes the package of which:

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

(ii) does not comply with:

(aa) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States,

including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(bb) all federal trademark and copyright laws;

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

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

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

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

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

(B) any health warning that is not specified in, or

does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; or

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

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

(1) a copy of:

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

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

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

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

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

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

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

(c) Administrative sanctions.

(1) Upon finding that a distributor, secondary distributor, retailer, or person has committed any of the acts prohibited by subsection (a), knowing or having reason

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

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

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

(d-1) Retailers issued a license under Section 4g of this Act and secondary distributors shall not be liable under

subsections (c)(1) and (d) of this Section for unknowingly possessing, selling, or distributing to consumers or users cigarettes identified in subsection (a)(1) of this Section if the cigarettes possessed, sold, or distributed by the licensed retailer or secondary distributor were obtained from a distributor licensed under this Act.

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

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

(f) General provisions.

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



with the State's Attorney of any county to enforce this Section.

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

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

(g) Definitions. As used in this Section:

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

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

(h) Applicability.

(1) This Section does not apply to:

(A) cigarettes allowed to be imported or brought

into the United States for personal use; and

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

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

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

(35 ILCS 130/4d)

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

out-of-state makers, manufacturers, or fabricators holding permits under Section 4b of this Act.

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

(35 ILCS 130/4e)

Sec. 4e. Sales of cigarettes to and by secondary distributors. In-state makers, manufacturers, and fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, and fabricators holding permits under Section 4b of this Act may not sell original packages of cigarettes to secondary distributors. A secondary distributor may sell only original packages of cigarettes obtained from licensed distributors other than in-state makers, manufacturers, or fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, or fabricators holding permits under Section 4b of this Act. Secondary distributors may sell cigarettes to Illinois retailers issued a license under Section 4g of this Act for resale, and are also authorized to make retail sales of cigarettes at the location on the secondary distributor's license as long as the secondary distributor obtains a license under Section 4g of the Cigarette Tax Act and sells 75% or more of the cigarettes sold at such location to retailers issued a license under Section 4g of this Act for resale. All sales by secondary distributors to retailers issued a license under

Section 4g of this Act must be made at the location on the secondary distributor's license. Retailers issued a license under Section 4g of this Act must take possession of all cigarettes sold by the secondary distributor at the secondary distributor's licensed address. Secondary distributors may not make deliveries of cigarettes to retailers.

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

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

(35 ILCS 130/4f)

Sec. 4f. Manufacturer representatives.

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

- (1) the name and address of the applicant;
- (2) the address of every location from which the applicant proposes to engage in business in this State;
- (3) the number of manufacturer representatives the

applicant requests to maintain in this State; and

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

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

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

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

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

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

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

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

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

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

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

(b) Only directors, officers, and employees of the

manufacturer may act as manufacturer representatives in this State. The manufacturer shall provide to the Department the names and addresses of the manufacturer representatives operating in this State and the make, model, and license plate number of each motor vehicle operated by a manufacturer representative in the course of performing his or her duties in this State on behalf of the manufacturer. The following individuals may not act as manufacturer representatives:

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

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

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

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

(c) Manufacturer representatives may sell to retailers in this State who are licensed under Section 4g of this Act only original packages of cigarettes made, manufactured, or

fabricated by the manufacturer and purchased or obtained from a distributor licensed under this Act, or the Cigarette Tax Use Act, and on which tax stamps have been affixed. Manufacturer representatives may sell up to 600 stamped original packages of cigarettes in a calendar year, for the purpose of promoting the manufacturer's brands of cigarettes. A manufacturer representative may not possess more than 500 stamped original packages of cigarettes made, manufactured, or fabricated by the manufacturer and purchased or obtained from a distributor licensed under this Act or the Cigarette Use Tax Act. Any original packages of cigarettes in the possession of a manufacturer representative that (i) are not made, manufactured, or fabricated by the manufacturer and purchased or obtained from a distributor licensed under this Act or the Cigarette Use Tax Act, other than cigarettes for personal use and consumption, (ii) exceed the maximum quantity of 500 original packages of cigarettes, excluding packages of cigarettes for personal use and consumption; (iii) violate Section 3-10 of this Act; or (iv) do not have the proper tax stamps affixed, are contraband and subject to seizure and forfeiture.

Manufacturer representatives may sell, on behalf of licensed distributors, stamped original packages of cigarettes to retailers who are licensed under Section 4g of this Act ~~on behalf of licensed distributors.~~ The manufacturer representative shall provide the distributor with a signed



receipt for the cigarettes obtained from the distributor. The distributor shall invoice the licensed retailer, and the licensed retailer shall pay the distributor for all cigarettes provided to licensed retailers by manufacturer representatives on behalf of a distributor.

Manufacturer representatives may sell stamped original packages of cigarettes to licensed retailers that are purchased from licensed distributors. Distributors shall provide manufacturer representatives with invoices for stamped original packages of cigarettes sold to manufacturer representatives. Manufacturer representatives shall invoice licensed retailers, and the licensed retailers shall pay the manufacturer representatives for all original packages of cigarettes sold to licensed retailers.

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

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

(35 ILCS 130/4g new)

Sec. 4g. Retailer's license. Beginning on January 1, 2016, no person may engage in business as a retailer of cigarettes in this State without first having obtained a license from the Department. Application for license shall be made to the Department, by electronic means, in a form prescribed by the Department. Each applicant for a license under this Section shall furnish to the Department, in an electronic format established by the Department, the following information:

(1) the name and address of the applicant;

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

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

The annual license fee payable to the Department for each retailer's license shall be \$75. The fee shall be deposited into the Tax Compliance and Administration Fund and shall be for the cost of tobacco retail inspection and contraband tobacco and tobacco smuggling with at least two-thirds of the money being used for contraband tobacco and tobacco smuggling operations and enforcement.

