



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 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.

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

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

5 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

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

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

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

11 "Department" means the Department of Revenue.

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

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

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

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

1 cigarettes, for sale or other disposition in the course of
2 such business.

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

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

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

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

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

26 "Retailer" means any person who engages in the making of

1 transfers of the ownership of, or title to, cigarettes to a
2 purchaser for use or consumption and not for resale in any
3 form, for a valuable consideration. "Retailer" does not include
4 a person:

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

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

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

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

1 cigarettes that bears a counterfeit tax stamp, and a stamped or
2 unstamped package of cigarettes that is marked "Not for sale in
3 the United States".

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

5 (35 ILCS 130/3-10)

6 Sec. 3-10. Cigarette enforcement.

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

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

12 (A) any cigarettes the package of which:

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

20 (ii) does not comply with:

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

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

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

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

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

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

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

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

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

1 does not conform with the requirements of, the federal
2 Cigarette Labeling and Advertising Act, 15 U.S.C.
3 1333; or

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

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

13 (1) a copy of:

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

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

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

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

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

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

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

23 (c) Administrative sanctions.

24 (1) Upon finding that a distributor or retailer has
25 committed any of the acts prohibited by subsection (a),
26 knowing or having reason to know that he or she has done

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

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

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

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

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

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

6 (f) General provisions.

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

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

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

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

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

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

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

9 (h) Applicability.

10 (1) This Section does not apply to:

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

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

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

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

24 (35 ILCS 130/4d new)

25 Sec. 4d. Retailer's License.

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

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

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

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

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

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

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

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

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

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

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

26 (4) a person who possesses a distributor's license

1 under Section 4 of this Act or a distributor's license
2 under Section 4b of this Act.

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

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

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

8 (35 ILCS 130/4e new)

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

13 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

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

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

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

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

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

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

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

25 (b) Any distributor or retailer aggrieved by any decision
26 of the Department under this Section may, within 20 days after

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

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

24 (d) The Department upon complaint filed in the circuit
25 court may by injunction restrain any person who fails, or
26 refuses, to comply with any of the provisions of this Act from

1 acting as a distributor of cigarettes in this State.

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

3 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

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

1 issued shall be served in the same manner as a subpoena or
2 subpoena duces tecum issued out of a court.

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

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

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

22 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

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

1 expedient.

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

9 Hearings provided for in this Act shall be held:

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

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

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

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

26 Service upon the Director of Revenue or Assistant Director

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

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

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

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

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

9 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

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

23 In the conduct of any investigation or hearing provided for
24 by this Act, neither the Department, nor any officer or
25 employee thereof, shall be bound by the technical rules of

1 evidence, and no informality in the proceedings nor in the
2 manner of taking testimony shall invalidate any rule, order,
3 decision or regulation made, approved or confirmed by the
4 Department.

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

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

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

16 (35 ILCS 130/11) (from Ch. 120, par. 453.11)

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

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

1 interfered with in making such examination as herein provided,
2 the license of the distributor or retailer at such premises
3 shall be subject to revocation by the Department.

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

5 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

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

1 ~~penalty of \$15 for each such package of cigarettes in excess of~~
2 ~~100 packages.~~ Such penalty may be recovered by the Department
3 in a civil action.

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

5 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

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

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

18 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

19 Sec. 24. Punishment for sale or possession of unstamped
20 packages.

21 (a) Any person licensed or required to be licensed as a
22 retailer under this Act, other than a person licensed as a
23 distributor or a transporter, as defined in Section 9c of this
24 Act, who has in his possession, offers for sale, or sells 100

1 or fewer original packages of unstamped packages of cigarettes,
2 shall be guilty of a Class A misdemeanor for a first offense
3 and a Class 4 felony for each subsequent offense.

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

10 (c) 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 1000 original packages of unstamped packages of
15 cigarettes, shall be guilty of a Class 3 felony.

16 (d) If a retailer possesses more than 100 original packages
17 of unstamped packages of cigarettes, the prima facie
18 presumption shall arise that the retailer was offering the
19 original packages of unstamped packages of cigarettes for sale.
20 If more than 100 original packages of unstamped packages of
21 cigarettes are found at a location, the prima facie presumption
22 shall arise that the retailer is in possession of the original
23 packages of unstamped packages of cigarettes.

24 (e) Any person licensed as a distributor or transporter, as
25 defined in Section 9c of this Act, who sells an original
26 package of an unstamped package of cigarettes, except when the

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

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

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

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

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

1 (35 ILCS 130/26a new)

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

6 (35 ILCS 130/18c rep.)

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

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

11 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

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

23 "Cigarette" means any roll for smoking made wholly or in

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

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

11 "Department" means the Department of Revenue.

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

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

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

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

1 cigarettes, for sale in the course of such business.

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

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

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

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

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

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

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

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

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

1 cigarettes that bears a counterfeit tax stamp, and a stamped or
2 unstamped package of cigarettes that is marked "Not for sale in
3 the United States".

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

5 (35 ILCS 135/3-10)

6 Sec. 3-10. Cigarette enforcement.

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

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

12 (A) any cigarettes the package of which:

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

20 (ii) does not comply with:

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

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

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

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

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

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

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

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

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

1 does not conform with the requirements of, the federal
2 Cigarette Labeling and Advertising Act, 15 U.S.C.
3 1333; or

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

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

13 (1) a copy of:

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

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

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

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

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

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

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

23 (c) Administrative sanctions.

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

1 comply with any requirement of subsection (b), the
2 Department may revoke or suspend the license or licenses of
3 any distributor pursuant to the procedures set forth in
4 Section 6 and impose on the distributor a civil penalty in
5 an 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 135/12) (from Ch. 120, par. 453.42)

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

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

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

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

18 (d) The provisions of the Uniform Penalty and Interest Act
19 (35 ILCS 735/) do not apply to this Section.

