



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Jeffrey M. Schoenberg

SYNOPSIS AS INTRODUCED:

30 ILCS 167/15
30 ILCS 167/30

Amends the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003. In provisions concerning penalties imposed for violation of certain provisions, changes the reference from a reference to a requirement that the Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of the Act to a reference to violations concerning (i) affixing a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or (ii) selling, offering for sale, or possessing for sale in this State, or importing for personal consumption in this State, cigarettes of a tobacco product manufacturer or brand family not included in the directory. Makes other changes.

LRB093 20849 SJM 46782 b

1 AN ACT concerning finance.

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

4 Section 5. The Tobacco Products Manufacturers' Escrow
5 Enforcement Act of 2003 is amended by changing Sections 15 and
6 30 as follows:

7 (30 ILCS 167/15)

8 Sec. 15. Certifications; directory; tax stamps.

9 (a) Every tobacco product manufacturer whose cigarettes
10 are sold in this State whether directly or through a
11 distributor, retailer, or similar intermediary or
12 intermediaries shall execute and deliver on a form prescribed
13 by the Attorney General a certification to the Attorney
14 General, no later than the thirtieth day of April each year,
15 certifying under penalty of perjury that, as of the date of the
16 certification, the tobacco product manufacturer either: (i) is
17 a participating manufacturer and has generally performed its
18 financial obligations under the Master Settlement Agreement;
19 or (ii) is in full compliance with the Escrow Act, including
20 all quarterly installment payments.

21 (1) A participating manufacturer shall include in its
22 certification a list of its brand families. The
23 participating manufacturer shall update the list 30 days
24 prior to any addition to or modification of its brand
25 families by executing and delivering a supplemental
26 certification to the Attorney General.

27 (2) A non-participating manufacturer shall include in
28 its certification a complete list of all of its brand
29 families: (i) separately listing brand families of
30 cigarettes and the number of units sold for each brand
31 family that were sold in the State during the preceding
32 calendar year; (ii) listing all of its brand families that

1 have been sold in the State at any time during the current
2 calendar year; (iii) indicating by an asterisk, any brand
3 family sold in the State during the preceding calendar year
4 that is no longer being sold in the State as of the date of
5 the certification; and (iv) identifying by name and address
6 any other manufacturer of the brand families in the
7 preceding calendar year. The non-participating
8 manufacturer shall update the list 30 days prior to any
9 addition to or modification of its brand families by
10 executing and delivering a supplemental certification to
11 the Attorney General.

12 (3) In the case of a non-participating manufacturer,
13 the certification shall further certify:

14 (A) that the non-participating manufacturer is
15 registered to do business in this State or has
16 appointed a resident agent for service of process and
17 provided notice thereof as required by item 4 of
18 subsection (a) of this Section;

19 (B) that the non-participating manufacturer has
20 (i) established and continues to maintain a qualified
21 escrow fund as that term is defined in Section 10 of
22 the Escrow Act, and (ii) executed a qualified escrow
23 agreement that has been reviewed and approved by the
24 Attorney General and that governs the qualified escrow
25 fund;

26 (C) that the non-participating manufacturer is in
27 full compliance with the Escrow Act and this Act, and
28 any regulations promulgated pursuant thereto;

29 (D) the name, address and telephone number of the
30 financial institution where the non-participating
31 manufacturer has established the qualified escrow fund
32 required pursuant to Section 15 of the Escrow Act and
33 all regulations promulgated thereto;

34 (E) the account number of the qualified escrow fund
35 and sub-account number for this State;

36 (F) the amount the non-participating manufacturer

1 placed in the fund for cigarettes sold in the State
2 during the preceding calendar year, including the
3 dates and amount of each deposit, and such evidence or
4 verification as may be deemed necessary by the Attorney
5 General to confirm the foregoing; and

6 (G) the amounts of and dates of any withdrawal or
7 transfer of funds the non-participating manufacturer
8 made at any time from the fund or from any other
9 qualified escrow fund into which it ever made escrow
10 payments pursuant to Section 15 of the Escrow Act and
11 all regulations promulgated thereto.

12 (4) A tobacco product manufacturer may not include a
13 brand family in its certification unless: (i) in the case
14 of a participating manufacturer, the participating
15 manufacturer affirms that the brand family is to be deemed
16 to be its cigarettes for purposes of calculating its
17 payments under the master settlement agreement for the
18 relevant year, in the volume and shares determined pursuant
19 to the master settlement agreement; and (ii) in the case of
20 a non-participating manufacturer, the non-participating
21 manufacturer affirms that the brand family is to be deemed
22 to be its cigarettes for purposes of Section 15 of the
23 Escrow Act.

24 Nothing in this Section shall be construed as limiting
25 or otherwise affecting the State's right to maintain that a
26 brand family constitutes cigarettes of a different tobacco
27 product manufacturer for purposes of calculating payments
28 under the master settlement agreement or for purposes of
29 Section 15 of the Escrow Act.

