

1 AN ACT concerning revenue.

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

4 Section 5. The Department of Revenue Law of the Civil  
5 Administrative Code of Illinois is amended by changing Section  
6 2505-210 as follows:

7 (20 ILCS 2505/2505-210) (was 20 ILCS 2505/39c-1)

8 Sec. 2505-210. Electronic funds transfer.

9 (a) The Department may provide means by which persons  
10 having a tax liability under any Act administered by the  
11 Department may use electronic funds transfer to pay the tax  
12 liability.

13 (b) Mandatory payment by electronic funds transfer.  
14 Beginning on October 1, 2002, and through September 30, 2010, a  
15 taxpayer who has an annual tax liability of \$200,000 or more  
16 shall make all payments of that tax to the Department by  
17 electronic funds transfer. Beginning October 1, 2010, a  
18 taxpayer (other than an individual taxpayer) who has an annual  
19 tax liability of \$20,000 or more and an individual taxpayer who  
20 has an annual tax liability of \$200,000 or more shall make all  
21 payments of that tax to the Department by electronic funds  
22 transfer. Before August 1 of each year, beginning in 2002, the  
23 Department shall notify all taxpayers required to make payments

1 by electronic funds transfer. All taxpayers required to make  
2 payments by electronic funds transfer shall make those payments  
3 for a minimum of one year beginning on October 1. For purposes  
4 of this subsection (b), the term "annual tax liability" means,  
5 except as provided in subsections (c) and (d) of this Section,  
6 the sum of the taxpayer's liabilities under a tax Act  
7 administered by the Department, except the Motor Fuel Tax Law  
8 and the Environmental Impact Fee Law, for the immediately  
9 preceding calendar year.

10 (c) For purposes of subsection (b), the term "annual tax  
11 liability" means, for a taxpayer that incurs a tax liability  
12 under the Retailers' Occupation Tax Act, Service Occupation Tax  
13 Act, Use Tax Act, Service Use Tax Act, or any other State or  
14 local occupation or use tax law that is administered by the  
15 Department, the sum of the taxpayer's liabilities under the  
16 Retailers' Occupation Tax Act, Service Occupation Tax Act, Use  
17 Tax Act, Service Use Tax Act, and all other State and local  
18 occupation and use tax laws administered by the Department for  
19 the immediately preceding calendar year.

20 (d) For purposes of subsection (b), the term "annual tax  
21 liability" means, for a taxpayer that incurs an Illinois income  
22 tax liability, the greater of:

23 (1) the amount of the taxpayer's tax liability under  
24 Article 7 of the Illinois Income Tax Act for the  
25 immediately preceding calendar year; or

26 (2) the taxpayer's estimated tax payment obligation

1 under Article 8 of the Illinois Income Tax Act for the  
2 immediately preceding calendar year.

3 (e) The Department shall adopt such rules as are necessary  
4 to effectuate a program of electronic funds transfer and the  
5 requirements of this Section.

6 (Source: P.A. 91-239, eff. 1-1-00; 92-492, eff. 1-1-02.)

7 Section 10. The Illinois Income Tax Act is amended by  
8 changing Section 704A as follows:

9 (35 ILCS 5/704A)

10 Sec. 704A. Employer's return and payment of tax withheld.

11 (a) In general, every employer who deducts and withholds or  
12 is required to deduct and withhold tax under this Act on or  
13 after January 1, 2008 shall make those payments and returns as  
14 provided in this Section.

15 (b) Returns. Every employer shall, in the form and manner  
16 required by the Department, make returns with respect to taxes  
17 withheld or required to be withheld under this Article 7 for  
18 each quarter beginning on or after January 1, 2008, on or  
19 before the last day of the first month following the close of  
20 that quarter.

21 (c) Payments. With respect to amounts withheld or required  
22 to be withheld on or after January 1, 2008:

23 (1) Semi-weekly payments. For each calendar year, each  
24 employer who withheld or was required to withhold more than

1           \$12,000 during the one-year period ending on June 30 of the  
2 immediately preceding calendar year, payment must be made:

3           (A) on or before each Friday of the calendar year,  
4 for taxes withheld or required to be withheld on the  
5 immediately preceding Saturday, Sunday, Monday, or  
6 Tuesday;

7           (B) on or before each Wednesday of the calendar  
8 year, for taxes withheld or required to be withheld on  
9 the immediately preceding Wednesday, Thursday, or  
10 Friday.

11           Beginning with calendar year 2011, payment made under  
12 this paragraph (1) of subsection (c) must be made by  
13 electronic funds transfer.

14           (2) Semi-weekly payments. Any employer who withholds  
15 or is required to withhold more than \$12,000 in any quarter  
16 of a calendar year is required to make payments on the  
17 dates set forth under item (1) of this subsection (c) for  
18 each remaining quarter of that calendar year and for the  
19 subsequent calendar year.

20           (3) Monthly payments. Each employer, other than an  
21 employer described in items (1) or (2) of this subsection,  
22 shall pay to the Department, on or before the 15th day of  
23 each month the taxes withheld or required to be withheld  
24 during the immediately preceding month.

25           (4) Payments with returns. Each employer shall pay to  
26 the Department, on or before the due date for each return

1 required to be filed under this Section, any tax withheld  
2 or required to be withheld during the period for which the  
3 return is due and not previously paid to the Department.

4 (d) Regulatory authority. The Department may, by rule:

5 (1) Permit ~~If the aggregate amounts required to be~~  
6 ~~withheld under this Article 7 do not exceed \$1,000 for the~~  
7 ~~calendar year, permit~~ employers, in lieu of the  
8 requirements of subsections (b) and (c), to file annual  
9 returns due on or before January 31 of the ~~following~~ year  
10 for taxes withheld or required to be withheld during the  
11 previous ~~that~~ calendar year and, if the aggregate amounts  
12 required to be withheld by the employer under this Article  
13 7 (other than amounts required to be withheld under Section  
14 709.5) do not exceed \$1,000 for the previous calendar year,  
15 to pay the taxes required to be shown on each such return  
16 no later than the due date for such return.

17 (2) Provide that any payment required to be made under  
18 subsection (c)(1) or (c)(2) is deemed to be timely to the  
19 extent paid by electronic funds transfer on or before the  
20 due date for deposit of federal income taxes withheld from,  
21 or federal employment taxes due with respect to, the wages  
22 from which the Illinois taxes were withheld.

23 (3) Designate one or more depositories to which payment  
24 of taxes required to be withheld under this Article 7 must  
25 be paid by some or all employers.

26 (4) Increase the threshold dollar amounts at which

1 employers are required to make semi-weekly payments under  
2 subsection (c) (1) or (c) (2).

3 (e) Annual return and payment. Every employer who deducts  
4 and withholds or is required to deduct and withhold tax from a  
5 person engaged in domestic service employment, as that term is  
6 defined in Section 3510 of the Internal Revenue Code, may  
7 comply with the requirements of this Section with respect to  
8 such employees by filing an annual return and paying the taxes  
9 required to be deducted and withheld on or before the 15th day  
10 of the fourth month following the close of the employer's  
11 taxable year. The Department may allow the employer's return to  
12 be submitted with the employer's individual income tax return  
13 or to be submitted with a return due from the employer under  
14 Section 1400.2 of the Unemployment Insurance Act.