Each applicant for a license shall pay the fee to the Department at the time of submitting its application for a

license to the Department. The Department shall require an applicant for a license under this Section to electronically file and pay the fee.

A separate annual license fee shall be paid for each place of business at which a person who is required to procure a retailer's license under this Section proposes to engage in business as a retailer in Illinois under this Act.

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

(1) a person who has been convicted of a felony related to the illegal transportation, sale, or distribution of cigarettes, or a tobacco-related felony, under any federal or State law, if the Department, after investigation and a hearing if requested by the applicant, determines that the person has not been sufficiently rehabilitated to warrant the public trust; or

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

The Department, upon receipt of an application and license fee, in proper form, from a person who is eligible to receive a retailer's license under this Act, shall issue to such applicant a license in form as prescribed by the Department. That license shall permit the applicant to whom it is issued to

engage in business as a retailer under this Act at the place shown in his or her application. All licenses issued by the Department under this Section shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled, or suspended as provided in this Act. No license issued under this Section is transferable or assignable. The license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois under such license. The Department shall not issue a retailer's license to a retailer unless the retailer is also registered under the Retailers' Occupation Tax Act. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or who obtains a distributor's license, or whose license is suspended or revoked, shall immediately surrender the license to the Department.

Any person aggrieved by any decision of the Department under this subsection may, within 30 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give written notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing within 30 days, the Department's decision shall become final without any

further determination being made or notice given.

(35 ILCS 130/4h new)

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

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

Sec. 6. Revocation, cancellation, or suspension of license. The Department may, after notice and hearing as provided for by this Act, revoke, cancel or suspend the license of any distributor, ~~or~~ secondary distributor, or retailer for the violation of any provision of this Act, or for noncompliance with any provision herein contained, or for any noncompliance with any lawful rule or regulation promulgated by the Department under Section 8 of this Act, or because the licensee is determined to be ineligible for a distributor's license for any one or more of the reasons provided for in Section 4 of this Act, or because the licensee is determined to be ineligible for a secondary distributor's license for any one or more of the reasons provided for in Section 4c of this Act, or because the licensee is determined to be ineligible for a retailer's license for any one or more of the reasons provided for in Section 4g of this Act. However, no such license shall

be revoked, cancelled or suspended, except after a hearing by the Department with notice to the distributor, ~~or~~ secondary distributor, or retailer, as aforesaid, and affording such distributor, ~~or~~ secondary distributor, or retailer a reasonable opportunity to appear and defend, and any distributor, ~~or~~ secondary distributor, or retailer aggrieved by any decision of the Department with respect thereto may have the determination of the Department judicially reviewed, as herein provided.

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

If the retailer has a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a) of Section 2 of that Act. For the purposes of this Section, any violation of subsection (a) of Section 2 of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act occurring at the retailer's licensed location during a 24-month period shall be

counted as a violation against the retailer.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a second violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 7 days the license of that retailer for a third violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 30 days the license of a retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

A training program that facilitates compliance with minimum-age tobacco laws must include at least the following elements: (i) it must explain that only individuals displaying valid identification demonstrating that they are 18 years of age or older shall be eligible to purchase cigarettes or tobacco products; (ii) it must explain where a clerk can check

identification for a date of birth; and (iii) it must explain the penalties that a clerk and retailer are subject to for violations of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act.

Any distributor, ~~or~~ secondary distributor, or retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor, ~~or~~ secondary distributor, or retailer requesting the hearing that contains a statement of the charges preferred against the distributor, ~~or~~ secondary distributor, or retailer and that states the time and place fixed for the hearing. The Department shall hold the hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to the distributor, ~~or~~ secondary distributor, or retailer. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

No license so revoked, as aforesaid, shall be reissued to any such distributor, ~~or~~ secondary distributor, or retailer within a period of 6 months after the date of the final determination of such revocation. No such license shall be reissued at all so long as the person who would receive the license is ineligible to receive a distributor's license under this Act for any one or more of the reasons provided for in



Section 4 of this Act, ~~or~~ is ineligible to receive a secondary distributor's license under this Act for any one or more of the reasons provided for in Section 4c of this Act, or is determined to be ineligible for a retailer's license under the Act for any one or more of the reasons provided for in Section 4g of this Act.

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

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

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

Sec. 7. The Department or any officer or employee of the Department designated, in writing, by the Director thereof, shall at its or his or her own instance, or on the written request of any distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives, or other interested party to the proceeding, issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the

fees of witnesses before the circuit court of this State; such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding, the cost of service of the subpoena or subpoena duces tecum and the fee of the witness shall be borne by the party at whose instance the witness is summoned. In such case the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum so issued shall be served in the same manner as a subpoena or subpoena duces tecum issued out of a court.

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

The Department or any officer or employee thereof, or any other party in an investigation or hearing before the

Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions, or depositions for discovery in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda, in the same manner hereinbefore provided.

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

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

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

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

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

- (1) In Cook County, if the taxpayer's or licensee's principal place of business is in that county;
- (2) At the Department's office nearest the taxpayer's or licensee's principal place of business, if the

taxpayer's or licensee's principal place of business is in Illinois but outside Cook County;

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

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

Service upon the Director of Revenue or Assistant Director of Revenue of summons issued in any action to review a final administrative decision shall be service upon the Department. The Department shall certify the record of its proceedings if the distributor, secondary distributor, retailer, or manufacturer with authority to maintain manufacturer representatives pays to it the sum of 75¢ per page of testimony taken before the Department and 25¢ per page of all other matters contained in such record, except that these charges may be waived where the Department is satisfied that the aggrieved party is a poor person who cannot afford to pay such charges. Before the delivery of such record to the person applying for it, payment of these charges must be made, and if the record is

not paid for within 30 days after notice that such record is available, the complaint may be dismissed by the court upon motion of the Department.

