



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0317

Introduced 2/6/2009, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

See Index

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

LRB096 09151 ASK 19300 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning cigarettes and tobacco products.

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

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

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

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

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

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

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

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

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

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

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

25 "Department" means the Department of Revenue.

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

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

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

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

16 Section 15. Delivery sales reporting requirements.

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

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

1 business of the seller;

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

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

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

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

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

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

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

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

17 (1) The first time a person violates Section 4 of this
18 Act, the person shall be subject to a civil penalty of
19 \$1,000 or five times the retail value of the cigarettes
20 involved in the violation, whichever is greater.

21 (2) In the case of a second or subsequent violation of
22 Section 4 of this Act, the person shall be subject to a
23 civil penalty of \$5,000 or five times the retail value of
24 the cigarettes involved in the violation, whichever is
25 greater.

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

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

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

15 Section 25. Enforcement. All enforcement proceedings under
16 this Act shall be instituted by the Attorney General at the
17 request of the Department to require compliance with this Act,
18 to recover civil penalties authorized under Section 5 of this
19 Act, and to seek any other remedy as provided by law.

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

22 Section 900. The Illinois Lottery Law is amended by
23 changing Section 10.1a as follows:

1 (20 ILCS 1605/10.1a) (from Ch. 120, par. 1160.1a)

2 Sec. 10.1a. In addition to other grounds specified in this
3 Act, the Division shall refuse to issue and shall suspend the
4 license of any lottery sales agency who fails to file a return,
5 or to pay the tax, penalty or interest shown in a filed return,
6 or to pay any final assessment of tax, penalty or interest, as
7 required by any tax Act administered by the Department, until
8 such time as the requirements of any such tax Act are
9 satisfied, unless the agency is contesting, in accordance with
10 the procedures established by the appropriate revenue Act, its
11 liability for the tax or the amount of tax. The Department may,
12 after notice and a hearing, revoke the license of any lottery
13 sales agency that has had a license revoked under the Cigarette
14 Tax Act or the Tobacco Products Tax Act of 1995. The Division
15 shall affirmatively verify the tax status of every sales agency
16 before issuing or renewing a license. For purposes of this
17 Section, a sales agency shall not be considered delinquent in
18 the payment of a tax if the agency (a) has entered into an
19 agreement with the Department for the payment of all such taxes
20 that are due and (b) is in compliance with the agreement.

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

22 Section 905. The Department of Revenue Law of the Civil
23 Administrative Code of Illinois is amended by changing Section
24 2505-380 as follows:

1 (20 ILCS 2505/2505-380) (was 20 ILCS 2505/39b47)

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

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

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

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

22 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

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

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

1 credited to any licensee who became licensed on or before the
2 effective date of this amendatory Act of 1987.

3 "Department" means the Department of Revenue.

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

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

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

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

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

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

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

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

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

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

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

1 industries program; or

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

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

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

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

23 (35 ILCS 130/3-10)

24 Sec. 3-10. Cigarette enforcement.

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

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

5 (A) any cigarettes the package of which:

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

13 (ii) does not comply with:

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

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

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

1 law, or implementing federal regulations;

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

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

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

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

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

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

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

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

5 (1) a copy of:

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

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

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

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

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

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

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

15 (c) Administrative sanctions.

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

26 (2) Cigarettes that are acquired, held, owned,

1 possessed, transported in, imported into, or sold or
2 distributed in this State in violation of this Section
3 shall be deemed contraband under this Act and are subject
4 to seizure and forfeiture as provided in this Act, and all
5 such cigarettes seized and forfeited shall be destroyed.
6 Such cigarettes shall be deemed contraband whether the
7 violation of this Section is knowing or otherwise.

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

12 (d-5) Criminal penalties. A person who violates subsection
13 (a) or subsection (b) of this Section shall be guilty of a
14 Class 4 felony.

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

24 (f) General provisions.

25 (1) This Section shall be enforced by the Department;
26 provided that, at the request of the Director of Revenue or

1 the Director's duly authorized agent, the State police and
2 all local police authorities shall enforce the provisions
3 of this Section. The Attorney General has concurrent power
4 with the State's Attorney of any county to enforce this
5 Section.

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

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

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

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

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

1 (h) Applicability.

2 (1) This Section does not apply to:

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

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

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

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

16 (35 ILCS 130/4d new)

17 Sec. 4d. Retailer's License.

18 (a) Commencing January 1, 2010, no person may engage in
19 business as a retailer of cigarettes in this State without
20 first having obtained a retailer's license from the Department.
21 Application for a license shall be made to the Department in
22 form as furnished and prescribed by the Department. Each
23 applicant for a license under this Section shall furnish to the
24 Department on the form signed and verified by the applicant the
25 following information:

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

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

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

14 (c) The Department may, in its discretion, require an
15 applicant who is required to procure a retailer's license to
16 file with the application a joint and several bond. If
17 required, such bond shall be executed to the Department of
18 Revenue, with good and sufficient surety or sureties residing
19 or licensed to do business within the State of Illinois, in an
20 amount of not less than \$2,500, conditioned upon the true and
21 faithful compliance by the licensee with all of the provisions
22 of this Act. If required, such bond, or a reissue thereof, or a
23 substitute therefor, shall be kept in effect during the entire
24 period covered by the license. A separate application for
25 license shall be made, a separate annual license fee paid, and,
26 if required, a separate bond filed, for each place of business

1 at which a person who is required to procure a retailer's
2 license under this Section proposes to engage in business as a
3 retailer in Illinois under this Act.