15 (f) Magnetic media and electronic filing. Any W-2 Form  
16 that, under the Internal Revenue Code and regulations  
17 promulgated thereunder, is required to be submitted to the  
18 Internal Revenue Service on magnetic media or electronically  
19 must also be submitted to the Department on magnetic media or  
20 electronically for Illinois purposes, if required by the  
21 Department.

22 (g) For amounts deducted or withheld after December 31,  
23 2009, a taxpayer who makes an election under Section 5-15(f) of  
24 the Economic Development for a Growing Economy Act for a  
25 taxable year shall be allowed a credit against payments due  
26 under this Section for amounts withheld during the first

1 calendar year beginning after the end of that taxable year  
2 equal to the amount of the credit awarded to the taxpayer by  
3 the Department of Commerce and Economic Opportunity under the  
4 Economic Development for a Growing Economy Act for the taxable  
5 year. The credit may not reduce the taxpayer's obligation for  
6 any payment due under this Section to less than zero. If the  
7 amount of the credit exceeds the total payments due under this  
8 Section with respect to amounts withheld during the calendar  
9 year, the excess may be carried forward and applied against the  
10 taxpayer's liability under this Section in the 5 succeeding  
11 calendar years. The credit shall be applied to the earliest  
12 year for which there is a tax liability. If there are credits  
13 from more than one taxable year that are available to offset a  
14 liability, the earlier credit shall be applied first. This  
15 Section is exempt from the provisions of Section 250 of this  
16 Act.

17 (h) An employer may claim a credit against payments due  
18 under this Section for amounts withheld during the first  
19 calendar year ending after date on which a tax credit  
20 certificate was issued under Section 35 of the Small Business  
21 Job Creation Tax Credit Act. The credit shall be equal to the  
22 amount shown on the certificate, but may not reduce the  
23 taxpayer's obligation for any payment due under this Section to  
24 less than zero. If the amount of the credit exceeds the total  
25 payments due under this Section with respect to amounts  
26 withheld during the calendar year, the excess may be carried

1 forward and applied against the taxpayer's liability under this  
2 Section in the 5 succeeding calendar years. The credit shall be  
3 applied to the earliest year for which there is a tax  
4 liability. If there are credits from more than one calendar  
5 year that are available to offset a liability, the earlier  
6 credit shall be applied first. This Section is exempt from the  
7 provisions of Section 250 of this Act.

8 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,  
9 eff. 12-14-09; 96-888, eff. 4-13-10.)".

10 Section 15. The Cigarette Tax Act is amended by changing  
11 Sections 1, 2, 3, 3-10, 4a, 4d, 6, 7, 8, 10, 10b, 12, 15, 23,  
12 24, 25, and 26 and by adding Sections 4c, 4e, 9e, and 11a as  
13 follows:

14 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

16 "Brand Style" means a variety of cigarettes distinguished  
17 by the tobacco used, tar and nicotine content, flavoring used,  
18 size of the cigarette, filtration on the cigarette or  
19 packaging.

20 "Cigarette", means any roll for smoking made wholly or in  
21 part of tobacco irrespective of size or shape and whether or  
22 not such tobacco is flavored, adulterated or mixed with any  
23 other ingredient, and the wrapper or cover of which is made of  
24 paper or any other substance or material except tobacco.



1 "Contraband cigarettes" means:

2 (a) cigarettes that do not bear a required tax stamp  
3 under this Act;

4 (b) cigarettes for which any required federal taxes  
5 have not been paid;

6 (c) cigarettes that bear a counterfeit tax stamp;

7 (d) cigarettes that are manufactured, fabricated,  
8 assembled, processed, packaged, or labeled by any person  
9 other than (i) the owner of the trademark rights in the  
10 cigarette brand or (ii) a person that is directly or  
11 indirectly authorized by such owner;

12 (e) cigarettes imported into the United States, or  
13 otherwise distributed, in violation of the federal  
14 Imported Cigarette Compliance Act of 2000 (Title IV of  
15 Public Law 106-476);

16 (f) cigarettes that have false manufacturing labels;

17 (g) cigarettes identified in Section 3-10(a)(1) of  
18 this Act; or

19 (h) cigarettes that are improperly tax stamped,  
20 including cigarettes that bear a tax stamp of another state  
21 or taxing jurisdiction.

22 "Person" means any natural individual, firm, partnership,  
23 association, joint stock company, joint adventure, public or  
24 private corporation, however formed, limited liability  
25 company, or a receiver, executor, administrator, trustee,  
26 guardian or other representative appointed by order of any

1 court.

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

18 "Department" means the Department of Revenue.

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

22 "Original Package" means the individual packet, box or  
23 other container whatsoever used to contain and to convey  
24 cigarettes to the consumer.

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

26 (1) Any person engaged in the business of selling

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

8 (2) Any person who makes, manufactures or fabricates  
9 cigarettes in this State for sale in this State, except a  
10 person who makes, manufactures or fabricates cigarettes as a  
11 part of a correctional industries program for sale to residents  
12 incarcerated in penal institutions or resident patients of a  
13 State-operated mental health facility.

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

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

25 "Business" means any trade, occupation, activity or  
26 enterprise engaged in for the purpose of selling cigarettes in

1 this State.

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

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

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

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

25 "Secondary distributor" means any person engaged in the  
26 business of selling cigarettes who purchases stamped original

1 packages of cigarettes from a licensed distributor under this  
2 Act or the Cigarette Use Tax Act, sells 75% or more of those  
3 cigarettes to retailers for resale, and maintains an  
4 established business where a substantial stock of cigarettes is  
5 available to retailers for resale.

6 "Stamp" or "stamps" mean the indicia required to be affixed  
7 on a pack of cigarettes that evidence payment of the tax on  
8 cigarettes under Section 2 of this Act.

9 "Related party" means any person that is associated with  
10 any other person because he or she:

11 (a) is an officer or director of a business; or

12 (b) is legally recognized as a partner in business.

13 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;  
14 96-782, eff. 1-1-10.)

15 (35 ILCS 130/2) (from Ch. 120, par. 453.2)

16 Sec. 2. Tax imposed; rate; collection, payment, and  
17 distribution; discount.

18 (a) A tax is imposed upon any person engaged in business as  
19 a retailer of cigarettes in this State at the rate of 5 1/2  
20 mills per cigarette sold, or otherwise disposed of in the  
21 course of such business in this State. In addition to any other  
22 tax imposed by this Act, a tax is imposed upon any person  
23 engaged in business as a retailer of cigarettes in this State  
24 at a rate of 1/2 mill per cigarette sold or otherwise disposed  
25 of in the course of such business in this State on and after

1 January 1, 1947, and shall be paid into the Metropolitan Fair  
2 and Exposition Authority Reconstruction Fund or as otherwise  
3 provided in Section 29. On and after December 1, 1985, in  
4 addition to any other tax imposed by this Act, a tax is imposed  
5 upon any person engaged in business as a retailer of cigarettes  
6 in this State at a rate of 4 mills per cigarette sold or  
7 otherwise disposed of in the course of such business in this  
8 State. Of the additional tax imposed by this amendatory Act of  
9 1985, \$9,000,000 of the moneys received by the Department of  
10 Revenue pursuant to this Act shall be paid each month into the  
11 Common School Fund. On and after the effective date of this  
12 amendatory Act of 1989, in addition to any other tax imposed by  
13 this Act, a tax is imposed upon any person engaged in business  
14 as a retailer of cigarettes at the rate of 5 mills per  
15 cigarette sold or otherwise disposed of in the course of such  
16 business in this State. On and after the effective date of this  
17 amendatory Act of 1993, in addition to any other tax imposed by  
18 this Act, a tax is imposed upon any person engaged in business  
19 as a retailer of cigarettes at the rate of 7 mills per  
20 cigarette sold or otherwise disposed of in the course of such  
21 business in this State. On and after December 15, 1997, in  
22 addition to any other tax imposed by this Act, a tax is imposed  
23 upon any person engaged in business as a retailer of cigarettes  
24 at the rate of 7 mills per cigarette sold or otherwise disposed  
25 of in the course of such business of this State. All of the  
26 moneys received by the Department of Revenue pursuant to this