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

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

Hearings to contest an administrative decision under this

Act conducted as a result of a protest filed with the Illinois Independent Tax Tribunal on or after July 1, 2013 shall be conducted pursuant to the provisions of the Illinois Independent Tax Tribunal Act of 2012.

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

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

Sec. 10. The Department, or any officer or employee designated in writing by the Director thereof, for the purpose of administering and enforcing the provisions of this Act, may hold investigations and, except as otherwise provided in the Illinois Independent Tax Tribunal Act of 2012, may hold hearings concerning any matters covered by this Act, and may examine books, papers, records or memoranda bearing upon the sale or other disposition of cigarettes by a distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act, or manufacturer representative, and may issue subpoenas requiring the attendance of a distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act, or manufacturer representative, or any officer or employee of a distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act, or any person having knowledge of the

facts, and may take testimony and require proof, and may issue subpoenas duces tecum to compel the production of relevant books, papers, records and memoranda, for the information of the Department.

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

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

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

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

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

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

Sec. 11. Every distributor of cigarettes, who is required to procure a license under this Act, shall keep within Illinois, at his licensed address, complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes on hand and of all cigarette revenue stamps, both affixed and unaffixed, and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes. Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's cigarette distributor license number. All books and records and other papers and documents that are required by this Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes



of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. Those books, records, papers and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. At all times during the usual business hours of the day any duly authorized agent or employee of the Department may enter any place of business of the distributor, without a search warrant, and inspect the premises and the stock or packages of cigarettes and the vending devices therein contained, to determine whether any of the provisions of this Act are being violated. If such agent or employee is denied free access or is hindered or interfered with in making such examination as herein provided, the license of the distributor at such premises shall be subject to revocation by the Department.

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

(35 ILCS 130/11a)

Sec. 11a. Secondary distributors; records. Every secondary distributor of cigarettes, who is required to procure a license under this Act, shall keep within Illinois, at his licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or

otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. Every sales invoice issued by a secondary distributor to a retailer in this State shall contain the distributor's secondary distributor license number. All books and records and other papers and documents that are required by this Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by secondary distributors. For purposes of this Section, "records" means all data maintained by the secondary distributors, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. Those books, records, papers, and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. At all times during the usual business hours of the day any duly authorized agent or employee of the Department may enter any place of business

of the secondary distributor without a search warrant and may inspect the premises and the stock or packages of cigarettes therein contained to determine whether any of the provisions of this Act are being violated. If such agent or employee is denied free access or is hindered or interfered with in making such examination as herein provided, the license of the secondary distributor at such premises shall be subject to revocation by the Department.

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

(35 ILCS 130/11b)

Sec. 11b. Manufacturer representatives; records. Every manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act shall keep within Illinois, at his business address identified under Section 4f of this Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at his business address all invoices, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. Every sales invoice issued by a manufacturer representative to a retailer in this State shall contain the manufacturer's manufacturer representative license number. All books and records and other papers and documents that are required by this Act to be kept

shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by manufacturers with authority to maintain manufacturer representatives under Section 4f of this Act and their manufacturer representatives. For purposes of this Section, "records" means all data maintained by the manufacturers with authority to maintain manufacturer representatives under Section 4f of this Act and their manufacturer representatives, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. Those books, records, papers, and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the manufacturers with authority to maintain manufacturer representatives under Section 4f of this Act and their manufacturer representatives, or inspect any motor vehicle used by a manufacturer representative in the course of business, without a search warrant and may inspect the premises, motor vehicle, and any packages of cigarettes therein

contained to determine whether any of the provisions of this Act are being violated. If such agent or employee is denied free access or is hindered or interfered with in making such examination as herein provided, the ability to maintain marketing representatives in Illinois may be withdrawn by the Department.

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

(35 ILCS 130/11c new)

Sec. 11c. Retailers; records. Every retailer who is required to procure a license under this Act shall keep within Illinois complete and accurate records of cigarettes purchased, sold, or otherwise disposed of. It shall be the duty of every retail licensee to make sales records, copies of bills of sale, and inventory at the close of each period for which a report is required of all cigarettes on hand available upon reasonable notice for the purpose of investigation and control by the Department. Such records need not be maintained on the licensed premises, but must be maintained in the State of Illinois; however, if access is available electronically, the records may be maintained out of state. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after such purchase, unless the Department has granted a waiver in response to a written request in cases where records are kept at a central business location within the State of

Illinois or in cases where records that are available electronically are maintained out of state. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by the retailer.

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

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

Sec. 23. Every distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act and their

manufacturer representatives, or other person who shall knowingly and wilfully sell or offer for sale any original package, as defined in this Act, having affixed thereto any fraudulent, spurious, imitation or counterfeit stamp, or stamp which has been previously affixed, or affixes a stamp which has previously been affixed to an original package, or who shall knowingly and wilfully sell or offer for sale any original package, as defined in this Act, having imprinted thereon underneath the sealed transparent wrapper thereof any fraudulent, spurious, imitation or counterfeit tax imprint, shall be deemed guilty of a Class 2 felony.

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

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

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

(a) Possession or sale of 100 or less packages of contraband cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of this Act, any person who has in his or her possession or sells 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense.