30 (5) The tobacco product manufacturers shall maintain
31 all invoices and documentation of sales and other
32 information relied upon for certification for a period of 5
33 years, unless otherwise required by law to maintain them
34 for a greater period of time.

35 (b) Not later than 6 months after the effective date of
36 this Act, the Attorney General shall develop and make available

1 for public inspection, through publishing on its website, a
2 directory listing all tobacco product manufacturers that have
3 provided current and accurate certifications conforming to the
4 requirements of subsection (a) of Section 15 and all brand
5 families that are listed in the certifications, except for the
6 following:

7 (1) The Attorney General shall not include or retain in
8 the directory the name or brand families of any
9 non-participating manufacturer that fails to provide the
10 required certification or whose certification the Attorney
11 General determines is not in compliance with subsections
12 (a) (2) or (a) (3) of Section 15, unless the Attorney General
13 has determined that the violation has been cured to the
14 satisfaction of the Attorney General.

15 (2) Neither a tobacco product manufacturer nor brand
16 family shall be included or retained in the directory if
17 the Attorney General concludes that: (i) in the case of a
18 non-participating manufacturer all escrow payments
19 required pursuant to Section 15 of the Escrow Act for any
20 period for any brand family, whether or not listed by the
21 non-participating manufacturer, have not been fully paid
22 into a qualified escrow fund governed by a qualified escrow
23 agreement that has been approved by the Attorney General;
24 or (ii) all outstanding final judgments, including
25 interest thereon, for violations of Section 15 of the
26 Escrow Act have not been fully satisfied for that brand
27 family and manufacturer.

28 (c) The Attorney General shall update the directory as
29 necessary in order to correct mistakes and to add or remove a
30 tobacco product manufacturer or brand families to keep the
31 directory in conformity with the requirements of this Act.

32 (d) Every distributor shall provide and update as necessary
33 an electronic mail address to the Attorney General for the
34 purpose of receiving any notifications as may be required by
35 this Act.

36 (e) It shall be unlawful for any person: (i) to affix a

1 stamp to a package or other container of cigarettes of a
2 tobacco product manufacturer or brand family not included in
3 the directory; or (ii) to sell, offer for sale, or possess for
4 sale in this State, ~~or~~ or ~~(iii)~~ import for personal consumption in
5 this State, cigarettes of a tobacco product manufacturer or
6 brand family not included in the directory.

7 (Source: P.A. 93-446, eff. 1-1-04.)

8 (30 ILCS 167/30)

9 Sec. 30. Penalties and other remedies.

10 (a) In addition to or in lieu of any other civil or
11 criminal remedy provided by law, upon a determination that a
12 distributor has violated subsection (e) ~~(e)~~ of Section 15 or
13 any regulation adopted pursuant thereto, the Director may
14 revoke or suspend the license of any stamping agent in the
15 manner provided by Section 6 of the Cigarette Tax Act, Section
16 6 of the Cigarette Use Tax Act, or Section 10-25 of the Tobacco
17 Products Tax Act of 1995, as appropriate. Each stamp affixed
18 and each offer to sell cigarettes in violation of subsection
19 (e) ~~(e)~~ of Section 15 shall constitute a separate violation.
20 For each violation, the Director may also impose a civil
21 penalty in an amount not to exceed the greater of 500% of the
22 retail value of the cigarettes sold or \$5,000 upon a
23 determination of violation of subsection (e) ~~(e)~~ of Section 15
24 or any regulations adopted pursuant thereto.

25 (b) Any cigarettes that have been sold, offered for sale,
26 or possessed for sale in this State, or imported for personal
27 consumption in this State in violation of subsection (e) ~~(e)~~ of
28 Section 15 shall be subject to seizure and forfeiture as
29 provided in Sections 18, 18a, and 20 of the Cigarette Tax Act
30 and Sections 24, 25, 25a and 26 of the Cigarette Use Tax Act,
31 and all cigarettes so seized and forfeited shall be destroyed
32 and not resold.

33 (c) The Attorney General may seek an injunction to restrain
34 a threatened or actual violation of subsection (e) ~~(e)~~ of
35 Section 15, subsection (a) of Section 25, or subsection (d) of

1 Section 25 by a stamping agent and to compel the stamping agent
2 to comply with such subsections. In any action brought pursuant
3 to this Section, the State shall be entitled to recover the
4 costs of investigation, costs of the action, and reasonable
5 attorney fees.

6 (d) It shall be unlawful for a person to: (i) sell or
7 distribute cigarettes; or (ii) acquire, hold, own, possess,
8 transport, import, or cause to be imported cigarettes that the
9 person knows or should know are intended for distribution or
10 sale in the State in violation of subsection (e) ~~(e)~~ of Section
11 15. A violation of this Section shall be a Class 2 felony.

12 (e) A person who violates subsection (e) ~~(e)~~ of Section 15
13 engages in an unfair and deceptive trade practice in violation
14 of the Uniform Deceptive Trade Practices Act.

15 (Source: P.A. 93-446, eff. 1-1-04.)