1 Act and the Cigarette Use Tax Act from the additional taxes  
2 imposed by this amendatory Act of 1997, shall be paid each  
3 month into the Common School Fund. On and after July 1, 2002,  
4 in addition to any other tax imposed by this Act, a tax is  
5 imposed upon any person engaged in business as a retailer of  
6 cigarettes at the rate of 20.0 mills per cigarette sold or  
7 otherwise disposed of in the course of such business in this  
8 State. The payment of such taxes shall be evidenced by a stamp  
9 affixed to each original package of cigarettes, or an  
10 authorized substitute for such stamp imprinted on each original  
11 package of such cigarettes underneath the sealed transparent  
12 outside wrapper of such original package, as hereinafter  
13 provided. However, such taxes are not imposed upon any activity  
14 in such business in interstate commerce or otherwise, which  
15 activity may not under the Constitution and statutes of the  
16 United States be made the subject of taxation by this State.

17 Beginning on the effective date of this amendatory Act of  
18 the 92nd General Assembly and through June 30, 2006, all of the  
19 moneys received by the Department of Revenue pursuant to this  
20 Act and the Cigarette Use Tax Act, other than the moneys that  
21 are dedicated to the Common School Fund, shall be distributed  
22 each month as follows: first, there shall be paid into the  
23 General Revenue Fund an amount which, when added to the amount  
24 paid into the Common School Fund for that month, equals  
25 \$33,300,000, except that in the month of August of 2004, this  
26 amount shall equal \$83,300,000; then, from the moneys

1 remaining, if any amounts required to be paid into the General  
2 Revenue Fund in previous months remain unpaid, those amounts  
3 shall be paid into the General Revenue Fund; then, beginning on  
4 April 1, 2003, from the moneys remaining, \$5,000,000 per month  
5 shall be paid into the School Infrastructure Fund; then, if any  
6 amounts required to be paid into the School Infrastructure Fund  
7 in previous months remain unpaid, those amounts shall be paid  
8 into the School Infrastructure Fund; then the moneys remaining,  
9 if any, shall be paid into the Long-Term Care Provider Fund. To  
10 the extent that more than \$25,000,000 has been paid into the  
11 General Revenue Fund and Common School Fund per month for the  
12 period of July 1, 1993 through the effective date of this  
13 amendatory Act of 1994 from combined receipts of the Cigarette  
14 Tax Act and the Cigarette Use Tax Act, notwithstanding the  
15 distribution provided in this Section, the Department of  
16 Revenue is hereby directed to adjust the distribution provided  
17 in this Section to increase the next monthly payments to the  
18 Long Term Care Provider Fund by the amount paid to the General  
19 Revenue Fund and Common School Fund in excess of \$25,000,000  
20 per month and to decrease the next monthly payments to the  
21 General Revenue Fund and Common School Fund by that same excess  
22 amount.

23 Beginning on July 1, 2006, all of the moneys received by  
24 the Department of Revenue pursuant to this Act and the  
25 Cigarette Use Tax Act, other than the moneys that are dedicated  
26 to the Common School Fund, shall be distributed each month as



1 follows: first, there shall be paid into the General Revenue  
2 Fund an amount that, when added to the amount paid into the  
3 Common School Fund for that month, equals \$29,200,000; then,  
4 from the moneys remaining, if any amounts required to be paid  
5 into the General Revenue Fund in previous months remain unpaid,  
6 those amounts shall be paid into the General Revenue Fund; then  
7 from the moneys remaining, \$5,000,000 per month shall be paid  
8 into the School Infrastructure Fund; then, if any amounts  
9 required to be paid into the School Infrastructure Fund in  
10 previous months remain unpaid, those amounts shall be paid into  
11 the School Infrastructure Fund; then the moneys remaining, if  
12 any, shall be paid into the Long-Term Care Provider Fund.

13 When any tax imposed herein terminates or has terminated,  
14 distributors who have bought stamps while such tax was in  
15 effect and who therefore paid such tax, but who can show, to  
16 the Department's satisfaction, that they sold the cigarettes to  
17 which they affixed such stamps after such tax had terminated  
18 and did not recover the tax or its equivalent from purchasers,  
19 shall be allowed by the Department to take credit for such  
20 absorbed tax against subsequent tax stamp purchases from the  
21 Department by such distributor.

22 The impact of the tax levied by this Act is imposed upon  
23 the retailer and shall be prepaid or pre-collected by the  
24 distributor for the purpose of convenience and facility only,  
25 and the amount of the tax shall be added to the price of the  
26 cigarettes sold by such distributor. Collection of the tax

1 shall be evidenced by a stamp or stamps affixed to each  
2 original package of cigarettes, as hereinafter provided.

3 Each distributor shall collect the tax from the retailer at  
4 or before the time of the sale, shall affix the stamps as  
5 hereinafter required, and shall remit the tax collected from  
6 retailers to the Department, as hereinafter provided. Any  
7 distributor who fails to properly collect and pay the tax  
8 imposed by this Act shall be liable for the tax. Any  
9 distributor having cigarettes to which stamps have been affixed  
10 in his possession for sale on the effective date of this  
11 amendatory Act of 1989 shall not be required to pay the  
12 additional tax imposed by this amendatory Act of 1989 on such  
13 stamped cigarettes. Any distributor having cigarettes to which  
14 stamps have been affixed in his or her possession for sale at  
15 12:01 a.m. on the effective date of this amendatory Act of  
16 1993, is required to pay the additional tax imposed by this  
17 amendatory Act of 1993 on such stamped cigarettes. This  
18 payment, less the discount provided in subsection (b), shall be  
19 due when the distributor first makes a purchase of cigarette  
20 tax stamps after the effective date of this amendatory Act of  
21 1993, or on the first due date of a return under this Act after  
22 the effective date of this amendatory Act of 1993, whichever  
23 occurs first. Any distributor having cigarettes to which stamps  
24 have been affixed in his possession for sale on December 15,  
25 1997 shall not be required to pay the additional tax imposed by  
26 this amendatory Act of 1997 on such stamped cigarettes.

1 Any distributor having cigarettes to which stamps have been  
2 affixed in his or her possession for sale on July 1, 2002 shall  
3 not be required to pay the additional tax imposed by this  
4 amendatory Act of the 92nd General Assembly on those stamped  
5 cigarettes.

