



Sen. Ira I. Silverstein

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1 AMENDMENT TO SENATE BILL 317

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 317 by replacing  
3 everything after the enacting clause with the following:

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

1 by the federal Jenkins Act (15 U.S.C. §§375-377) in order to  
2 bill consumers for the taxes due. The General Assembly further  
3 finds that many cigarette sellers do not comply with the  
4 provisions of the Jenkins Act and that many other states, in  
5 order to address this problem, have enacted their own reporting  
6 laws intended to prevent further tax avoidance. Therefore, it  
7 is intent of the General Assembly in enacting this Act to  
8 facilitate the collection of all applicable State sales and use  
9 taxes on cigarettes sold to residents of this State over the  
10 Internet or by mail order by establishing a reporting  
11 requirement for out-of-state cigarette sellers and penalties  
12 for those persons who violate this Act.

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

15 "Cigarette" means any roll for smoking made wholly or in  
16 part of tobacco, irrespective of size or shape and whether or  
17 not the tobacco is flavored, adulterated, or mixed with any  
18 other ingredient, and the wrapper or cover of which is made of  
19 paper or any other substance or material except whole tobacco  
20 leaf.

21 "Consumer" means an individual who is not a licensed  
22 cigarette distributor or a licensed cigarette retailer.

23 "Delivery sale" means a sale of cigarettes to a consumer in  
24 this State in which:

25 (1) the purchaser submits the order for the sale by

1 means of a telephone or other method of voice transmission,  
2 a delivery service, or the Internet or other online  
3 service; or

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

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

7 "Department" means the Department of Revenue.

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

13 "Person accepting a purchase order for a delivery sale"  
14 means a person who fills a cigarette order given by a consumer  
15 and processes the order for mail, shipping or other delivery,  
16 or who contracts with another party to provide delivery service  
17 to the purchaser.

18 "Purchase order" means a written or electronic document  
19 authorizing a seller to provide cigarettes.

20 "Retail value" means the market price of the cigarettes  
21 plus all applicable taxes at the location where the cigarettes  
22 were mailed, shipped, or delivered.

23 Section 15. Delivery sales reporting requirements.

24 (a) Not later than the 15th day of each calendar month,  
25 each person that has made a delivery sale of delivered, mailed,

1 or shipped cigarettes during the previous calendar month, or  
2 contracted with another party for delivery service in  
3 connection with a delivery sale made during the previous  
4 calendar month, shall file a report with the Department. The  
5 report shall contain the following information:

6 (1) the name, trade name, and address of the principal  
7 place of business of the seller and any other place of  
8 business of the seller;

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

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

13 (4) the quantity of cigarettes that were sold in the  
14 delivery sale; and

15 (5) such other information as the Department may  
16 require by rule.

17 (b) A person that satisfies the requirements of 15 U.S.C.  
18 376 is deemed to have met the requirements of this Section.

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

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

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

24 (1) The first time a person violates Section 15 of  
25 this Act, the person shall be subject to a civil penalty of

1           \$1,000 or five times the retail value of the cigarettes  
2           involved in the violation, whichever is greater.

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

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

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

14          (d) Any person aggrieved by a Department decision may,  
15          within 30 days after notice of that decision, protest in  
16          writing and request a hearing. The Department shall give notice  
17          to the person of the time and place for the hearing and shall  
18          hold a hearing before it issues a final administrative  
19          decision. In the absence of a protest and request for a hearing  
20          within 30 days, the Department's decision shall become final  
21          without any further determination being made or notice given.

22          Section 25. Enforcement. All enforcement proceedings under  
23          this Act shall be instituted by the Attorney General at the  
24          request of the Department to require compliance with this Act,  
25          to recover civil penalties authorized under Section 20 of this

1 Act, and to seek any other remedy as provided by law.

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

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

6 (20 ILCS 1605/10.1a) (from Ch. 120, par. 1160.1a)

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

1 agreement with the Department for the payment of all such taxes  
2 that are due and (b) is in compliance with the agreement.

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

4 Section 905. The Department of Revenue Law of the Civil  
5 Administrative Code of Illinois is amended by changing Section  
6 2505-380 as follows:

7 (20 ILCS 2505/2505-380) (was 20 ILCS 2505/39b47)

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

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

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

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

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

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

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

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

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



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

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 (1) 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 or other disposition in the course of

1 such business.