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

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

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

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

18 (4) a person who possesses a distributor's license
19 under Section 4 of this Act or a distributor's license
20 under Section 4b of this Act.

21 (d) The Department, upon receipt of an application, license
22 fee, and bond in proper form from a person who is eligible to
23 receive a retailer's license under this Act, shall issue to the
24 applicant a license in form as prescribed by the Department,
25 which license shall permit the applicant to engage in business
26 as a retailer under this Act at the place shown in the

1 application. All licenses issued by the Department under this
2 Section shall be valid for not to exceed one year after
3 issuance unless sooner revoked, canceled or suspended as
4 provided in this Act. No license issued under this Section is
5 transferable or assignable. The license shall be conspicuously
6 displayed in the place of business conducted by the licensee in
7 Illinois under the license. The Department shall not issue a
8 license to a retailer unless the retailer is also validly
9 registered under the Retailers' Occupation Tax Act. A person
10 who obtains a license as a retailer and then ceases to do
11 business as specified in the license, or who does not commence
12 business, or who obtains a distributor's license, or whose
13 license is suspended or revoked, shall immediately surrender
14 the license to the Department.

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

1 (35 ILCS 130/4e new)

2 Sec. 4e. Purchases of Cigarettes by Licensed Retailers. A
3 person who possesses a retailer's license under Section 4d of
4 this Act shall obtain cigarettes for sale only from a licensed
5 distributor.

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

7 Sec. 6. Revocation, cancellation, or suspension of
8 license.

9 (a) The Department may, after notice and hearing as
10 provided for by this Act, revoke, cancel or suspend the license
11 of any distributor or retailer for the violation of any
12 provision of this Act, or for noncompliance with any provision
13 herein contained, or for any noncompliance with any lawful rule
14 or regulation promulgated by the Department under Section 8 of
15 this Act or under the Department of Revenue Law, or because the
16 licensee is determined to be ineligible for a distributor's
17 license for any one or more of the reasons provided for in
18 Section 4 of this Act, or because the licensee has been
19 determined to be ineligible for a retailer's license for any
20 one or more of the reasons provided for in Section 4d of this
21 Act. However, no such license shall be revoked, cancelled or
22 suspended, except after a hearing by the Department with notice
23 to the distributor or retailer, as aforesaid, and affording
24 such distributor or retailer a reasonable opportunity to appear
25 and defend, and any distributor or retailer aggrieved by any

1 decision of the Department with respect thereto may have the
2 determination of the Department judicially reviewed, as herein
3 provided.

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

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

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

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

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

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

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

16 (d) The revocation of a retailer's license under this Act
17 may be grounds for the revocation of both (i) any licenses
18 issued to the retailer under the Liquor Control Act of 1934 and
19 (ii) any licenses issued to the retailer under the Illinois
20 Lottery Law. The Department shall notify the Liquor Control
21 Commission and the Department of the Lottery when a retailer's
22 license has been revoked under this Act.

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

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

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

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

1 subpoena duces tecum issued out of a court.

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

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

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

21 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

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

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

8 Hearings provided for in this Act shall be held:

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

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

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

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

25 Service upon the Director of Revenue or Assistant Director
26 of Revenue of summons issued in any action to review a final

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

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

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

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

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

8 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

9 Sec. 10. The Department, or any officer or employee
10 designated in writing by the Director thereof, for the purpose
11 of administering and enforcing the provisions of this Act, may
12 hold investigations and hearings concerning any matters
13 covered by this Act, and may examine books, papers, records or
14 memoranda bearing upon the sale or other disposition of
15 cigarettes by such distributor or retailer, and may issue
16 subpoenas requiring the attendance of such distributor or
17 retailer, or any officer or employee of such distributor or
18 retailer, or any person having knowledge of the facts, and may
19 take testimony and require proof, and may issue subpoenas duces
20 tecum to compel the production of relevant books, papers,
21 records and memoranda, for the information of the Department.

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

1 manner of taking testimony shall invalidate any rule, order,
2 decision or regulation made, approved or confirmed by the
3 Department.