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

21 (35 ILCS 135/25b)

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

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

1 ~~can be established by the person upon whom the penalty is~~
2 ~~imposed. Reasonable cause shall be determined in each situation~~
3 ~~in accordance with rules adopted by the Department.~~

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

5 (35 ILCS 135/25a rep.)

6 Section 925. The Cigarette Use Tax Act is amended by
7 repealing Section 25a.

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

12 (35 ILCS 143/10-5)

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

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

17 "Cigarette" has the meaning ascribed to the term in Section
18 1 of the Cigarette Tax Act.

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

1 "Department" means the Illinois Department of Revenue.

2 "Distributor" means any of the following:

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

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

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

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

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

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

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

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

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

26 "Sale" means any transfer, exchange, or barter in any

1 manner or by any means whatsoever for a consideration and
2 includes all sales made by persons.

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

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

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

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

5 (35 ILCS 143/10-20)

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

15 (1) The name of the applicant.

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

19 (3) Other information the Department may reasonably
20 require.

21 Except as otherwise provided in this Section, every
22 applicant who is required to procure a distributor's license
23 shall file with his or her application a joint and several
24 bond. The bond shall be executed to the Department of Revenue,
25 with good and sufficient surety or sureties residing or

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

19 The Department, upon receipt of an application and bond in
20 proper form, shall issue to the applicant a license, in a form
21 prescribed by the Department, which shall permit the applicant
22 to whom it is issued to engage in business as a distributor at
23 the place shown on his or her application. The license shall be
24 issued by the Department without charge or cost to the
25 applicant. No license issued under this Act is transferable or
26 assignable. The license shall be conspicuously displayed in the

1 place of business conducted by the licensee under the license.

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

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

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

24 The Department may revoke, suspend, or cancel the license
25 of a distributor of roll-your-own tobacco (as that term is used
26 in Section 10 of the Tobacco Product Manufacturers' Escrow Act)

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

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

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

22 (35 ILCS 143/10-21 new)

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

24 (a) Commencing January 1, 2010, no person may engage in
25 business as a retailer of tobacco products in this State

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

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

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

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

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

20 (c) The Department may, in its discretion, require an
21 applicant who is required to procure a retailer's license to
22 file with the application a joint and several bond. If
23 required, such bond shall be executed to the Department of
24 Revenue, with good and sufficient surety or sureties residing
25 or licensed to do business within the State of Illinois, in an
26 amount of not less than \$2,500, conditioned upon the true and

1 faithful compliance by the licensee with all of the provisions
2 of this Act. If required, such bond, or a reissue thereof, or a
3 substitute therefor, shall be kept in effect during the entire
4 period covered by the license. A separate application for
5 license shall be made, a separate annual license fee paid, and,
6 if required, a separate bond filed, for each place of business
7 at which a person who is required to procure a retailer's
8 license under this Section proposes to engage in business as a
9 retailer in Illinois under this Act.

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

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

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

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

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

26 (d) The Department, upon receipt of an application, license

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

24 (e) Any person aggrieved by any decision of the Department
25 under this subsection may, within 20 days after notice of the
26 decision, protest and request a hearing. Upon receiving a

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

9 (35 ILCS 143/10-22 new)

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

14 (35 ILCS 143/10-25)

15 Sec. 10-25. License actions.

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

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

1 Section 20 of that Act.

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

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

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

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

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

24 (35 ILCS 143/10-30)

25 Sec. 10-30. Returns.

1 (a) Every distributor shall, on or before the 15th day of each
2 month, file a return with the Department covering the preceding
3 calendar month. The return shall disclose the wholesale price
4 for tobacco products sold or otherwise disposed of and other
5 information that the Department may reasonably require. The
6 return shall be filed upon a form prescribed and furnished by
7 the Department.

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

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

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

18 (35 ILCS 143/10-35)

19 Sec. 10-35. Record keeping.

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

1 wholesale price for tobacco products sold or otherwise disposed
2 of, an inventory of tobacco products prepared as of December 31
3 of each year or as of the last day of the distributor's fiscal
4 year if he or she files federal income tax returns on the basis
5 of a fiscal year, and other pertinent papers and documents
6 relating to the manufacture, purchase, sale, or disposition of
7 tobacco products. Every sales invoice issued by a licensed
8 distributor to a retailer in this State shall contain the
9 distributor's Tobacco Products License number.

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

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

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

1 (35 ILCS 143/10-36 new)

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

20 (35 ILCS 143/10-50)

21 Sec. 10-50. Violations and penalties.

22 (a) When the amount due is under \$300, any distributor who
23 fails to file a return, willfully ~~wilfully~~ fails or refuses to
24 make any payment to the Department of the tax imposed by this

1 Act, or files a fraudulent return, or any officer or agent of a
2 corporation engaged in the business of distributing tobacco
3 products to retailers and consumers located in this State who
4 signs a fraudulent return filed on behalf of the corporation,
5 or any accountant or other agent who knowingly enters false
6 information on the return of any taxpayer under this Act is
7 guilty of a Class 4 felony.

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

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

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

1 or causes to be signed a fraudulent return filed on behalf of
2 the corporation, or any accountant or other agent who knowingly
3 enters false information on the return of any taxpayer under
4 this Act is guilty of a Class 3 felony.

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

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

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

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

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

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

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

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

1 (35 ILCS 143/10-53 new)

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

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

10 (720 ILCS 675/3 new)

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

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

18 (2) suspended for 30 days for a second violation of
19 this Act; and

20 (3) revoked for a third or subsequent violation of this
21 Act. "