(b) Possession or sale of more than 100 but less than 251 packages of contraband cigarettes. With the exception of

licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of this Act, any person who has in his or her possession or sells more than 100 but less than 251 original packages of contraband cigarettes is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.

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

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

(e) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of this Act, who has in his or her possession or sells 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense.



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

(g) Notwithstanding subsections (e) through (f), licensed distributors and transporters, as defined in Section 9c of this Act, may possess unstamped packages of cigarettes. Notwithstanding subsections (e) through (f), licensed distributors may possess cigarettes that bear a tax stamp of another state or taxing jurisdiction. Notwithstanding subsections (e) through (f), a licensed distributor or licensed secondary distributor may possess contraband cigarettes returned to the distributor or licensed secondary distributor by a retailer if the distributor or licensed secondary distributor immediately conducts an inventory of the cigarettes being returned, the distributor or licensed secondary distributor and the retailer returning the contraband cigarettes sign the inventory, the distributor or licensed secondary distributor provides a copy of the signed inventory to the retailer, and the distributor retains the inventory in its books and records and promptly notifies the Department of Revenue.

(h) Notwithstanding subsections (a) through (d) of this Section, a retailer unknowingly possessing contraband cigarettes obtained from a licensed distributor or licensed

secondary distributor or knowingly possessing contraband cigarettes obtained from a licensed distributor is not subject to penalties under this Section if the retailer, within 48 hours after discovering that the cigarettes are contraband cigarettes, excluding Saturdays, Sundays, and holidays: (i) notifies the Department and the licensed distributor or licensed secondary distributor from whom the cigarettes were obtained, orally and in writing, that he or she possesses contraband cigarettes obtained from a licensed distributor or licensed secondary distributor; (ii) places the contraband cigarettes in one or more containers and seals those containers; and (iii) places on the containers the following or similar language: "Contraband Cigarettes. Not For Sale." All contraband cigarettes in the possession of a retailer remain subject to forfeiture under the provisions of this Act.

Any retailer who knowingly possesses packages of cigarettes with a counterfeit stamp with intent to sell is guilty of a Class 2 felony. Any retailer who knowingly possesses unstamped packages of cigarettes with intent to sell is guilty of a Class 4 felony. A retailer shall not be liable for unknowingly possessing, selling, or distributing to consumers cigarettes that contain an old stamp if the correct tax was collected at the point of sale and the cigarettes were obtained from a distributor licensed under this Act.

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

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

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

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

Section 15. The Cigarette Use Tax Act is amended by changing Sections 3-10, 4d, 4e, 28, and 30 as follows:

(35 ILCS 135/3-10)

Sec. 3-10. Cigarette enforcement.

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

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

(A) any cigarettes the package of which:

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

(ii) does not comply with:

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

(bb) all federal trademark and copyright laws;

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

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

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

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

remove, conceal, or obscure:

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

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

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

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

(1) a copy of:

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

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

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

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

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

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

the meaning of Exhibit T.

(c) Administrative sanctions.

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

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

(d) Unfair trade practices. In addition to any other penalties provided for in this Act, a violation of subsection

(a) or subsection (b) of this Section shall constitute an unlawful practice as provided in the Consumer Fraud and Deceptive Business Practices Act.

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

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

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



(f) General provisions.

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

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

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

(g) Definitions. As used in this Section:

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

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

(h) Applicability.

(1) This Section does not apply to:

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

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

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

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

(35 ILCS 135/4d)

Sec. 4d. Sales of cigarettes to and by retailers. In-state makers, manufacturers, or fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, or fabricators holding permits under Section 7 of this Act may not sell original packages of cigarettes to

retailers. A retailer who is licensed under Section 4g of the Cigarette Tax Act may sell only original packages of cigarettes obtained from licensed secondary distributors or licensed distributors other than in-state makers, manufacturers, or fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, or fabricators holding permits under Section 7 of this Act.

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

(35 ILCS 135/4e)

Sec. 4e. Sales of cigarettes to and by secondary distributors. In-state makers, manufacturers, and fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, and fabricators holding permits under Section 7 of this Act may not sell original packages of cigarettes to secondary distributors. A secondary distributor may sell only original packages of cigarettes obtained from licensed distributors other than in-state makers, manufacturers, or fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, or fabricators holding permits under Section 7 of this Act. Secondary distributors may sell cigarettes to Illinois retailers who are licensed under Section 4g of the Cigarette Tax Act for resale, and are also authorized to make retail sales of cigarettes at the location on the secondary distributor's license as long as the secondary distributor

obtains a license under Section 4g of the Cigarette Tax Act and sells 75% or more of the cigarettes sold at such location to retailers who are licensed under Section 4g of the Cigarette Tax Act for resale.

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

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

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

(35 ILCS 135/28) (from Ch. 120, par. 453.58)

Sec. 28. Any person who (a) falsely or fraudulently makes, forges, alters or counterfeits any stamp provided for herein, (b) causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, (c) knowingly and wilfully utters, publishes, passes or tenders as genuine any such false, altered, forged or counterfeited stamp, (d) falsely or fraudulently makes, forges, alters or counterfeits any tax imprint on an original package of cigarettes inside a

sealed transparent wrapper, (e) causes or procures falsely or fraudulently to be made, forged, altered or counterfeited any such tax imprint or (f) knowingly and wilfully utters, publishes, passes or tenders as genuine any such false, altered, forged or counterfeited tax imprint, for the purpose of evading the tax imposed by this Act, shall be guilty of a Class 2 ~~3~~ felony.

(Source: P.A. 77-2229.)

(35 ILCS 135/30) (from Ch. 120, par. 453.60)

Sec. 30. Punishment for sale or possession of unstamped packages of cigarettes, other than by a licensed distributor or transporter.