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

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

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

15 (35 ILCS 130/11) (from Ch. 120, par. 453.11)

16 Sec. 11. Every distributor and every retailer of
17 cigarettes, who is required to procure a license under this
18 Act, shall keep within Illinois, at his licensed address,
19 complete and accurate records of cigarettes held, purchased,
20 manufactured, brought in or caused to be brought in from
21 without the State, and sold, or otherwise disposed of, and
22 shall preserve and keep within Illinois at his licensed address
23 all invoices, bills of lading, sales records, copies of bills
24 of sale, inventory at the close of each period for which a
25 return is required of all cigarettes on hand and of all

1 cigarette revenue stamps, both affixed and unaffixed, and other
2 pertinent papers and documents relating to the manufacture,
3 purchase, sale or disposition of cigarettes. All books and
4 records and other papers and documents that are required by
5 this Act to be kept shall be kept in the English language, and
6 shall, at all times during the usual business hours of the day,
7 be subject to inspection by the Department or its duly
8 authorized agents and employees. The Department may adopt rules
9 that establish requirements, including record forms and
10 formats, for records required to be kept and maintained by
11 taxpayers. For purposes of this Section, "records" means all
12 data maintained by the taxpayer, including data on paper,
13 microfilm, microfiche or any type of machine-sensible data
14 compilation. Those books, records, papers and documents shall
15 be preserved for a period of at least 3 years after the date of
16 the documents, or the date of the entries appearing in the
17 records, unless the Department, in writing, authorizes their
18 destruction or disposal at an earlier date. At all times during
19 the usual business hours of the day any duly authorized agent
20 or employee of the Department may enter any place of business
21 of the distributor or retailer, without a search warrant, and
22 inspect the premises and the stock or packages of cigarettes
23 and the vending devices therein contained, to determine whether
24 any of the provisions of this Act are being violated. If such
25 agent or employee is denied free access or is hindered or
26 interfered with in making such examination as herein provided,

1 the license of the distributor or retailer at such premises
2 shall be subject to revocation by the Department.

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

4 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

5 Sec. 18b. Any person licensed or required to be licensed as
6 a retailer under this Act possessing original packages of
7 unstamped packages of cigarettes is liable to pay to the
8 Department, for deposit into the Tax Compliance and
9 Administration Fund, a penalty for each such package of
10 cigarettes, unless reasonable cause for possessing said
11 unstamped packages of cigarettes can be established by the
12 person upon whom the penalty is imposed. The penalty shall be
13 \$15 per package for possession of less than 101 packages and
14 \$25 for possession of each package in excess of 100 packages.
15 This penalty is in addition to the taxes imposed by this Act.
16 Such penalty may be recovered by the Department in a civil
17 action. Reasonable cause shall be determined in each situation
18 in accordance with rules adopted by the Department. The
19 provisions of the Uniform Penalty and Interest Act (35 ILCS
20 735/) do not apply to this Section. ~~With the exception of~~
21 ~~licensed distributors, anyone possessing cigarettes contained~~
22 ~~in original packages which are not tax stamped as required by~~
23 ~~this Act, or which are improperly tax stamped, shall be liable~~
24 ~~to pay, to the Department for deposit in the State Treasury, a~~
25 ~~penalty of \$15 for each such package of cigarettes in excess of~~

1 ~~100 packages~~. Such penalty may be recovered by the Department
2 in a civil action.

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

4 (35 ILCS 130/22) (from Ch. 120, par. 453.22)

5 Sec. 22. Any person who (a) falsely or fraudulently makes,
6 forges, alters or counterfeits any stamp provided for herein,
7 (b) causes or procures to be falsely or fraudulently made,
8 forged, altered or counterfeited any such stamp, (c) knowingly
9 and wilfully utters, publishes, passes or tenders as genuine
10 any such false, altered, forged or counterfeited stamp, (d)
11 falsely or fraudulently makes, forges, alters or counterfeits
12 any tax imprint on an original package of cigarettes inside a
13 sealed transparent wrapper, (e) causes or procures falsely or
14 fraudulently to be made, forged, altered or counterfeited any
15 such tax imprint or (f) knowingly and wilfully utters,
16 publishes, passes or tenders as genuine any such false,
17 altered, forged or counterfeited tax imprint, for the purpose
18 of evading the tax imposed by this Act shall be guilty of a
19 Class 4 ~~2~~ felony.

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

21 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

22 Sec. 23. Every distributor, retailer, or other person who
23 shall knowingly and wilfully sell or offer for sale any
24 original package, as defined in this Act, having affixed

1 thereto any fraudulent, spurious, imitation or counterfeit
2 stamp, or stamp which has been previously affixed, or affixes a
3 stamp which has previously been affixed to an original package,
4 or who shall knowingly and wilfully sell or offer for sale any
5 original package, as defined in this Act, having imprinted
6 thereon underneath the sealed transparent wrapper thereof any
7 fraudulent, spurious, imitation or counterfeit tax imprint,
8 shall be deemed guilty of a Class 4 ~~2~~ felony.