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

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

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

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

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

25 "Retailer" means any person who engages in the making of  
26 transfers of the ownership of, or title to, cigarettes to a

1 purchaser for use or consumption and not for resale in any  
2 form, for a valuable consideration. "Retailer" does not include  
3 a person:

4 (1) who transfers to residents incarcerated in penal  
5 institutions or resident patients of a State-operated  
6 mental health facility ownership of cigarettes made,  
7 manufactured, or fabricated as part of a correctional  
8 industries program; or

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

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

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 130/3-10)

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

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

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

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

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

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



1 any trade name, trade dress, or trademark used for cigarettes  
2 manufactured in the United States for sale or distribution in  
3 the United States shall be presumed to have been purchased  
4 outside of the ordinary channels of trade.

5 (f) General provisions.

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

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

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

1 reasonable attorney's fees. If the trier of fact finds that  
2 the violation is flagrant, it may increase recovery to an  
3 amount not in excess of 3 times the actual damages  
4 sustained by reason of the violation.

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

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

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

8 (h) Applicability.

9 (1) This Section does not apply to:

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

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

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

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

23 (35 ILCS 130/4d new)

24 Sec. 4d. Retailer's License.

25 (a) Commencing January 1, 2010, no person may engage in

1 business as a retailer of cigarettes in this State without  
2 first having obtained a retailer's license from the Department.  
3 Application for a license shall be made to the Department in  
4 form as furnished and prescribed by the Department. Each  
5 applicant for a license under this Section shall furnish to the  
6 Department on the form signed and verified by the applicant the  
7 following information:

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

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

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

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

21 (c) The Department may, in its discretion, require an  
22 applicant who is required to procure a retailer's license to  
23 file with the application a joint and several bond. If  
24 required, such bond shall be executed to the Department of  
25 Revenue, with good and sufficient surety or sureties residing  
26 or licensed to do business within the State of Illinois, in an

1 amount of not less than \$2,500, conditioned upon the true and  
2 faithful compliance by the licensee with all of the provisions  
3 of this Act. If required, such bond, or a reissue thereof, or a  
4 substitute therefor, shall be kept in effect during the entire  
5 period covered by the license. A separate application for  
6 license shall be made, a separate annual license fee paid, and,  
7 if required, a separate bond filed, for each place of business  
8 at which a person who is required to procure a retailer's  
9 license under this Section proposes to engage in business as a  
10 retailer in Illinois under this Act.

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

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

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

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

25 (4) a person who possesses a distributor's license  
26 under Section 4 of this Act or a distributor's license

1       under Section 4b of this Act.

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

22       (e) Any person aggrieved by any decision of the Department  
23 under this subsection may, within 20 days after notice of the  
24 decision, protest and request a hearing. Upon receiving a  
25 request for a hearing, the Department shall give notice to the  
26 person requesting the hearing of the time and place fixed for

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

7 (35 ILCS 130/4e new)

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

12 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

13 Sec. 6. Revocation, cancellation, or suspension of  
14 license.

15 (a) The Department may, after notice and hearing as  
16 provided for by this Act, revoke, cancel or suspend the license  
17 of any distributor or retailer for the violation of any  
18 provision of this Act, or for noncompliance with any provision  
19 herein contained, or for any noncompliance with any lawful rule  
20 or regulation promulgated by the Department under Section 8 of  
21 this Act or under the Department of Revenue Law, or because the  
22 licensee is determined to be ineligible for a distributor's  
23 license for any one or more of the reasons provided for in  
24 Section 4 of this Act, or because the licensee has been

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

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

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

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

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

24 (b) Any distributor or retailer aggrieved by any decision  
25 of the Department under this Section may, within 20 days after  
26 notice of the decision, protest and request a hearing. Upon

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

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

23 (d) The revocation of a retailer's license under this Act  
24 may be grounds for the revocation of both (i) any licenses  
25 issued to the retailer under the Liquor Control Act of 1934 and  
26 (ii) any licenses issued to the retailer under the Illinois



1 Lottery Law. The Department shall notify the Liquor Control  
2 Commission and the Department of the Lottery when a retailer's  
3 license has been revoked under this Act.