(a) Possession or sale of more than 9 but less than 101 unstamped packages of cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of the Cigarette Tax Act, any person who has in his or her possession or sells more than 9 but less than 101 original packages of contraband cigarettes is guilty of a Class A misdemeanor and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense.

(b) Possession or sale of more than 100 but less than 251 unstamped packages of cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of the

Cigarette Tax Act, any person who has in his or her possession or sells more than 100 but less than 251 original packages of contraband cigarettes is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for each subsequent offense.

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

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

(e) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of the Cigarette Tax Act, who has in his or her possession or sells 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense.

(f) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of the Cigarette Tax Act, who has in his or her possession or sells more than 100 original packages of contraband cigarettes is guilty of a Class 4 felony.

(g) Notwithstanding subsections (e) through (f), licensed distributors and transporters, as defined in Section 9c of the Cigarette Tax Act, may possess unstamped packages of cigarettes. Notwithstanding subsections (e) through (f), licensed distributors may possess cigarettes that bear a tax stamp of another state or taxing jurisdiction. Notwithstanding subsections (e) through (f), a licensed distributor or licensed secondary distributor may possess contraband cigarettes returned to the distributor or licensed secondary distributor by a retailer if the distributor or licensed secondary distributor immediately conducts an inventory of the cigarettes being returned, the distributor or licensed secondary distributor and the retailer returning the contraband cigarettes sign the inventory, the distributor or licensed secondary distributor provides a copy of the signed inventory to the retailer, and the distributor or licensed secondary distributor retains the inventory in its books and records and promptly notifies the Department of Revenue.

(h) Notwithstanding subsections (a) through (d) of this Section, a retailer unknowingly possessing contraband cigarettes obtained from a licensed distributor or licensed

secondary distributor or knowingly possessing contraband cigarettes obtained from a licensed distributor or licensed secondary distributor is not subject to penalties under this Section if the retailer, within 48 hours after discovering that the cigarettes are contraband cigarettes, excluding Saturdays, Sundays, and holidays: (i) notifies the Department and the licensed distributor or licensed secondary distributor from whom the cigarettes were obtained, orally and in writing, that he or she possesses contraband cigarettes obtained from a licensed distributor or licensed secondary distributor; (ii) places the contraband cigarettes in one or more containers and seals those containers; and (iii) places on the containers the following or similar language: "Contraband Cigarettes. Not For Sale." All contraband cigarettes in the possession of a retailer remain subject to forfeiture under the provisions of this Act.

Any retailer who knowingly possesses packages of cigarettes with a counterfeit stamp with intent to sell is guilty of a Class 2 felony. Any retailer who knowingly possesses unstamped packages of cigarettes with intent to sell is guilty of a Class 4 felony. A retailer shall not be liable for unknowingly possessing, selling, or distributing to consumers cigarettes that contain an old stamp if the correct tax was collected at the point of sale and the cigarettes were obtained from a distributor licensed under this Act.

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



Section 20. The Tobacco Products Tax Act of 1995 is amended by changing Sections 10-5, 10-20, 10-25, 10-35, and 10-50 and by adding Sections 10-21, 10-22, 10-37, and 10-53 as follows:

(35 ILCS 143/10-5)

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

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

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

"Contraband little cigar" means:

(1) packages of little cigars containing 20 or 25 little cigars that do not bear a required tax stamp under this Act;

(2) packages of little cigars containing 20 or 25 little cigars that bear a fraudulent, imitation, or counterfeit tax stamp;

(3) packages of little cigars containing 20 or 25 little cigars that are improperly tax stamped, including packages of little cigars that bear only a tax stamp of another state or taxing jurisdiction; or

(4) packages of little cigars containing other than 20 or 25 little cigars in the possession of a distributor, retailer or wholesaler, unless the distributor, retailer,

or wholesaler possesses, or produces within the time frame provided in Section 10-27 or 10-28 of this Act, an invoice from a stamping distributor, distributor, or wholesaler showing that the tax on the packages has been or will be paid.

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

"Department" means the Illinois Department of Revenue.

"Distributor" means any of the following:

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

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

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

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

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

"Little cigar" means and includes any roll, made wholly or in part of tobacco, where such roll has an integrated cellulose acetate filter and weighs less than 4 pounds per thousand and the wrapper or cover of which is made in whole or in part of tobacco.

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

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

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

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

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

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

"Stamp" or "stamps" mean the indicia required to be affixed on a package of little cigars that evidence payment of the tax on packages of little cigars containing 20 or 25 little cigars under Section 10-10 of this Act. These stamps shall be the same stamps used for cigarettes under the Cigarette Tax Act.

"Stamping distributor" means a distributor licensed under this Act and also licensed as a distributor under the Cigarette Tax Act or Cigarette Use Tax Act.

"Tobacco products" means any cigars, including little

cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff (including moist snuff) or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes as defined in Section 1 of the Cigarette Tax Act or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

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

"Wholesaler" means any person, wherever resident or

located, engaged in the business of selling tobacco products to others for the purpose of resale. "Wholesaler", when used in this Act, does not include a person licensed as a distributor under Section 10-20 of this Act unless expressly stated in this Act.

(Source: P.A. 97-688, eff. 6-14-12; 98-273, eff. 8-9-13.)

(35 ILCS 143/10-20)

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

(1) The name of the applicant.

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

(3) Other information the Department may reasonably require.