6 Distributors making sales of cigarettes to secondary  
7 distributors shall add the amount of the tax to the price of  
8 the cigarettes sold by the distributors. Secondary  
9 distributors making sales of cigarettes to retailers shall  
10 include the amount of the tax in the price of the cigarettes  
11 sold to retailers. The amount of tax shall not be less than the  
12 amount of taxes imposed by the State and all local  
13 jurisdictions. The amount of local taxes shall be calculated  
14 based on the location of the retailer's place of business shown  
15 on the retailer's certificate of registration or  
16 sub-registration issued to the retailer pursuant to Section 2a  
17 of the Retailers' Occupation Tax Act. The original packages of  
18 cigarettes sold to the retailer shall bear all the required  
19 stamps, or other indicia, for the taxes included in the price  
20 of cigarettes.

21 The amount of the Cigarette Tax imposed by this Act shall  
22 be separately stated, apart from the price of the goods, by  
23 ~~both~~ distributors, secondary distributors, and retailers, in  
24 all ~~advertisements,~~ bills and sales invoices.

25 (b) The distributor shall be required to collect the taxes  
26 provided under paragraph (a) hereof, and, to cover the costs of

1 such collection, shall be allowed a discount during any year  
2 commencing July 1st and ending the following June 30th in  
3 accordance with the schedule set out hereinbelow, which  
4 discount shall be allowed at the time of purchase of the stamps  
5 when purchase is required by this Act, or at the time when the  
6 tax is remitted to the Department without the purchase of  
7 stamps from the Department when that method of paying the tax  
8 is required or authorized by this Act. Prior to December 1,  
9 1985, a discount equal to  $1\frac{2}{3}\%$  of the amount of the tax up to  
10 and including the first \$700,000 paid hereunder by such  
11 distributor to the Department during any such year;  $1\frac{1}{3}\%$  of  
12 the next \$700,000 of tax or any part thereof, paid hereunder by  
13 such distributor to the Department during any such year; 1% of  
14 the next \$700,000 of tax, or any part thereof, paid hereunder  
15 by such distributor to the Department during any such year, and  
16  $\frac{2}{3}$  of 1% of the amount of any additional tax paid hereunder by  
17 such distributor to the Department during any such year shall  
18 apply. On and after December 1, 1985, a discount equal to 1.75%  
19 of the amount of the tax payable under this Act up to and  
20 including the first \$3,000,000 paid hereunder by such  
21 distributor to the Department during any such year and 1.5% of  
22 the amount of any additional tax paid hereunder by such  
23 distributor to the Department during any such year shall apply.

24 Two or more distributors that use a common means of  
25 affixing revenue tax stamps or that are owned or controlled by  
26 the same interests shall be treated as a single distributor for

1 the purpose of computing the discount.

2 (c) The taxes herein imposed are in addition to all other  
3 occupation or privilege taxes imposed by the State of Illinois,  
4 or by any political subdivision thereof, or by any municipal  
5 corporation.

6 (Source: P.A. 93-839, eff. 7-30-04; 94-91, eff. 7-1-05; 94-839,  
7 eff. 6-6-06.)

8 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

9 Sec. 3. Affixing tax stamp; remitting tax to the  
10 Department. Payment of the taxes imposed by Section 2 of this  
11 Act shall (except as hereinafter provided) be evidenced by  
12 revenue tax stamps affixed to each original package of  
13 cigarettes. Each distributor of cigarettes, before delivering  
14 or causing to be delivered any original package of cigarettes  
15 in this State to a purchaser, shall firmly affix a proper stamp  
16 or stamps to each such package, or (in case of manufacturers of  
17 cigarettes in original packages which are contained inside a  
18 sealed transparent wrapper) shall imprint the required  
19 language on the original package of cigarettes beneath such  
20 outside wrapper, as hereinafter provided.

21 No stamp or imprint may be affixed to, or made upon, any  
22 package of cigarettes unless that package complies with all  
23 requirements of the federal Cigarette Labeling and Advertising  
24 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
25 warnings, or any other information upon a package of cigarettes

1 that is sold within the United States. Under the authority of  
2 Section 6, the Department shall revoke the license of any  
3 distributor that is determined to have violated this paragraph.  
4 A person may not affix a stamp on a package of cigarettes,  
5 cigarette papers, wrappers, or tubes if that individual package  
6 has been marked for export outside the United States with a  
7 label or notice in compliance with Section 290.185 of Title 27  
8 of the Code of Federal Regulations. It is not a defense to a  
9 proceeding for violation of this paragraph that the label or  
10 notice has been removed, mutilated, obliterated, or altered in  
11 any manner.

12 Only distributors licensed under this Act and  
13 transporters, as defined in Section 9c of this Act, may possess  
14 unstamped original packages of cigarettes. Prior to shipment to  
15 a secondary distributor or an Illinois retailer, a stamp shall  
16 be applied to each original package of cigarettes sold to the  
17 secondary distributor or retailer. A distributor may apply tax  
18 stamps only to original packages of cigarettes purchased or  
19 obtained directly from an in-state maker, manufacturer, or  
20 fabricator licensed as a distributor under Section 4 of this  
21 Act or an out-of-state maker, manufacturer, or fabricator  
22 holding a permit under Section 4b of this Act. A licensed  
23 distributor may ship or otherwise cause to be delivered  
24 unstamped original packages of cigarettes in, into, or from  
25 this State. A licensed distributor may transport unstamped  
26 original packages of cigarettes to a facility, wherever

1 located, owned or controlled by such distributor; however, a  
2 distributor may not transport unstamped original packages of  
3 cigarettes to a facility where retail sales of cigarettes take  
4 place or to a facility where a secondary distributor makes  
5 sales for resale. Any licensed distributor that ships or  
6 otherwise causes to be delivered unstamped original packages of  
7 cigarettes into, within, or from this State shall ensure that  
8 the invoice or equivalent documentation and the bill of lading  
9 or freight bill for the shipment identifies the true name and  
10 address of the consignor or seller, the true name and address  
11 of the consignee or purchaser, and the quantity by brand style  
12 of the cigarettes so transported, provided that this Section  
13 shall not be construed as to impose any requirement or  
14 liability upon any common or contract carrier.

15 The Department, or any person authorized by the Department,  
16 shall sell such stamps only to persons holding valid licenses  
17 as distributors under this Act. On and after July 1, 2003,  
18 payment for such stamps must be made by means of electronic  
19 funds transfer. The Department may refuse to sell stamps to any  
20 person who does not comply with the provisions of this Act.  
21 Beginning on the effective date of this amendatory Act of the  
22 92nd General Assembly and through June 30, 2002, persons  
23 holding valid licenses as distributors may purchase cigarette  
24 tax stamps up to an amount equal to 115% of the distributor's  
25 average monthly cigarette tax stamp purchases over the 12  
26 calendar months prior to the effective date of this amendatory

1 Act of the 92nd General Assembly.

2 Prior to December 1, 1985, the Department shall allow a  
3 distributor 21 days in which to make final payment of the  
4 amount to be paid for such stamps, by allowing the distributor  
5 to make payment for the stamps at the time of purchasing them  
6 with a draft which shall be in such form as the Department  
7 prescribes, and which shall be payable within 21 days  
8 thereafter: Provided that such distributor has filed with the  
9 Department, and has received the Department's approval of, a  
10 bond, which is in addition to the bond required under Section 4  
11 of this Act, payable to the Department in an amount equal to  
12 80% of such distributor's average monthly tax liability to the  
13 Department under this Act during the preceding calendar year or  
14 \$500,000, whichever is less. The Bond shall be joint and  
15 several and shall be in the form of a surety company bond in  
16 such form as the Department prescribes, or it may be in the  
17 form of a bank certificate of deposit or bank letter of credit.  
18 The bond shall be conditioned upon the distributor's payment of  
19 amount of any 21-day draft which the Department accepts from  
20 that distributor for the delivery of stamps to that distributor  
21 under this Act. The distributor's failure to pay any such  
22 draft, when due, shall also make such distributor automatically  
23 liable to the Department for a penalty equal to 25% of the  
24 amount of such draft.