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

10 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

11 Sec. 24. Punishment for sale or possession of unstamped
12 packages.

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

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

25 (c) Any person licensed or required to be licensed as a

1 retailer under this Act, other than a person licensed as a
2 distributor or a transporter, as defined in Section 9c of this
3 Act, who has in his possession, offers for sale or sells more
4 than 1000 original packages of unstamped packages of
5 cigarettes, shall be guilty of a Class 3 felony.

6 (d) If a retailer possesses more than 100 original packages
7 of unstamped packages of cigarettes, the prima facie
8 presumption shall arise that the retailer was offering the
9 original packages of unstamped packages of cigarettes for sale.
10 If more than more than 100 original packages of unstamped
11 packages of cigarettes are found at a location, the prima facie
12 presumption shall arise that the retailer is in possession of
13 the original packages of unstamped packages of cigarettes.

14 (e) Any person licensed as a distributor or transporter, as
15 defined in Section 9c of this Act, who sells 100 or fewer
16 original packages of an unstamped package of cigarettes, except
17 when the sale is made under such circumstances that the tax
18 imposed by this Act may not legally be levied because of the
19 Constitution or laws of the United States, shall be guilty of a
20 Class A misdemeanor.

21 (f) Any person licensed as a distributor or transporter, as
22 defined in Section 9c of this Act, who sells more than 100
23 original packages of an unstamped package of cigarettes, except
24 when the sale is made under such circumstances that the tax
25 imposed by this Act may not legally be levied because of the
26 Constitution or laws of the United States, shall be guilty of a

1 Class 4 felony.

2 ~~(a) Any person other than a licensed distributor who sells,~~
3 ~~offers for sale, or has in his possession with intent to sell~~
4 ~~or offer for sale, more than 100 original packages, not tax~~
5 ~~stamped or tax imprinted underneath the sealed transparent~~
6 ~~wrapper of such original package in accordance with this Act,~~
7 ~~shall be guilty of a Class 4 felony.~~

8 ~~(a 5) Any person other than a licensed distributor who~~
9 ~~sells, offers for sale, or has in his possession with intent to~~
10 ~~sell or offer for sale, 100 or fewer original packages, not tax~~
11 ~~stamped or tax imprinted underneath the sealed transparent~~
12 ~~wrapper of the original package in accordance with this Act, is~~
13 ~~guilty of a Class A misdemeanor for the first offense and a~~
14 ~~Class 4 felony for each subsequent offense.~~

15 ~~(b) Any distributor who sells an original package of~~
16 ~~cigarettes, not tax stamped or tax imprinted underneath the~~
17 ~~sealed transparent wrapper of such original package in~~
18 ~~accordance with this Act, except when the sale is made under~~
19 ~~such circumstances that the tax imposed by this Act may not~~
20 ~~legally be levied because of the Constitution or laws of the~~
21 ~~United States, shall be guilty of a Class 3 felony.~~

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

23 (35 ILCS 130/26a new)

24 Sec. 26a. Operation without retail license. Any person who
25 operates as a retailer of original packages of cigarettes as

1 defined by this Act without having a license as required by
2 this Act shall be guilty of a Class A misdemeanor. Each day
3 such person operates as a retailer without a license
4 constitutes a separate offense.

5 (35 ILCS 130/18c rep.)

6 Section 915. The Cigarette Tax Act is amended by repealing
7 Section 18c.

8 Section 920. The Cigarette Use Tax Act is amended by
9 changing Sections 1, 3-10, 12, 25b, and 30 as follows:

10 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

13 "Use" means the exercise by any person of any right or
14 power over cigarettes incident to the ownership or possession
15 thereof, other than the making of a sale thereof in the course
16 of engaging in a business of selling cigarettes and shall
17 include the keeping or retention of cigarettes for use, except
18 that "use" shall not include the use of cigarettes by a
19 not-for-profit research institution conducting tests
20 concerning the health effects of tobacco products, provided the
21 cigarettes are not offered for resale.

22 "Cigarette" means any roll for smoking made wholly or in
23 part of tobacco irrespective of size or shape and whether or

1 not such tobacco is flavored, adulterated or mixed with any
2 other ingredient, and the wrapper or cover of which is made of
3 paper or any other substance or material except tobacco.

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

10 "Department" means the Department of Revenue.

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

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

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

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

1 b. Any person who makes, manufactures or fabricates
2 cigarettes in this State for sale, except a person who
3 makes, manufactures or fabricates cigarettes for sale to
4 residents incarcerated in penal institutions or resident
5 patients or a State-operated mental health facility.

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

12 "Distributor" does not include any person with respect to a
13 sale of cigarettes to a purchaser for use or consumption, and
14 not for resale.

15 "Distributor" does not include any person who transfers
16 cigarettes to a not-for-profit research institution that
17 conducts tests concerning the health effects of tobacco
18 products and who does not offer the cigarettes for resale.

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

1 distributor or subsidiary is licensed to transact business
2 within this State.