Except as otherwise provided in this Section, every applicant who is required to procure a distributor's license shall file with his or her application a joint and several

bond. The bond shall be executed to the Department of Revenue, with good and sufficient surety or sureties residing or licensed to do business within the State of Illinois, conditioned upon the true and faithful compliance by the licensee with all of the provisions of this Act. The Department shall fix the amount of the bond for each applicant, taking into consideration the amount of money expected to become due from the applicant under this Act. The amount of bond required by the Department shall be an amount that, in its opinion, will protect the State of Illinois against failure to pay the amount that may become due from the applicant under this Act, but the amount of the security required by the Department shall not exceed 3 times the amount of the applicant's average monthly tax liability, or \$50,000, whichever amount is lower. The bond, a reissue, or a substitute shall be kept in full force and effect during the entire period covered by the license. A separate application for license shall be made, and bond filed, for each place of business at which a person who is required to procure a distributor's license proposes to engage in business as a distributor under this Act.

The Department, upon receipt of an application and bond in proper form, shall issue to the applicant a license, in a form prescribed by the Department, which shall permit the applicant to whom it is issued to engage in business as a distributor at the place shown on his or her application. The license shall be issued by the Department without charge or cost to the

applicant. No license issued under this Act is transferable or assignable. The license shall be conspicuously displayed in the place of business conducted by the licensee under the license.

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

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

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

The Department may revoke, suspend, or cancel the license



of a distributor of roll-your-own tobacco (as that term is used in Section 10 of the Tobacco Product Manufacturers' Escrow Act) under this Act if the tobacco product manufacturer, as defined in Section 10 of the Tobacco Product Manufacturers' Escrow Act, that made or sold the roll-your-own tobacco has failed to become a participating manufacturer, as defined in subdivision (a) (1) of Section 15 of the Tobacco Product Manufacturers' Escrow Act, or has failed to create a qualified escrow fund for any roll-your-own tobacco manufactured by the tobacco product manufacturer and sold in this State or otherwise failed to bring itself into compliance with subdivision (a) (2) of Section 15 of the Tobacco Product Manufacturers' Escrow Act.

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

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

(35 ILCS 143/10-21 new)

Sec. 10-21. Retailer's license. Beginning on January 1,

2016, no person may engage in business as a retailer of tobacco products in this State without first having obtained a license from the Department. Application for license shall be made to the Department, by electronic means, in a form prescribed by the Department. Each applicant for a license under this Section shall furnish to the Department, in an electronic format established by the Department, the following information:

(1) the name and address of the applicant;

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

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

The annual license fee payable to the Department for each retailer's license shall be \$75. The fee will be deposited into the Tax Compliance and Administration Fund and shall be used for the cost of tobacco retail inspection and contraband tobacco and tobacco smuggling with at least two-thirds of the money being used for contraband tobacco and tobacco smuggling operations and enforcement.

Each applicant for license shall pay such fee to the Department at the time of submitting its application for license to the Department. The Department shall require an applicant for a license under this Section to electronically file and pay the fee.

A separate annual license fee shall be paid for each place of business at which a person who is required to procure a retailer's license under this Section proposes to engage in business as a retailer in Illinois under this Act.

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

(1) a person who has been convicted of a felony under any federal or State law for smuggling cigarettes or tobacco products or tobacco tax evasion, if the Department, after investigation and a hearing if requested by the applicant, determines that such person has not been sufficiently rehabilitated to warrant the public trust; and

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

The Department, upon receipt of an application and license fee, in proper form, from a person who is eligible to receive a retailer's license under this Act, shall issue to such applicant a license in form as prescribed by the Department, which license shall permit the applicant to which it is issued to engage in business as a retailer under this Act at the place shown in his application. All licenses issued by the Department under this Section shall be valid for a period not to exceed

one year after issuance unless sooner revoked, canceled or suspended as provided in this Act. No license issued under this Section is transferable or assignable. Such license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois under such license. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or who obtains a distributor's license, or whose license is suspended or revoked, shall immediately surrender the license to the Department. The Department shall not issue a license to a retailer unless the retailer is also validly registered under the Retailers Occupation Tax Act.

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

Any person aggrieved by any decision of the Department under this subsection may, within 30 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing within 30 days, the Department's decision shall become final without any further

determination being made or notice given.

(35 ILCS 143/10-22 new)

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

(35 ILCS 143/10-25)

Sec. 10-25. License actions.

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

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

(c) If the retailer has a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided

in subsection (a) of Section 2 of that Act. For the purposes of this Section, any violation of subsection (a) of Section 2 of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act occurring at the retailer's licensed location, during a 24-month period, shall be counted as a violation against the retailer.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a second violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 7 days the license of that retailer for a third violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 30 days the license of a retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

A training program that facilitates compliance with

minimum-age tobacco laws must include at least the following elements: (i) it must explain that only individuals displaying valid identification demonstrating that they are 18 years of age or older shall be eligible to purchase cigarettes or tobacco products; (ii) it must explain where a clerk can check identification for a date of birth; and (iii) it must explain the penalties that a clerk and retailer are subject to for violations of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act.

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

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

(35 ILCS 143/10-35)

Sec. 10-35. Record keeping.

(a) Every distributor, as defined in Section 10-5, shall keep complete and accurate records of tobacco products held,

purchased, manufactured, brought in or caused to be brought in from without the State, and tobacco products sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, the wholesale price for tobacco products sold or otherwise disposed of, an inventory of tobacco products prepared as of December 31 of each year or as of the last day of the distributor's fiscal year if he or she files federal income tax returns on the basis of a fiscal year, and other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of tobacco products. Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's Tobacco Products License number.