25 On and after December 1, 1985 and until July 1, 2003, the  
26 Department shall allow a distributor 30 days in which to make



1 final payment of the amount to be paid for such stamps, by  
2 allowing the distributor to make payment for the stamps at the  
3 time of purchasing them with a draft which shall be in such  
4 form as the Department prescribes, and which shall be payable  
5 within 30 days thereafter, and beginning on January 1, 2003 and  
6 thereafter, the draft shall be payable by means of electronic  
7 funds transfer: Provided that such distributor has filed with  
8 the Department, and has received the Department's approval of,  
9 a bond, which is in addition to the bond required under Section  
10 4 of this Act, payable to the Department in an amount equal to  
11 150% of such distributor's average monthly tax liability to the  
12 Department under this Act during the preceding calendar year or  
13 \$750,000, whichever is less, except that as to bonds filed on  
14 or after January 1, 1987, such additional bond shall be in an  
15 amount equal to 100% of such distributor's average monthly tax  
16 liability under this Act during the preceding calendar year or  
17 \$750,000, whichever is less. The bond shall be joint and  
18 several and shall be in the form of a surety company bond in  
19 such form as the Department prescribes, or it may be in the  
20 form of a bank certificate of deposit or bank letter of credit.  
21 The bond shall be conditioned upon the distributor's payment of  
22 the amount of any 30-day draft which the Department accepts  
23 from that distributor for the delivery of stamps to that  
24 distributor under this Act. The distributor's failure to pay  
25 any such draft, when due, shall also make such distributor  
26 automatically liable to the Department for a penalty equal to

1 25% of the amount of such draft.

2 Every prior continuous compliance taxpayer shall be exempt  
3 from all requirements under this Section concerning the  
4 furnishing of such bond, as defined in this Section, as a  
5 condition precedent to his being authorized to engage in the  
6 business licensed under this Act. This exemption shall continue  
7 for each such taxpayer until such time as he may be determined  
8 by the Department to be delinquent in the filing of any  
9 returns, or is determined by the Department (either through the  
10 Department's issuance of a final assessment which has become  
11 final under the Act, or by the taxpayer's filing of a return  
12 which admits tax to be due that is not paid) to be delinquent  
13 or deficient in the paying of any tax under this Act, at which  
14 time that taxpayer shall become subject to the bond  
15 requirements of this Section and, as a condition of being  
16 allowed to continue to engage in the business licensed under  
17 this Act, shall be required to furnish bond to the Department  
18 in such form as provided in this Section. Such taxpayer shall  
19 furnish such bond for a period of 2 years, after which, if the  
20 taxpayer has not been delinquent in the filing of any returns,  
21 or delinquent or deficient in the paying of any tax under this  
22 Act, the Department may reinstate such person as a prior  
23 continuance compliance taxpayer. Any taxpayer who fails to pay  
24 an admitted or established liability under this Act may also be  
25 required to post bond or other acceptable security with the  
26 Department guaranteeing the payment of such admitted or

1 established liability.

2 Any person aggrieved by any decision of the Department  
3 under this Section may, within the time allowed by law, protest  
4 and request a hearing, whereupon the Department shall give  
5 notice and shall hold a hearing in conformity with the  
6 provisions of this Act and then issue its final administrative  
7 decision in the matter to such person. In the absence of such a  
8 protest filed within the time allowed by law, the Department's  
9 decision shall become final without any further determination  
10 being made or notice given.

11 The Department shall discharge any surety and shall release  
12 and return any bond or security deposited, assigned, pledged,  
13 or otherwise provided to it by a taxpayer under this Section  
14 within 30 days after:

15 (1) Such taxpayer becomes a prior continuous compliance  
16 taxpayer; or

17 (2) Such taxpayer has ceased to collect receipts on which  
18 he is required to remit tax to the Department, has filed a  
19 final tax return, and has paid to the Department an amount  
20 sufficient to discharge his remaining tax liability as  
21 determined by the Department under this Act. The Department  
22 shall make a final determination of the taxpayer's outstanding  
23 tax liability as expeditiously as possible after his final tax  
24 return has been filed. If the Department cannot make such final  
25 determination within 45 days after receiving the final tax  
26 return, within such period it shall so notify the taxpayer,

1 stating its reasons therefor.

2 The Department may authorize distributors to affix revenue  
3 tax stamps by imprinting tax meter stamps upon original  
4 packages of cigarettes. The Department shall adopt rules and  
5 regulations relating to the imprinting of such tax meter stamps  
6 as will result in payment of the proper taxes as herein  
7 imposed. No distributor may affix revenue tax stamps to  
8 original packages of cigarettes by imprinting tax meter stamps  
9 thereon unless such distributor has first obtained permission  
10 from the Department to employ this method of affixation. The  
11 Department shall regulate the use of tax meters and may, to  
12 assure the proper collection of the taxes imposed by this Act,  
13 revoke or suspend the privilege, theretofore granted by the  
14 Department to any distributor, to imprint tax meter stamps upon  
15 original packages of cigarettes.

16 Illinois cigarette manufacturers who place their  
17 cigarettes in original packages which are contained inside a  
18 sealed transparent wrapper, and similar out-of-State cigarette  
19 manufacturers who elect to qualify and are accepted by the  
20 Department as distributors under Section 4b(a) of this Act,  
21 shall pay the taxes imposed by this Act by remitting the amount  
22 thereof to the Department by the 5th day of each month covering  
23 cigarettes shipped or otherwise delivered in Illinois to  
24 purchasers during the preceding calendar month. Such  
25 manufacturers of cigarettes in original packages which are  
26 contained inside a sealed transparent wrapper, before

1 delivering such cigarettes or causing such cigarettes to be  
2 delivered in this State to purchasers, shall evidence their  
3 obligation to remit the taxes due with respect to such  
4 cigarettes by imprinting language to be prescribed by the  
5 Department on each original package of such cigarettes  
6 underneath the sealed transparent outside wrapper of such  
7 original package, in such place thereon and in such manner as  
8 the Department may designate. Such imprinted language shall  
9 acknowledge the manufacturer's payment of or liability for the  
10 tax imposed by this Act with respect to the distribution of  
11 such cigarettes.

12 A distributor shall not affix, or cause to be affixed, any  
13 stamp or imprint to a package of cigarettes, as provided for in  
14 this Section, if the tobacco product manufacturer, as defined  
15 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
16 that made or sold the cigarettes has failed to become a  
17 participating manufacturer, as defined in subdivision (a)(1)  
18 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
19 or has failed to create a qualified escrow fund for any  
20 cigarettes manufactured by the tobacco product manufacturer  
21 and sold in this State or otherwise failed to bring itself into  
22 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
23 Product Manufacturers' Escrow Act.