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

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

9 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

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

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

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

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

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

2 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

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

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

14 Hearings provided for in this Act shall be held:

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

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

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

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

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

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

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

26 Whenever any proceeding provided by this Act is begun

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

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

15 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

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

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

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

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

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

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

22 (35 ILCS 130/11) (from Ch. 120, par. 453.11)

23 Sec. 11. Every distributor and every retailer of  
24 cigarettes, who is required to procure a license under this  
25 Act, shall keep within Illinois, at his licensed address,

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

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

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

11 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

12 Sec. 18b. Any person licensed or required to be licensed as  
13 a retailer under this Act possessing original packages of  
14 unstamped packages of cigarettes is liable to pay to the  
15 Department, for deposit into the Tax Compliance and  
16 Administration Fund, a penalty for each such package of  
17 cigarettes, unless reasonable cause for possessing said  
18 unstamped packages of cigarettes can be established by the  
19 person upon whom the penalty is imposed. The penalty shall be  
20 \$15 per package for possession of less than 101 packages and  
21 \$25 for possession of each package in excess of 100 packages.  
22 This penalty is in addition to the taxes imposed by this Act.  
23 Such penalty may be recovered by the Department in a civil  
24 action. Reasonable cause shall be determined in each situation  
25 in accordance with rules adopted by the Department. The



1 provisions of the Uniform Penalty and Interest Act (35 ILCS  
2 735/) do not apply to this Section. ~~With the exception of~~  
3 ~~licensed distributors, anyone possessing cigarettes contained~~  
4 ~~in original packages which are not tax stamped as required by~~  
5 ~~this Act, or which are improperly tax stamped, shall be liable~~  
6 ~~to pay, to the Department for deposit in the State Treasury, a~~  
7 ~~penalty of \$15 for each such package of cigarettes in excess of~~  
8 ~~100 packages.~~ Such penalty may be recovered by the Department  
9 in a civil action.

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

11 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

12 Sec. 23. Every distributor, retailer, or other person who  
13 shall knowingly and wilfully sell or offer for sale any  
14 original package, as defined in this Act, having affixed  
15 thereto any fraudulent, spurious, imitation or counterfeit  
16 stamp, or stamp which has been previously affixed, or affixes a  
17 stamp which has previously been affixed to an original package,  
18 or who shall knowingly and wilfully sell or offer for sale any  
19 original package, as defined in this Act, having imprinted  
20 thereon underneath the sealed transparent wrapper thereof any  
21 fraudulent, spurious, imitation or counterfeit tax imprint,  
22 shall be deemed guilty of a Class 2 felony.

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

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

1           Sec. 24. Punishment for sale or possession of unstamped  
2 packages.

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

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

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

22          (d) If a retailer possesses more than 100 original packages  
23 of unstamped packages of cigarettes, the prima facie  
24 presumption shall arise that the retailer was offering the  
25 original packages of unstamped packages of cigarettes for sale.  
26 If more than more than 100 original packages of unstamped

1 packages of cigarettes are found at a location, the prima facie  
2 presumption shall arise that the retailer is in possession of  
3 the original packages of unstamped packages of cigarettes.

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

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

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

24 ~~(b) Any distributor who sells an original package of~~  
25 ~~cigarettes, not tax stamped or tax imprinted underneath the~~  
26 ~~sealed transparent wrapper of such original package in~~

1 ~~accordance with this Act, except when the sale is made under~~  
2 ~~such circumstances that the tax imposed by this Act may not~~  
3 ~~legally be levied because of the Constitution or laws of the~~  
4 ~~United States, shall be guilty of a Class 3 felony.~~

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

6 (35 ILCS 130/26a new)

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

11 (35 ILCS 130/18c rep.)

12 Section 915. The Cigarette Tax Act is amended by repealing  
13 Section 18c.

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

16 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

19 "Use" means the exercise by any person of any right or  
20 power over cigarettes incident to the ownership or possession  
21 thereof, other than the making of a sale thereof in the course  
22 of engaging in a business of selling cigarettes and shall

1 include the keeping or retention of cigarettes for use, except  
2 that "use" shall not include the use of cigarettes by a  
3 not-for-profit research institution conducting tests  
4 concerning the health effects of tobacco products, provided the  
5 cigarettes are not offered for resale.