(b) Every retailer, as defined in Section 10-5, shall keep complete and accurate records of tobacco products held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. Such records need not be maintained on the licensed premises, but must be maintained in the State of Illinois; however, if access is available electronically, the records may be maintained out of state. However, all original invoices or copies thereof covering purchases of tobacco products must be retained on the licensed premises for a period of 90 days after such purchase, unless the Department has



granted a waiver in response to a written request in cases where records are kept at a central business location within the State of Illinois or in cases where records that are available electronically are maintained out of state.

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

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

(35 ILCS 143/10-37 new)

Sec. 10-37. Proof of payment of tax imposed by this Act. Every licensed distributor of tobacco products in this State is required to show proof of the tax having been paid as required by this Act by displaying its Tobacco Products License number on every sales invoice issued to a retailer in this State. No retailer shall possess tobacco products without either a proper invoice indicating that the tobacco products tax was paid by a distributor for the tobacco products in the retailer's possession or other proof that the tax was paid by the retailer if it has purchased tobacco products on which tax has not been paid as required by this Act. Failure to comply with the

provisions of this paragraph may be grounds for revocation of a distributor's or retailer's license in accordance with Section 10-25 of this Act or Section 6 of the Cigarette Tax Act. In addition, the Department may impose a civil penalty not to exceed \$1,000 for each violation, which shall be deposited into the Tax Compliance and Administration Fund.

(35 ILCS 143/10-50)

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

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

10-20, 10-21, or 10-22 of this Act.

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

Any person who violates any provision of Sections 10-20, 10-21 and 10-22 of this Act, fails to keep books and records as required under this Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of this Act is guilty of a business offense and may be fined up to \$5,000. A person commits a separate offense on each day that he or she engages in business in violation of Sections 10-20, 10-21 and 10-22 of this Act.

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

When the amount due is \$300 or more, any person engaged in the business of distributing tobacco products to retailers and

consumers located in this State who fails to file a return, willfully ~~willfully~~ fails or refuses to make any payment to the Department of the tax imposed by this Act, or accepts money that is due to the Department under this Act from a taxpayer for the purpose of acting as the taxpayer's agent to make payment to the Department but fails to remit such payment to the Department when due is guilty of a Class 3 felony.

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

When the amount due is \$300 or more, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by this Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return

filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act is guilty of a Class 4 felony.

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

Any taxpayer or agent of a taxpayer who with the intent to defraud purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.

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

(Source: P.A. 97-1150, eff. 1-25-13.)

(35 ILCS 143/10-53 new)

Sec. 10-53. Acting as a retailer of tobacco products without a license. Any person who knowingly acts as a retailer

of tobacco products in this State without first having obtained a license to do so in compliance with Section 10-21 of this Act or a license in compliance with Section 4g of the Cigarette Tax Act shall be guilty of a Class A misdemeanor for the first offense and a Class 4 felony for a second or subsequent offense. Each day such person operates as a retailer without a license constitutes a separate offense.

Section 25. The Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act is amended by changing Sections 1 and 2 as follows:

(720 ILCS 675/1) (from Ch. 23, par. 2357)

Sec. 1. Prohibition on sale to and possession of tobacco by minors; prohibition on the distribution of tobacco samples to any person; use of identification cards; vending machines; lunch wagons; out-of-package sales.

(a) No minor under 18 years of age shall buy any tobacco product. No person shall sell, buy for, distribute samples of or furnish any tobacco product to any minor under 18 years of age.

(a-5) No minor under 16 years of age may sell any tobacco product at a retail establishment selling tobacco products. This subsection does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner.

(a-6) No minor under 18 years of age in the furtherance or facilitation of obtaining any tobacco product shall display or use a false or forged identification card or transfer, alter, or deface an identification card.

(a-7) No minor under 18 years of age shall possess any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms.

(a-8) A person shall not distribute without charge samples of any tobacco product to any other person, regardless of age:

(1) within a retail establishment selling tobacco products, unless the retailer has verified the purchaser's age with a government issued identification;

(2) from a lunch wagon; or

(3) on a public way as a promotion or advertisement of a tobacco manufacturer or tobacco product.

This subsection (a-8) does not apply to the distribution of a tobacco product sample in any adult-only facility.

(a-9) For the purpose of this Section:

"Adult-only facility means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under State law, or by checking the identification of any person appearing to be under the age of 27) that no person under legal age is present. A facility or restricted area need not be permanently restricted to persons under legal age to

constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no person under legal age is present during the event or time period in question.

"Lunch wagon" means a mobile vehicle designed and constructed to transport food and from which food is sold to the general public.

"Smokeless tobacco" means any tobacco products that are suitable for dipping or chewing.

"Tobacco product" means any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms.

(b) Tobacco products listed in this Section may be sold through a vending machine only if such tobacco products are not placed together with any non-tobacco product, other than matches, in the vending machine and the vending machine is in any of the following locations:

(1) (Blank).

(2) Places to which minors under 18 years of age are not permitted access.

(3) Places where alcoholic beverages are sold and consumed on the premises and vending machine operation is under the direct supervision of the owner or manager.

(4) (Blank).

(5) Places where the vending machine can only be operated by the owner or an employee over age 18 either directly or through a remote control device if the device



is inaccessible to all customers.

(c) (Blank).

(d) The sale or distribution by any person of a tobacco product in this Section, including but not limited to a single or loose cigarette, that is not contained within a sealed container, pack, or package as provided by the manufacturer, which container, pack, or package bears the health warning required by federal law, is prohibited.