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

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

22 "Unstamped package of cigarettes" means a package of
23 cigarettes that does not bear a tax stamp as required by this
24 Act, including a package of cigarettes that bears a tax stamp
25 of another state or taxing jurisdiction, a package of
26 cigarettes that bears a counterfeit tax stamp, and a stamped or

1 unstamped package of cigarettes that is marked "Not for sale in
2 the United States".

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

4 (35 ILCS 135/3-10)

5 Sec. 3-10. Cigarette enforcement.

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

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

11 (A) any cigarettes the package of which:

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

19 (ii) does not comply with:

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

1 warning labels specified in the federal
2 Cigarette Labeling and Advertising Act, 15
3 U.S.C. 1333; and

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

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

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

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

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

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

25 (B) any health warning that is not specified in, or
26 does not conform with the requirements of, the federal

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

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

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

12 (1) a copy of:

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

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

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

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

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

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

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

22 (c) Administrative sanctions.

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

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

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

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

18 (d-5) Criminal penalties. A person who violates subsection
19 (a) or subsection (b) of this Section shall be guilty of a
20 Class 4 felony.

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

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

4 (f) General provisions.

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

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

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

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

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

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

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

7 (h) Applicability.

8 (1) This Section does not apply to:

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

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

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

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

22 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

23 Sec. 12. Declaration of possession of cigarettes on which
24 tax not paid.

25 (a) When cigarettes are acquired for use in this State by a

1 person ~~(including a distributor as well as any other person)~~,
2 who did not pay the tax herein imposed to a distributor, the
3 person, within 30 days after acquiring the cigarettes, shall
4 file with the Department a return declaring the possession of
5 the cigarettes and shall transmit with the return to the
6 Department the tax imposed by this Act.

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

12 (c) The return referred to in paragraph (a) shall contain
13 the name and address of the person possessing the cigarettes
14 involved, the location of the cigarettes and the quantity,
15 brand name, place, and date of the acquisition of the
16 cigarettes.

17 (d) The provisions of the Uniform Penalty and Interest Act
18 (35 ILCS 735/) do not apply to this Section.

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

20 (35 ILCS 135/25b)

21 Sec. 25b. Possession of cigarette packages by persons not
22 licensed as a distributor or a retailer; penalty. Any person
23 other than a person licensed as a distributor or a retailer
24 under the Cigarette Tax Act in possession of more than 10 but
25 fewer than 101 original packages of unstamped packages of

1 cigarettes and who has not paid the taxes imposed by this Act
2 within 30 days of acquiring the cigarettes, shall be liable to
3 pay to the Department for deposit into the Tax Compliance and
4 Administration Fund, a penalty of \$15 for possession of each
5 package of cigarettes. Any person other than a person licensed
6 as a distributor or a retailer under the Cigarette Tax Act in
7 possession of more than 101 original packages of unstamped
8 packages of cigarettes and who has not paid the taxes imposed
9 by this Act within 30 days of acquiring the cigarettes, shall
10 be liable to pay to the Department for deposit into the Tax
11 Compliance and Administration Fund, a penalty of \$25 for
12 possession of each package of cigarettes. Any person who
13 purchases and possesses a total of 10 or fewer original
14 packages of unstamped cigarettes per month shall be exempt from
15 the penalties of this Section. The provisions of the Uniform
16 Penalty and Interest Act (35 ILCS 735/) do not apply to this
17 Section. Possession of not less than 10 and not more than 100
18 original packages not tax stamped or improperly tax stamped;
19 penalty. With the exception of licensed distributors, anyone
20 possessing not less than 10 and not more than 100 packages of
21 cigarettes contained in original packages that are not tax
22 stamped as required by this Act, or that are improperly tax
23 stamped, is liable to pay to the Department, for deposit into
24 the Tax Compliance and Administration Fund, a penalty of \$10
25 for each such package of cigarettes, unless reasonable cause
26 can be established by the person upon whom the penalty is

1 ~~imposed. Reasonable cause shall be determined in each situation~~
2 ~~in accordance with rules adopted by the Department.~~

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

4 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

5 Sec. 30. Punishment for possession, offer for sale, or sale
6 of unstamped packages of cigarettes, other than in a retail or
7 resale business. ~~Punishment for sale or possession of unstamped~~
8 ~~packages.~~

9 (a) Any person other than a person licensed as a
10 distributor, a transporter as defined in Section 9c of the
11 Cigarette Tax Act, or a retailer under the Cigarette Tax Act,
12 who has in his possession, offers for sale or sells, fewer than
13 101 original packages of unstamped packages of cigarettes,
14 shall be guilty of a Class A misdemeanor. The punishment
15 imposed shall increase for each subsequent conviction under
16 this subsection.