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

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

17 "Department" means the Department of Revenue.

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

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

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

26 a. Any person engaged in the business of selling

1 cigarettes in this State who brings or causes to be brought  
2 into this State from without this State any original  
3 packages of cigarettes, on which original packages there is  
4 no authorized evidence underneath a sealed transparent  
5 wrapper showing that the tax liability imposed by this Act  
6 has been paid or assumed by the out-of-State seller of such  
7 cigarettes, for sale in the course of such business.

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

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

19 "Distributor" does not include any person with respect to a  
20 sale of cigarettes to a purchaser for use or consumption, and  
21 not for resale.

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

26 "Distributor maintaining a place of business in this

1 State", or any like term, means any distributor having or  
2 maintaining within this State, directly or by a subsidiary, an  
3 office, distribution house, sales house, warehouse or other  
4 place of business, or any agent operating within this State  
5 under the authority of the distributor or its subsidiary,  
6 irrespective of whether such place of business or agent is  
7 located here permanently or temporarily, or whether such  
8 distributor or subsidiary is licensed to transact business  
9 within this State.

10 "Business" means any trade, occupation, activity or  
11 enterprise engaged in or conducted in this State for the  
12 purpose of selling cigarettes.

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

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

11 (35 ILCS 135/3-10)

12 Sec. 3-10. Cigarette enforcement.

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

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

18 (A) any cigarettes the package of which:

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



1 (ii) does not comply with:

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

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

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

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

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

26 (2) to alter the package of any cigarettes, prior to

1 sale or distribution to the ultimate consumer, so as to  
2 remove, conceal, or obscure:

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

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

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

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

19 (1) a copy of:

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

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

1           Firearms;

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

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

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

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

1 is not, a participating tobacco manufacturer within  
2 the meaning of Exhibit T.

3 (c) Administrative sanctions.

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

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

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

25 (d-5) Criminal penalties. A person who violates subsection  
26 (a) or subsection (b) of this Section shall be guilty of a

1 Class 4 felony.

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

11 (f) General provisions.

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

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

26 (3) In addition to any other remedy provided by law,

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

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

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

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

14 (h) Applicability.

15 (1) This Section does not apply to:

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

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

25 (2) The penalties provided in this Section are in  
26 addition to any other penalties imposed under other

1 provision of law.

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

3 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

4 Sec. 12. Declaration of possession of cigarettes on which  
5 tax not paid.

6 (a) When cigarettes are acquired for use in this State by a  
7 person ~~(including a distributor as well as any other person)~~,  
8 who did not pay the tax herein imposed to a distributor, the  
9 person, within 30 days after acquiring the cigarettes, shall  
10 file with the Department a return declaring the possession of  
11 the cigarettes and shall transmit with the return to the  
12 Department the tax imposed by this Act.

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

18 (c) The return referred to in paragraph (a) shall contain  
19 the name and address of the person possessing the cigarettes  
20 involved, the location of the cigarettes and the quantity,  
21 brand name, place, and date of the acquisition of the  
22 cigarettes.

23 (d) The provisions of the Uniform Penalty and Interest Act  
24 (35 ILCS 735/) do not apply to this Section.

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

1 (35 ILCS 135/25b)

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



1 ~~possessing not less than 10 and not more than 100 packages of~~  
2 ~~cigarettes contained in original packages that are not tax~~  
3 ~~stamped as required by this Act, or that are improperly tax~~  
4 ~~stamped, is liable to pay to the Department, for deposit into~~  
5 ~~the Tax Compliance and Administration Fund, a penalty of \$10~~  
6 ~~for each such package of cigarettes, unless reasonable cause~~  
7 ~~can be established by the person upon whom the penalty is~~  
8 ~~imposed. Reasonable cause shall be determined in each situation~~  
9 ~~in accordance with rules adopted by the Department.~~

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

11 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

12 Sec. 30. Punishment for possession, offer for sale, or sale  
13 of unstamped packages of cigarettes, other than in a retail or  
14 resale business. ~~Punishment for sale or possession of unstamped~~  
15 ~~packages.~~

16 (a) Any person other than a person licensed as a  
17 distributor, a transporter as defined in Section 9c of the  
18 Cigarette Tax Act, or a retailer under the Cigarette Tax Act,  
19 who has in his possession, offers for sale or sells, fewer than  
20 101 original packages of unstamped packages of cigarettes,  
21 shall be guilty of a Class A misdemeanor for a first offense  
22 and a Class 4 felony for each subsequent offense.