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

1           Sec. 3-10. Cigarette enforcement.

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

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

7                 (A) any cigarettes the package of which:

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

15                         (ii) does not comply with:

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

25                                 (bb) all federal trademark and copyright  
26 laws;

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

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

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

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

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

20 (B) any health warning that is not specified in, or  
21 does not conform with the requirements of, the federal  
22 Cigarette Labeling and Advertising Act, 15 U.S.C.  
23 1333; or

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

1 subdivision (a) (2).

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

7 (1) a copy of:

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

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

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



1 cigarettes; and

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

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

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

17 (c) Administrative sanctions.

18 (1) Upon finding that a distributor, secondary  
19 distributor, or person has committed any of the acts  
20 prohibited by subsection (a), knowing or having reason to  
21 know that he or she has done so, or upon finding that a  
22 distributor or person has failed to comply with any  
23 requirement of subsection (b), the Department may revoke or  
24 suspend the license or licenses of any distributor or  
25 secondary distributor pursuant to the procedures set forth  
26 in Section 6 and impose, on the distributor, secondary

1        distributor, or ~~on the~~ person, a civil penalty in an amount  
2        not to exceed the greater of 500% of the retail value of  
3        the cigarettes involved or \$5,000.

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

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

18            (d-1) Retailers and secondary distributors shall not be  
19       liable under subsections (c)(1) and (d) of this Section for  
20       unknowingly possessing, selling, or distributing to consumers  
21       or users cigarettes identified in subsection (a)(1) of this  
22       Section if the cigarettes possessed, sold, or distributed by  
23       the retailer or secondary distributor were obtained from a  
24       distributor licensed under this Act.

25            (e) Unfair cigarette sales. For purposes of the Trademark  
26       Registration and Protection Act and the Counterfeit Trademark

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

8 (f) General provisions.

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

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

23 (3) In addition to any other remedy provided by law,  
24 including enforcement as provided in subdivision (a)(1),  
25 any person may bring an action for appropriate injunctive  
26 or other equitable relief for a violation of this Section;

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

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

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

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

11 (h) Applicability.

12 (1) This Section does not apply to:

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

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

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

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

1 (35 ILCS 130/4a) (from Ch. 120, par. 453.4a)

2 Sec. 4a. If a distributor ~~licensee~~ shall be convicted of  
3 the violation of any of the provisions of this Act, or if his  
4 or her license shall be revoked and no review is had of the  
5 order or revocation, or if on review thereof the decision is  
6 adverse to the distributor ~~licensee~~, or if a distributor  
7 ~~licensee~~ fails to pay an assessment as to which no judicial  
8 review is sought and which has become final, or pursuant to  
9 which, upon review thereof, the circuit court has entered a  
10 judgment that is in favor of the Department and that has become  
11 final, the bond filed pursuant to this Act shall thereupon be  
12 forfeited, and the Department may institute a suit upon such  
13 bond in its own name for the entire amount of such bond and  
14 costs. Such suit upon the bond shall be in addition to any  
15 other remedy provided for herein.

16 (Source: P.A. 79-1366.)

17 (35 ILCS 130/4c new)

18 Sec. 4c. Secondary distributor's license. No person may  
19 engage in business as a secondary distributor of cigarettes in  
20 this State without first having obtained a license therefor  
21 from the Department. Application for license shall be made to  
22 the Department on a form as furnished and prescribed by the  
23 Department. Each applicant for a license under this Section  
24 shall furnish the following information to the Department on a  
25 form signed and verified by the applicant under penalty of

1 perjury:

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

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

6 (3) such other additional information as the  
7 Department may reasonably require.

8 The annual license fee payable to the Department for each  
9 secondary distributor's license shall be \$250. Each applicant  
10 for a license shall pay such fee to the Department at the time  
11 of submitting an application for license to the Department.

12 A separate application for license shall be made and  
13 separate annual license fee paid for each place of business at  
14 which a person who is required to procure a secondary  
15 distributor's license under this Section proposes to engage in  
16 business as a secondary distributor in Illinois under this Act.

17 The following are ineligible to receive a secondary  
18 distributor's license under this Act:

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

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

26 (3) a corporation, if any officer, manager, or director

1 thereof, or any stockholder or stockholders owning in the  
2 aggregate more than 5% of the stock of such corporation,  
3 would not be eligible to receive a license under this Act  
4 for any reason;

5 (4) a person who manufactures cigarettes, whether in  
6 this State or out of this State;

7 (5) a person, or any person who owns more than 15% of  
8 the ownership interests in a person or a related party who:

9 (A) owes, at the time of application, any  
10 delinquent cigarette taxes that have been determined  
11 by law to be due and unpaid, unless the license  
12 applicant has entered into an agreement approved by the  
13 Department to pay the amount due;

14 (B) had a license under this Act revoked within the  
15 past two years by the Department or has been convicted  
16 of a State or federal crime, punishable by imprisonment  
17 of one year or more, relating to stolen or contraband  
18 cigarettes;

19 (C) has been found by the Department, after notice  
20 and a hearing, to have imported or caused to be  
21 imported into the United States for sale or  
22 distribution any cigarette in violation of 19 U.S.C.  
23 1681a;

24 (D) has been found by the Department, after notice  
25 and a hearing, to have imported or caused to be  
26 imported into the United States for sale or

1 distribution or manufactured for sale or distribution  
2 in the United States any cigarette that does not fully  
3 comply with the Federal Cigarette Labeling and  
4 Advertising Act (15 U.S.C. 1331, et seq.); or

5 (E) has been found by the Department, after notice  
6 and a hearing, to have made a material false statement  
7 in the application or has failed to produce records  
8 required to be maintained by this Act.

9 The Department, upon receipt of an application and license  
10 fee from a person who is eligible to receive a secondary  
11 distributor's license under this Act, shall issue to such  
12 applicant a license in such form as prescribed by the  
13 Department. The license shall permit the applicant to which it  
14 is issued to engage in business as a secondary distributor at  
15 the place shown in his application. All licenses issued by the  
16 Department under this Act shall be valid for a period not to  
17 exceed one year after issuance unless sooner revoked, canceled,  
18 or suspended as provided in this Act. No license issued under  
19 this Act is transferable or assignable. Such license shall be  
20 conspicuously displayed in the place of business conducted by  
21 the licensee in Illinois under such license. No secondary  
22 distributor licensee acquires any vested interest or  
23 compensable property right in a license issued under this Act.

24 A licensed secondary distributor shall notify the  
25 Department of any change in the information contained on the  
26 application form, including any change in ownership, and shall



1 do so within 30 days after any such change.

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

13 (35 ILCS 130/4d)

14 Sec. 4d. Sales of cigarettes to and by retailers. In-state  
15 makers, manufacturers, and fabricators licensed as  
16 distributors under Section 4 of this Act and out-of-state  
17 makers, manufacturers, and fabricators holding permits under  
18 Section 4b of this Act may not sell original packages of  
19 cigarettes to retailers. A retailer may sell only original  
20 packages of cigarettes obtained from licensed secondary  
21 distributors or licensed distributors other than in-state  
22 makers, manufacturers, or fabricators licensed as distributors  
23 under Section 4 of this Act and out-of-state makers,  
24 manufacturers, or fabricators holding permits under Section 4b  
25 of this Act.