17 (b) Any person other than a person licensed as a
18 distributor, a transporter as defined in Section 9c of the
19 Cigarette Tax Act, or a retailer under the Cigarette Tax Act,
20 who has in his possession, offers for sale or sells, more than
21 100 but fewer than 1001 original packages of unstamped packages
22 of cigarettes, shall be guilty of a Class 4 felony.

23 (c) Any person other than a person licensed as a
24 distributor, a transporter as defined in Section 9c of the
25 Cigarette Tax Act, or a retailer under the Cigarette Tax Act,

1 who has in his possession, offers for sale or sells, more than
2 1000 original packages of unstamped packages of cigarettes,
3 shall be guilty of a Class 3 felony.

4 ~~Any person other than a licensed distributor who sells, offers~~
5 ~~for sale, or has in his possession with intent to sell or offer~~
6 ~~for sale, more than 100 original packages, not tax stamped or~~
7 ~~tax imprinted underneath the sealed transparent wrapper of such~~
8 ~~original package in accordance with this Act, shall be guilty~~
9 ~~of a Class 4 felony.~~

10 ~~Any person other than a licensed distributor who sells,~~
11 ~~offers for sale, or has in his possession with intent to sell~~
12 ~~or offer for sale, 100 or fewer original packages, not tax~~
13 ~~stamped or tax imprinted underneath the sealed transparent~~
14 ~~wrapper of the original package in accordance with this Act, is~~
15 ~~guilty of a Class A misdemeanor for the first offense and a~~
16 ~~Class 4 felony for each subsequent offense.~~

17 ~~Any distributor who sells an original package of~~
18 ~~cigarettes, not tax stamped or tax imprinted underneath the~~
19 ~~sealed transparent wrapper of such original package in~~
20 ~~accordance with this Act, except when the sale is made under~~
21 ~~such circumstances that the tax imposed by this Act may not~~
22 ~~legally be levied because of the Constitution or laws of the~~
23 ~~United States, shall be guilty of a Class 3 felony.~~

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

25 (35 ILCS 135/25a rep.)

1 Section 925. The Cigarette Use Tax Act is amended by
2 repealing Section 25a.

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

7 (35 ILCS 143/10-5)

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

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

12 "Cigarette" has the meaning ascribed to the term in Section
13 1 of the Cigarette Tax Act.

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

19 "Department" means the Illinois Department of Revenue.

20 "Distributor" means any of the following:

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

1 (2) Any manufacturer or wholesaler engaged in the
2 business of selling tobacco products from without this
3 State who sells, exchanges, distributes, ships, or
4 transports tobacco products to retailers ~~or consumers~~
5 located in this State, so long as that manufacturer or
6 wholesaler has or maintains within this State, directly or
7 by subsidiary, an office, sales house, or other place of
8 business, or any agent or other representative operating
9 within this State under the authority of the person or
10 subsidiary, irrespective of whether the place of business
11 or agent or other representative is located here
12 permanently or temporarily.

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

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

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

24 "Manufacturer" means any person, wherever resident or
25 located, who manufactures and sells tobacco products, except a
26 person who makes, manufactures, or fabricates tobacco products

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

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

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

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

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

21 "Tobacco products" means any cigars; cheroots; stogies;
22 periques; granulated, plug cut, crimp cut, ready rubbed, and
23 other smoking tobacco; snuff or snuff flour; cavendish; plug
24 and twist tobacco; fine-cut and other chewing tobaccos; shorts;
25 refuse scraps, clippings, cuttings, and sweeping of tobacco;
26 and other kinds and forms of tobacco, prepared in such manner

1 as to be suitable for chewing or smoking in a pipe or
2 otherwise, or both for chewing and smoking; but does not
3 include cigarettes or tobacco purchased for the manufacture of
4 cigarettes by cigarette distributors and manufacturers defined
5 in the Cigarette Tax Act and persons who make, manufacture, or
6 fabricate cigarettes as a part of a Correctional Industries
7 program for sale to residents incarcerated in penal
8 institutions or resident patients of a State operated mental
9 health facility.

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

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

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

23 (35 ILCS 143/10-20)

24 Sec. 10-20. Distributor's Licenses. It shall be unlawful
25 for any person to engage in business as a distributor of

1 tobacco products within the meaning of this Act without first
2 having obtained a license to do so from the Department.
3 Application for that license shall be made to the Department in
4 a form prescribed and furnished by the Department. Each
5 applicant for a license shall furnish to the Department on a
6 form, signed and verified by the applicant, the following
7 information:

8 (1) The name of the applicant.

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

12 (3) Other information the Department may reasonably
13 require.