23 (b) 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  
2 100 but fewer than 1001 original packages of unstamped packages  
3 of cigarettes, shall be guilty of a Class 4 felony.

4 (c) Any person other than a person licensed as a  
5 distributor, a transporter as defined in Section 9c of the  
6 Cigarette Tax Act, or a retailer under the Cigarette Tax Act,  
7 who has in his possession, offers for sale or sells, more than  
8 1000 original packages of unstamped packages of cigarettes,  
9 shall be guilty of a Class 3 felony.

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

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

22 ~~Any person other than a licensed distributor who sells,~~  
23 ~~offers for sale, or has in his possession with intent to sell~~  
24 ~~or offer for sale, 100 or fewer original packages, not tax~~  
25 ~~stamped or tax imprinted underneath the sealed transparent~~  
26 ~~wrapper of the original package in accordance with this Act, is~~

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

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

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

11 (35 ILCS 135/25a rep.)

12 Section 925. The Cigarette Use Tax Act is amended by  
13 repealing Section 25a.

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

18 (35 ILCS 143/10-5)

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

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

23 "Cigarette" has the meaning ascribed to the term in Section

1 1 of the Cigarette Tax Act.

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

7 "Department" means the Illinois Department of Revenue.

8 "Distributor" means any of the following:

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

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

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

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

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

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

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

24          "Place of business" means and includes any place where  
25          tobacco products are sold or where tobacco products are  
26          manufactured, stored, or kept for the purpose of sale or

1 consumption, including any vessel, vehicle, airplane, train,  
2 or vending machine.

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

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

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

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

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

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

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

11 (35 ILCS 143/10-20)

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

21 (1) The name of the applicant.

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

25 (3) Other information the Department may reasonably

1           require.

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

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



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

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

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

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

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

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

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

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

2 (35 ILCS 143/10-21 new)

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

4 (a) Commencing January 1, 2010, no person may engage in  
5 business as a retailer of tobacco products in this State  
6 without first having obtained a retailer's license from the  
7 Department. Application for a license shall be made to the  
8 Department in form as furnished and prescribed by the  
9 Department. Each applicant for a license under this Section  
10 shall furnish to the Department on the form signed and verified  
11 by the applicant the following information:

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

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

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

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

25 (c) The Department may, in its discretion, require an

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

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

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

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

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

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

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

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

1 this Act, but shall be deemed to be sufficiently licensed by  
2 virtue of his being properly licensed as a retailer under  
3 Section 4d of the Cigarette Tax Act.

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

15 (35 ILCS 143/10-22 new)

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

20 (35 ILCS 143/10-25)

21 Sec. 10-25. License actions.

22 (a) The Department may, after notice and a hearing, revoke,  
23 cancel, or suspend the license of any distributor or retailer  
24 who violates any of the provisions of this Act. The notice

1 shall specify the alleged violation or violations upon which  
2 the revocation, cancellation, or suspension proceeding is  
3 based.

4 (b) 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 (c) The Department shall suspend for 7 days the license of  
9 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 (d) The revocation of a retailer's license under this Act  
18 may be grounds for the revocation of any licenses issued to the  
19 retailer under the Liquor Control Act of 1934 and 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 may, by application to any circuit  
24 court, obtain an injunction restraining any person who engages  
25 in business as a distributor of tobacco products without a  
26 license (either because his or her license has been revoked,

1 canceled, or suspended or because of a failure to obtain a  
2 license in the first instance) from engaging in that business  
3 until that person, as if that person were a new applicant for a  
4 license, complies with all of the conditions, restrictions, and  
5 requirements of Section 10-20 (for a distributor's license) or  
6 Section 10-21 (for a retailer's license) ~~of this Act~~ and  
7 qualifies for and obtains a license. Refusal or neglect to obey  
8 the order of the court may result in punishment for contempt.