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

2 (35 ILCS 130/4e new)

3 Sec. 4e. Sales of cigarettes to and by secondary  
4 distributors. In-state makers, manufacturers, and fabricators  
5 licensed as distributors under Section 4 of this Act and  
6 out-of-state makers, manufacturers, and fabricators holding  
7 permits under Section 4b of this Act may not sell original  
8 packages of cigarettes to secondary distributors. A secondary  
9 distributor may sell only original packages of cigarettes  
10 obtained from licensed distributors other than in-state  
11 makers, manufacturers, or fabricators licensed as distributors  
12 under Section 4 of this Act and out-of-state makers,  
13 manufacturers, or fabricators holding permits under Section 4b  
14 of this Act. Secondary distributors may sell cigarettes to  
15 Illinois retailers for resale, and are also authorized to make  
16 retail sales of cigarettes at the location on the secondary  
17 distributor's license as long as the secondary distributor  
18 sells 75% or more of the cigarettes sold at such location to  
19 retailers for resale. All sales by secondary distributors to  
20 retailers must be made at the location on the secondary  
21 distributor's license. Retailers must take possession of all  
22 cigarettes sold by the secondary distributor at the secondary  
23 distributor's licensed address. Secondary distributors may not  
24 make deliveries of cigarettes to retailers.

25 Secondary distributors may not file a claim for credit or

1 refund with the State under Section 9d of this Act.

2 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

3 Sec. 6. Revocation, cancellation, or suspension of  
4 license. The Department may, after notice and hearing as  
5 provided for by this Act, revoke, cancel or suspend the license  
6 of any distributor or secondary distributor for the violation  
7 of any provision of this Act, or for noncompliance with any  
8 provision herein contained, or for any noncompliance with any  
9 lawful rule or regulation promulgated by the Department under  
10 Section 8 of this Act, or because the licensee is determined to  
11 be ineligible for a distributor's license for any one or more  
12 of the reasons provided for in Section 4 of this Act, or  
13 because the licensee is determined to be ineligible for a  
14 secondary distributor's license for any one or more of the  
15 reasons provided for in Section 4c of this Act. However, no  
16 such license shall be revoked, cancelled or suspended, except  
17 after a hearing by the Department with notice to the  
18 distributor or secondary distributor, as aforesaid, and  
19 affording such distributor or secondary distributor a  
20 reasonable opportunity to appear and defend, and any  
21 distributor or secondary distributor aggrieved by any decision  
22 of the Department with respect thereto may have the  
23 determination of the Department judicially reviewed, as herein  
24 provided.

25 The Department may revoke, cancel, or suspend the license

1 of any distributor for a violation of the Tobacco Product  
2 Manufacturers' Escrow Enforcement Act as provided in Section 30  
3 ~~20~~ of that Act. The Department may revoke, cancel, or suspend  
4 the license of any secondary distributor for a violation of  
5 subsection (e) of Section 15 of the Tobacco Product  
6 Manufacturers' Escrow Enforcement Act.

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

22 No license so revoked, as aforesaid, shall be reissued to  
23 any such distributor or secondary distributor within a period  
24 of 6 months after the date of the final determination of such  
25 revocation. No such license shall be reissued at all so long as  
26 the person who would receive the license is ineligible to

1 receive a distributor's license under this Act for any one or  
2 more of the reasons provided for in Section 4 of this Act or is  
3 ineligible to receive a secondary distributor's license under  
4 this Act for any one or more of the reasons provided for in  
5 Section 4c of this Act.

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

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

12 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

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

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

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

23 The Department or any officer or employee thereof, or any  
24 other party in an investigation or hearing before the  
25 Department, may cause the depositions of witnesses within the  
26 State to be taken in the manner prescribed by law for like

1 depositions, or depositions for discovery in civil actions in  
2 courts of this State, and to that end compel the attendance of  
3 witnesses and the production of books, papers, records or  
4 memoranda, in the same manner hereinbefore provided.

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

6 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

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

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

18 Hearings provided for in this Act shall be held:

19 (1) In Cook County, if the taxpayer's or licensee's  
20 principal place of business is in that county;

21 (2) At the Department's office nearest the taxpayer's or  
22 licensee's principal place of business, if the taxpayer's or  
23 licensee's principal place of business is in Illinois but  
24 outside Cook County;

25 (3) In Sangamon County, if the taxpayer's or licensee's

1 principal place of business is outside Illinois.

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

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

25       No stay order shall be entered by the Circuit Court unless  
26 the distributor or secondary distributor files with the court a



1 bond in an amount fixed and approved by the court, to indemnify  
2 the State against all loss and injury which may be sustained by  
3 it on account of the review proceedings and to secure all costs  
4 which may be occasioned by such proceedings.

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

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

20 (35 ILCS 130/9e new)

21 Sec. 9e. Secondary distributors; reports. Every secondary  
22 distributor who is required to procure a license under this Act  
23 shall, on or before the 15th day of each calendar month, file a  
24 report with the Department, showing the quantity of cigarettes  
25 purchased during the preceding calendar month either within or

1 outside this State, and the quantity of cigarettes sold to  
2 retailers or otherwise disposed of during the preceding  
3 calendar month. Such reports shall be filed electronically in  
4 such form prescribed by the Department and shall contain such  
5 other information as the Department may reasonably require. The  
6 secondary distributor's report shall be accompanied by  
7 appropriate computer generated magnetic media supporting  
8 schedule data in the format required by the Department, unless,  
9 as provided by rule, the Department grants an exception upon  
10 petition of a secondary distributor.

11 A certification by the Director of the Department that a  
12 report has not been filed, or that information has not been  
13 supplied pursuant to the provisions of this Act, shall be prima  
14 facie evidence thereof.

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

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

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

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

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

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

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

23 (35 ILCS 130/10b) (from Ch. 120, par. 453.10b)

24 Sec. 10b. All information received by the Department from  
25 returns or reports filed under this Act, or from any

1 investigation conducted under this Act, shall be confidential,  
2 except for official purposes, and any person who divulges any  
3 such information in any manner, except in accordance with a  
4 proper judicial order or as otherwise provided by law, shall be  
5 guilty of a Class A misdemeanor.

6 Nothing in this Act prevents the Director of Revenue from  
7 publishing or making available to the public the names and  
8 addresses of persons filing returns or reports under this Act,  
9 or reasonable statistics concerning the operation of the tax by  
10 grouping the contents of returns or reports so that the  
11 information in any individual return or report is not  
12 disclosed.

13 Nothing in this Act prevents the Director of Revenue from  
14 divulging to the United States Government or the government of  
15 any other state, or any officer or agency thereof, for  
16 exclusively official purposes, information received by the  
17 Department in administering this Act, provided that such other  
18 governmental agency agrees to divulge requested tax  
19 information to the Department.

20 The furnishing upon request of the Auditor General, or his  
21 authorized agents, for official use, of returns or reports  
22 filed and information related thereto under this Act is deemed  
23 to be an official purpose within the meaning of this Section.

24 The furnishing of financial information to a home rule unit  
25 with a population in excess of 2,000,000 that has imposed a tax  
26 similar to that imposed by this Act under its home rule powers,

1 upon request of the Chief Executive of the home rule unit, is  
2 an official purpose within the meaning of this Section,  
3 provided the home rule unit agrees in writing to the  
4 requirements of this Section. Information so provided is  
5 subject to all confidentiality provisions of this Section. The  
6 written agreement shall provide for reciprocity, limitations  
7 on access, disclosure, and procedures for requesting  
8 information.