14 Except as otherwise provided in this Section, every
15 applicant who is required to procure a distributor's license
16 shall file with his or her application a joint and several
17 bond. The bond shall be executed to the Department of Revenue,
18 with good and sufficient surety or sureties residing or
19 licensed to do business within the State of Illinois,
20 conditioned upon the true and faithful compliance by the
21 licensee with all of the provisions of this Act. The Department
22 shall fix the amount of the bond for each applicant, taking
23 into consideration the amount of money expected to become due
24 from the applicant under this Act. The amount of bond required
25 by the Department shall be an amount that, in its opinion, will
26 protect the State of Illinois against failure to pay the amount

1 that may become due from the applicant under this Act, but the
2 amount of the security required by the Department shall not
3 exceed 3 times the amount of the applicant's average monthly
4 tax liability, or \$50,000, whichever amount is lower. The bond,
5 a reissue, or a substitute shall be kept in full force and
6 effect during the entire period covered by the license. A
7 separate application for license shall be made, and bond filed,
8 for each place of business at which a person who is required to
9 procure a distributor's license proposes to engage in business
10 as a distributor under this Act.

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

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

26 No license shall be issued to any person who is in default

1 to the State of Illinois for moneys due under this Act or any
2 other tax Act administered by the Department.

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

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

1 bring itself into compliance with subdivision (a) (2) of Section
2 15 of the Tobacco Product Manufacturers' Escrow Act.

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

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

14 (35 ILCS 143/10-21 new)

15 Sec. 10-21. Retailer's License.

16 (a) Commencing January 1, 2010, no person may engage in
17 business as a retailer of tobacco products in this State
18 without first having obtained a retailer's license from the
19 Department. Application for a license shall be made to the
20 Department in form as furnished and prescribed by the
21 Department. Each applicant for a license under this Section
22 shall furnish to the Department on the form signed and verified
23 by the applicant the following information:

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

25 (2) the address of the location at which the applicant

1 proposes to engage in business as a retailer of tobacco
2 products in this State; and

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

6 (b) The annual license fee payable to the Department for
7 each retailer's license shall be \$250. The fee will be placed
8 into the Tax Compliance and Administration Fund and used
9 towards the cost of retail inspections. Each applicant for a
10 license shall pay that fee to the Department at the time of
11 submitting the application for a license to the Department.

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

1 retailer in Illinois under this Act.

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

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

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

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

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

18 (d) The Department, upon receipt of an application, license
19 fee, and bond in proper form from a person who is eligible to
20 receive a retailer's license under this Act, shall issue to the
21 applicant a license in form as prescribed by the Department,
22 which license shall permit the applicant to engage in business
23 as a retailer under this Act at the place shown in the
24 application. All licenses issued by the Department under this
25 Section shall be valid for not to exceed one year after
26 issuance unless sooner revoked, canceled or suspended as

1 provided in this Act. No license issued under this Section is
2 transferable or assignable. The license shall be conspicuously
3 displayed in the place of business conducted by the licensee in
4 Illinois under the license. The Department shall not issue a
5 license to a retailer unless the retailer is also validly
6 registered under the Retailers' Occupation Tax Act. A person
7 who obtains a license as a retailer and then ceases to do
8 business as specified in the license, or who does not commence
9 business, or who obtains a distributor's license, or whose
10 license is suspended or revoked, shall immediately surrender
11 the license to the Department. A retailer as defined under the
12 Cigarette Tax Act need not obtain an additional license under
13 this Act, but shall be deemed to be sufficiently licensed by
14 virtue of his being properly licensed as a retailer under
15 Section 4d of the Cigarette Tax Act.

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

1 (35 ILCS 143/10-22 new)

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

6 (35 ILCS 143/10-25)

7 Sec. 10-25. License actions.

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

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

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

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

24 The Department shall revoke the license of a retailer for a

1 third or subsequent violation of the Sale of Tobacco to Minors
2 Act, as provided in Section 3 of that Act.

3 (d) The revocation of a retailer's license under this Act
4 may be grounds for the revocation of any licenses issued to the
5 retailer under the Liquor Control Act of 1934 and the Illinois
6 Lottery Law. The Department shall notify the Liquor Control
7 Commission and the Department of the Lottery when a retailer's
8 license has been revoked under this Act.

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

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

22 (35 ILCS 143/10-30)

23 Sec. 10-30. Returns.

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

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

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

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

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

16 (35 ILCS 143/10-35)

17 Sec. 10-35. Record keeping.

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

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

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

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

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

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

19 (35 ILCS 143/10-50)

20 Sec. 10-50. Violations and penalties.

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

1 products to retailers and consumers located in this State who
2 signs a fraudulent return filed on behalf of the corporation,
3 or any accountant or other agent who knowingly enters false
4 information on the return of any taxpayer under this Act is
5 guilty of a Class A misdemeanor for a first offense and a Class
6 4 felony for each subsequent offense ~~4 felony~~.

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

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

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

1 the corporation, or any accountant or other agent who knowingly
2 enters false information on the return of any taxpayer under
3 this Act is guilty of a Class 3 felony.