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

10 (35 ILCS 143/10-30)

11 Sec. 10-30. Returns.

12 (a) Every distributor shall, on or before the 15th day of each  
13 month, file a return with the Department covering the preceding  
14 calendar month. The return shall disclose the wholesale price  
15 for tobacco products sold or otherwise disposed of and other  
16 information that the Department may reasonably require. The  
17 return shall be filed upon a form prescribed and furnished by  
18 the Department.

19 At the time when any return of any distributor is due to be  
20 filed with the Department, the distributor shall also remit to  
21 the Department the tax liability that the distributor has  
22 incurred for transactions occurring in the preceding calendar  
23 month.

24 (b) A retailer who possesses, acquires, or purchases  
25 tobacco products on which the tax imposed by this Act has not



1 been paid shall file a return and pay the tax in a format and at  
2 a time prescribed by the Department by rule.

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

4 (35 ILCS 143/10-35)

5 Sec. 10-35. Record keeping.

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

21 (b) Every retailer, as defined in Section 10-5, shall keep  
22 within Illinois, at his or her licensed address, complete and  
23 accurate records of tobacco products held, purchased, sold, or  
24 otherwise disposed of, and shall preserve and keep all  
25 invoices, bills of lading, sales records, copies of bills of

1 sale, returns, and other pertinent papers and documents  
2 relating to the purchase, sale, or disposition of tobacco  
3 products.

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

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

13 (35 ILCS 143/10-36 new)

14 Sec. 10-36. Proof of payment of tax imposed by this Act.  
15 Every licensed distributor of tobacco products in this State is  
16 required to show proof of the tax having been paid as required  
17 by this Act by displaying his or her Tobacco Products License  
18 number on every sales invoice issued to a retailer in this  
19 State. No retailer shall possess tobacco products without  
20 either (i) a proper invoice indicating that the tobacco  
21 products tax was paid by a distributor for the tobacco products  
22 in the retailer's possession or (ii) proof that the tax was  
23 paid by the retailer if it has purchased tobacco products on  
24 which tax has not been paid as required by this Act. Failure to  
25 comply with the provisions of this Section may be grounds for

1 revocation of a distributor's or retailer's license in  
2 accordance with Section 10-25 of this Act or Section 6 of the  
3 Cigarette Tax Act. In addition, the Department may impose a  
4 civil penalty not to exceed \$1000 for each violation, which  
5 shall be deposited into the Tax Compliance and Administration  
6 Fund.

7 (35 ILCS 143/10-50)

8 Sec. 10-50. Violations and penalties.

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

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

1 this Act.

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

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

17 (e) When the amount due is \$300 or more, any person engaged  
18 in the business of distributing tobacco products to retailers  
19 and consumers located in this State who fails to file a return,  
20 willfully ~~wilfully~~ fails or refuses to make any payment to the  
21 Department of the tax imposed by this Act, or accepts money  
22 that is due to the Department under this Act from a taxpayer  
23 for the purpose of acting as the taxpayer's agent to make  
24 payment to the Department but fails to remit such payment to  
25 the Department when due is guilty of a Class 3 felony.

26 (f) When the amount due is under \$300, any retailer who

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

10 (g) When the amount due is \$300 or more, any retailer who  
11 fails to file a return, willfully fails or refuses to make any  
12 payment to the Department of the tax imposed by this Act, or  
13 files a fraudulent return, or any officer or agent of a  
14 corporation engaged in the retail business of selling tobacco  
15 products to purchasers of tobacco products for use and  
16 consumption located in this State who signs a fraudulent return  
17 filed on behalf of the corporation, or any accountant or other  
18 agent who knowingly enters false information on the return of  
19 any taxpayer under this Act is guilty of a Class 3 felony.

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

1 asserts a right to be tried in another venue.

2 (i) Any taxpayer or agent of a taxpayer who with the intent  
3 to defraud purports to make a payment due to the Department by  
4 issuing or delivering a check or other order upon a real or  
5 fictitious depository for the payment of money, knowing that it  
6 will not be paid by the depository, is guilty of a deceptive  
7 practice in violation of Section 17-1 of the Criminal Code of  
8 1961.