(e) It is not a violation of this Act for a person under 18 years of age to purchase or possess a cigar, cigarette, smokeless tobacco or tobacco in any of its forms if the person under the age of 18 purchases or is given the cigar, cigarette, smokeless tobacco or tobacco in any of its forms from a retail seller of tobacco products or an employee of the retail seller pursuant to a plan or action to investigate, patrol, or otherwise conduct a "sting operation" or enforcement action against a retail seller of tobacco products or a person employed by the retail seller of tobacco products or on any premises authorized to sell tobacco products to determine if tobacco products are being sold or given to persons under 18 years of age if the "sting operation" or enforcement action is approved by, conducted by, or conducted on behalf of the Department of State Police, the county sheriff, a municipal police department, the Department of Revenue, the Department of Public Health, or a local health department. The results of any sting operation or enforcement action, including the name of

the clerk, shall be provided to the retail seller within 7 business days.

(Source: P.A. 95-905, eff. 1-1-09; 96-179, eff. 8-10-09; 96-446, eff. 1-1-10; 96-1000, eff. 7-2-10.)

(720 ILCS 675/2) (from Ch. 23, par. 2358)

Sec. 2. Penalties.

(a) Any person who violates subsection (a) or (a-5) of Section 1 or Section 1.5 of this Act is guilty of a petty offense. For the first offense in a 24-month period, the person shall be fined \$200 if his or her employer has a training program that facilitates compliance with minimum-age tobacco laws. For the second offense in a 24-month period, the person shall be fined \$400 if his or her employer has a training program that facilitates compliance with minimum-age tobacco laws. For the third offense in a 24-month period, the person shall be fined \$600 if his or her employer has a training program that facilitates compliance with minimum-age tobacco laws. For the fourth or subsequent offense in a 24-month period, the person shall be fined \$800 if his or her employer has a training program that facilitates compliance with minimum-age tobacco laws. For the purposes of this subsection, the 24-month period shall begin with the person's first violation of the Act. The penalties in this subsection are in addition to any other penalties prescribed under the Cigarette Tax Act and the Tobacco Products Tax Act of 1995.

(a-5) Any person who violates subsection (a) or (a-5) of Section 1 or Section 1.5 of this Act is guilty of a petty offense. For the first offense, the retailer shall be fined \$200 if it does not have a training program that facilitates compliance with minimum-age tobacco laws. For the second offense, the retailer shall be fined \$400 if it does not have a training program that facilitates compliance with minimum-age tobacco laws. For the third offense, the retailer shall be fined \$600 if it does not have a training program that facilitates compliance with minimum-age tobacco laws. For the fourth or subsequent offense in a 24-month period, the retailer shall be fined \$800 if it does not have a training program that facilitates compliance with minimum-age tobacco laws. For the purposes of this subsection, the 24-month period shall begin with the person's first violation of the Act. The penalties in this subsection are in addition to any other penalties prescribed under the Cigarette Tax Act and the Tobacco Products Tax Act of 1995.

(a-6) For the purpose of this Act, a training program that facilitates compliance with minimum-age tobacco laws must include at least the following elements: (i) it must explain that only individuals displaying valid identification demonstrating that they are 18 years of age or older shall be eligible to purchase cigarettes or tobacco products; (ii) it must explain where a clerk can check identification for a date of birth; and (iii) it must explain the penalties that a clerk

and retailer are subject to for violations of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act.

~~Any person who violates subsection (a), (a-5), or (a-6) of Section 1 or Section 1.5 of this Act is guilty of a petty offense and for the first offense shall be fined \$200, \$400 for the second offense in a 12 month period, and \$600 for the third or any subsequent offense in a 12 month period.~~

(b) If a minor violates subsection (a-7) of Section 1 he or she is guilty of a petty offense and the court may impose a sentence of 25 ~~15~~ hours of community service and ~~or~~ a fine of \$50 ~~\$25~~ for a first violation. If a minor violates subsection (a-6) of Section 1, he or she is guilty of a Class A misdemeanor.

(c) A second violation by a minor of subsection (a-7) of Section 1 that occurs within 12 months after the first violation is punishable by a fine of \$75 ~~\$50~~ and 50 ~~25~~ hours of community service.

(d) A third or subsequent violation by a minor of subsection (a-7) of Section 1 that occurs within 12 months after the first violation is punishable by a \$200 ~~\$100~~ fine and 50 ~~30~~ hours of community service.

(e) Any second or subsequent violation not within the 12-month time period after the first violation is punishable as provided for a first violation.

(f) If a minor is convicted of or placed on supervision for

a violation of subsection (a-6) or (a-7) of Section 1, the court may, in its discretion, and upon recommendation by the State's Attorney, order that minor and his or her parents or legal guardian to attend a smoker's education or youth diversion program if that program is available in the jurisdiction where the offender resides. Attendance at a smoker's education or youth diversion program shall be time-credited against any community service time imposed for any first violation of subsection (a-7) of Section 1. In addition to any other penalty that the court may impose for a violation of subsection (a-7) of Section 1, the court, upon request by the State's Attorney, may in its discretion require the offender to remit a fee for his or her attendance at a smoker's education or youth diversion program.

(g) For purposes of this Section, "smoker's education program" or "youth diversion program" includes, but is not limited to, a seminar designed to educate a person on the physical and psychological effects of smoking tobacco products and the health consequences of smoking tobacco products that can be conducted with a locality's youth diversion program.

(h) All moneys collected as fines for violations of subsection (a), (a-5), (a-6), or (a-7) of Section 1 shall be distributed in the following manner:

(1) one-half of each fine shall be distributed to the unit of local government or other entity that successfully prosecuted the offender; and

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(2) one-half shall be remitted to the State to be used for enforcing this Act.

Any violation of subsection (a) or (a-5) of Section 1 or Section 1.5 shall be reported to the Department of Revenue within 7 business days.

(Source: P.A. 98-350, eff. 1-1-14.)

Section 99. Effective date. This Act takes effect January 1, 2016.