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

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

25 (g) When the amount due is \$300 or more, any retailer who
26 fails to file a return, willfully fails or refuses to make any

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

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

17 (i) Any taxpayer or agent of a taxpayer who with the intent
18 to defraud purports to make a payment due to the Department by
19 issuing or delivering a check or other order upon a real or
20 fictitious depository for the payment of money, knowing that it
21 will not be paid by the depository, is guilty of a deceptive
22 practice in violation of Section 17-1 of the Criminal Code of
23 1961.

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

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

2 (35 ILCS 143/10-53 new)

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

11 Section 935. The Liquor Control Act of 1934 is amended by
12 changing Section 7-5 as follows:

13 (235 ILCS 5/7-5) (from Ch. 43, par. 149)

14 Sec. 7-5. The local liquor control commissioner may revoke
15 or suspend any license issued by him if he determines that the
16 licensee has violated any of the provisions of this Act or of
17 any valid ordinance or resolution enacted by the particular
18 city council, president, or board of trustees or county board
19 (as the case may be) or any applicable rule or regulations
20 established by the local liquor control commissioner or the
21 State commission which is not inconsistent with law. Upon
22 notification by the Illinois Department of Revenue, the State
23 Commission, in accordance with Section 3-12, may refuse the

1 issuance or renewal of a license, fine a licensee, or suspend
2 or revoke any license issued by the State Commission if the
3 licensee or license applicant has violated the provisions of
4 Section 3 of the Retailers' Occupation Tax Act. Upon
5 notification of the Department of Revenue, the Commission may,
6 after notice and a hearing, revoke the license of any licensee
7 that has had a license revoked under the Cigarette Tax Act or
8 the Tobacco Products Tax Act of 1995. In addition to the
9 suspension, the local liquor control commissioner in any county
10 or municipality may levy a fine on the licensee for such
11 violations. The fine imposed shall not exceed \$1000 for a first
12 violation within a 12-month period, \$1,500 for a second
13 violation within a 12-month period, and \$2,500 for a third or
14 subsequent violation within a 12-month period. Each day on
15 which a violation continues shall constitute a separate
16 violation. Not more than \$15,000 in fines under this Section
17 may be imposed against any licensee during the period of his
18 license. Proceeds from such fines shall be paid into the
19 general corporate fund of the county or municipal treasury, as
20 the case may be.

21 However, no such license shall be so revoked or suspended
22 and no licensee shall be fined except after a public hearing by
23 the local liquor control commissioner with a 3 day written
24 notice to the licensee affording the licensee an opportunity to
25 appear and defend. All such hearings shall be open to the
26 public and the local liquor control commissioner shall reduce

1 all evidence to writing and shall maintain an official record
2 of the proceedings. If the local liquor control commissioner
3 has reason to believe that any continued operation of a
4 particular licensed premises will immediately threaten the
5 welfare of the community he may, upon the issuance of a written
6 order stating the reason for such conclusion and without notice
7 or hearing order the licensed premises closed for not more than
8 7 days, giving the licensee an opportunity to be heard during
9 that period, except that if such licensee shall also be engaged
10 in the conduct of another business or businesses on the
11 licensed premises such order shall not be applicable to such
12 other business or businesses.

13 The local liquor control commissioner shall within 5 days
14 after such hearing, if he determines after such hearing that
15 the license should be revoked or suspended or that the licensee
16 should be fined, state the reason or reasons for such
17 determination in a written order, and either the amount of the
18 fine, the period of suspension, or that the license has been
19 revoked, and shall serve a copy of such order within the 5 days
20 upon the licensee.

21 If the premises for which the license was issued are
22 located outside of a city, village or incorporated town having
23 a population of 500,000 or more inhabitants, the licensee after
24 the receipt of such order of suspension or revocation shall
25 have the privilege within a period of 20 days after the receipt
26 of such order of suspension or revocation of appealing the

1 order to the State commission for a decision sustaining,
2 reversing or modifying the order of the local liquor control
3 commissioner. If the State commission affirms the local
4 commissioner's order to suspend or revoke the license at the
5 first hearing, the appellant shall cease to engage in the
6 business for which the license was issued, until the local
7 commissioner's order is terminated by its own provisions or
8 reversed upon rehearing or by the courts.

9 If the premises for which the license was issued are
10 located within a city, village or incorporated town having a
11 population of 500,000 or more inhabitants, the licensee shall
12 have the privilege, within a period of 20 days after the
13 receipt of such order of fine, suspension or revocation, of
14 appealing the order to the local license appeal commission and
15 upon the filing of such an appeal by the licensee the license
16 appeal commission shall determine the appeal upon certified
17 record of proceedings of the local liquor commissioner in
18 accordance with the provisions of Section 7-9. Within 30 days
19 after such appeal was heard the license appeal commission shall
20 render a decision sustaining or reversing the order of the
21 local liquor control commissioner.

22 (Source: P.A. 95-331, eff. 8-21-07.)

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

1 (720 ILCS 675/3 new)

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

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

9 (2) suspended for 30 days for a second violation of
10 this Act; and

11 (3) revoked for a third or subsequent violation of this
12 Act.

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