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

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

13 (35 ILCS 143/10-53 new)

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

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

22 (235 ILCS 5/7-5) (from Ch. 43, par. 149)

23 Sec. 7-5. The local liquor control commissioner may revoke

1 or suspend any license issued by him if he determines that the  
2 licensee has violated any of the provisions of this Act or of  
3 any valid ordinance or resolution enacted by the particular  
4 city council, president, or board of trustees or county board  
5 (as the case may be) or any applicable rule or regulations  
6 established by the local liquor control commissioner or the  
7 State commission which is not inconsistent with law. Upon  
8 notification by the Illinois Department of Revenue, the State  
9 Commission, in accordance with Section 3-12, may refuse the  
10 issuance or renewal of a license, fine a licensee, or suspend  
11 or revoke any license issued by the State Commission if the  
12 licensee or license applicant has violated the provisions of  
13 Section 3 of the Retailers' Occupation Tax Act. Upon  
14 notification of the Department of Revenue, the Commission may,  
15 after notice and a hearing, revoke the license of any licensee  
16 that has had a license revoked under the Cigarette Tax Act or  
17 the Tobacco Products Tax Act of 1995. In addition to the  
18 suspension, the local liquor control commissioner in any county  
19 or municipality may levy a fine on the licensee for such  
20 violations. The fine imposed shall not exceed \$1000 for a first  
21 violation within a 12-month period, \$1,500 for a second  
22 violation within a 12-month period, and \$2,500 for a third or  
23 subsequent violation within a 12-month period. Each day on  
24 which a violation continues shall constitute a separate  
25 violation. Not more than \$15,000 in fines under this Section  
26 may be imposed against any licensee during the period of his

1 license. Proceeds from such fines shall be paid into the  
2 general corporate fund of the county or municipal treasury, as  
3 the case may be.

4 However, no such license shall be so revoked or suspended  
5 and no licensee shall be fined except after a public hearing by  
6 the local liquor control commissioner with a 3 day written  
7 notice to the licensee affording the licensee an opportunity to  
8 appear and defend. All such hearings shall be open to the  
9 public and the local liquor control commissioner shall reduce  
10 all evidence to writing and shall maintain an official record  
11 of the proceedings. If the local liquor control commissioner  
12 has reason to believe that any continued operation of a  
13 particular licensed premises will immediately threaten the  
14 welfare of the community he may, upon the issuance of a written  
15 order stating the reason for such conclusion and without notice  
16 or hearing order the licensed premises closed for not more than  
17 7 days, giving the licensee an opportunity to be heard during  
18 that period, except that if such licensee shall also be engaged  
19 in the conduct of another business or businesses on the  
20 licensed premises such order shall not be applicable to such  
21 other business or businesses.

22 The local liquor control commissioner shall within 5 days  
23 after such hearing, if he determines after such hearing that  
24 the license should be revoked or suspended or that the licensee  
25 should be fined, state the reason or reasons for such  
26 determination in a written order, and either the amount of the



1 fine, the period of suspension, or that the license has been  
2 revoked, and shall serve a copy of such order within the 5 days  
3 upon the licensee.

4 If the premises for which the license was issued are  
5 located outside of a city, village or incorporated town having  
6 a population of 500,000 or more inhabitants, the licensee after  
7 the receipt of such order of suspension or revocation shall  
8 have the privilege within a period of 20 days after the receipt  
9 of such order of suspension or revocation of appealing the  
10 order to the State commission for a decision sustaining,  
11 reversing or modifying the order of the local liquor control  
12 commissioner. If the State commission affirms the local  
13 commissioner's order to suspend or revoke the license at the  
14 first hearing, the appellant shall cease to engage in the  
15 business for which the license was issued, until the local  
16 commissioner's order is terminated by its own provisions or  
17 reversed upon rehearing or by the courts.

18 If the premises for which the license was issued are  
19 located within a city, village or incorporated town having a  
20 population of 500,000 or more inhabitants, the licensee shall  
21 have the privilege, within a period of 20 days after the  
22 receipt of such order of fine, suspension or revocation, of  
23 appealing the order to the local license appeal commission and  
24 upon the filing of such an appeal by the licensee the license  
25 appeal commission shall determine the appeal upon certified  
26 record of proceedings of the local liquor commissioner in

1 accordance with the provisions of Section 7-9. Within 30 days  
2 after such appeal was heard the license appeal commission shall  
3 render a decision sustaining or reversing the order of the  
4 local liquor control commissioner.

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

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

8 (720 ILCS 675/3 new)

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

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

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

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