9 The Director may make available to any State agency,  
10 including the Illinois Supreme Court, which licenses persons to  
11 engage in any occupation, information that a person licensed by  
12 such agency has failed to file returns under this Act or pay  
13 the tax, penalty and interest shown therein, or has failed to  
14 pay any final assessment of tax, penalty or interest due under  
15 this Act or has failed to file reports under this Act. An  
16 assessment is final when all proceedings in court for review of  
17 such assessment have terminated or the time for the taking  
18 thereof has expired without such proceedings being instituted.

19 The Director shall make available for public inspection in  
20 the Department's principal office and for publication, at cost,  
21 administrative decisions issued on or after January 1, 1995.  
22 These decisions are to be made available in a manner so that  
23 the following taxpayer or licensee information is not  
24 disclosed:

- 25 (1) The names, addresses, and identification numbers  
26 of the taxpayer or licensee, related entities, and

1 employees.

2 (2) At the sole discretion of the Director, trade  
3 secrets or other confidential information identified as  
4 such by the taxpayer or licensee, no later than 30 days  
5 after receipt of an administrative decision, by such means  
6 as the Department shall provide by rule.

7 The Director shall determine the appropriate extent of the  
8 deletions allowed in paragraph (2). In the event the taxpayer  
9 or licensee does not submit deletions, the Director shall make  
10 only the deletions specified in paragraph (1).

11 The Director shall make available for public inspection and  
12 publication an administrative decision within 180 days after  
13 the issuance of the administrative decision. The term  
14 "administrative decision" has the same meaning as defined in  
15 Section 3-101 of Article III of the Code of Civil Procedure.  
16 Costs collected under this Section shall be paid into the Tax  
17 Compliance and Administration Fund.

18 Nothing contained in this Act shall prevent the Director  
19 from divulging information to any person pursuant to a request  
20 or authorization made by the taxpayer or licensee or by an  
21 authorized representative of the taxpayer or licensee.

22 (Source: P.A. 94-1074, eff. 12-26-06.)

23 (35 ILCS 130/11a new)

24 Sec. 11a. Secondary distributors; records. Every secondary  
25 distributor of cigarettes, who is required to procure a license

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

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

10 (35 ILCS 130/12) (from Ch. 120, par. 453.12)

11 Sec. 12. Every distributor or secondary distributor who is  
12 required to procure a license under this Act and who purchases  
13 cigarettes for shipment into Illinois from a point outside this  
14 State shall procure invoices in duplicate covering each such  
15 shipment, and shall furnish one copy of each such invoice to  
16 the Department at the time of filing a ~~the~~ return or a report  
17 required by this Act.

18 (Source: Laws 1953, p. 255.)

19 (35 ILCS 130/15) (from Ch. 120, par. 453.15)

20 Sec. 15. Any person who shall fail to safely preserve the  
21 records required by Section 11 and Section 11a of this Act for  
22 the period of three years, as required therein, in such manner  
23 as to insure permanency and accessibility for inspection by the  
24 Department, shall be guilty of a business offense and may be



1 fined up to \$5,000.

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

3 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

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

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

17 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

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

20 (a) Possession or sale of 100 or less packages of  
21 contraband cigarettes. With the exception of licensed  
22 distributors, licensed secondary distributors, or licensed  
23 transporters, as defined in Section 9c of this Act, any person  
24 who has in his or her possession or sells 100 or less original

1 packages of contraband cigarettes is guilty of a Class A  
2 misdemeanor.

3 (b) Possession or sale of more than 100 but less than 251  
4 packages of contraband cigarettes. With the exception of  
5 licensed distributors, licensed secondary distributors, or  
6 licensed transporters, as defined in Section 9c of this Act,  
7 any person who has in his or her possession or sells more than  
8 100 but less than 251 original packages of contraband  
9 cigarettes is guilty of a Class A misdemeanor for a first  
10 offense and a Class 4 felony for each subsequent offense.

11 (c) Possession or sale of more than 250 but less than 1,001  
12 packages of contraband cigarettes. With the exception of  
13 licensed distributors, licensed secondary distributors, or  
14 licensed transporters, as defined in Section 9c of this Act,  
15 any person who has in his or her possession or sells more than  
16 250 but less than 1,001 original packages of contraband  
17 cigarettes is guilty of a Class 4 felony.

18 (d) Possession or sale of more than 1,000 packages of  
19 contraband cigarettes. With the exception of licensed  
20 distributors, licensed secondary distributors, or licensed  
21 transporters, as defined in Section 9c of this Act, any person  
22 who has in his or her possession or sells more than 1,000  
23 original packages of contraband cigarettes is guilty of a Class  
24 3 felony.

25 (e) Any person licensed as a distributor, secondary  
26 distributor, or transporter, as defined in Section 9c of this

1 Act, who has in his or her possession or sells 100 or less  
2 original packages of contraband cigarettes is guilty of a Class  
3 A misdemeanor.

4 (f) Any person licensed as a distributor, secondary  
5 distributor, or transporter, as defined in Section 9c of this  
6 Act, who has in his or her possession or sells more than 100  
7 original packages of contraband cigarettes is guilty of a Class  
8 4 felony.

9 (g) Notwithstanding subsections (e) through (f), licensed  
10 distributors and transporters, as defined in Section 9c of this  
11 Act, may possess unstamped packages of cigarettes.  
12 Notwithstanding subsections (e) through (f), licensed  
13 distributors may possess cigarettes that bear a tax stamp of  
14 another state or taxing jurisdiction. Notwithstanding  
15 subsections (e) through (f), a licensed distributor or licensed  
16 secondary distributor may possess contraband cigarettes  
17 returned to the distributor or licensed secondary distributor  
18 by a retailer if the distributor or licensed secondary  
19 distributor immediately conducts an inventory of the  
20 cigarettes being returned, the distributor or licensed  
21 secondary distributor and the retailer returning the  
22 contraband cigarettes sign the inventory, the distributor or  
23 licensed secondary distributor provides a copy of the signed  
24 inventory to the retailer, and the distributor retains the  
25 inventory in its books and records and promptly notifies the  
26 Department of Revenue.

1 (h) Notwithstanding subsections (a) through (d) of this  
2 Section, a retailer unknowingly possessing contraband  
3 cigarettes obtained from a licensed distributor or licensed  
4 secondary distributor or knowingly possessing contraband  
5 cigarettes obtained from a licensed distributor is not subject  
6 to penalties under this Section if the retailer, within 48  
7 hours after discovering that the cigarettes are contraband  
8 cigarettes, excluding Saturdays, Sundays, and holidays: (i)  
9 notifies the Department and the licensed distributor or  
10 licensed secondary distributor from whom the cigarettes were  
11 obtained, orally and in writing, that he or she possesses  
12 contraband cigarettes obtained from a licensed distributor or  
13 licensed secondary distributor; (ii) places the contraband  
14 cigarettes in one or more containers and seals those  
15 containers; and (iii) places on the containers the following or  
16 similar language: "Contraband Cigarettes. Not For Sale." All  
17 contraband cigarettes in the possession of a retailer remain  
18 subject to forfeiture under the provisions of this Act.

19 (Source: P.A. 96-782, eff. 1-1-10.)

20 (35 ILCS 130/25) (from Ch. 120, par. 453.25)

21 Sec. 25. Any person, or any officer, agent or employee of  
22 any person, required by this Act to make, file, render, sign or  
23 verify any report or return, who makes any false or fraudulent  
24 report or return or files any false or fraudulent report or  
25 return, or who shall fail to make such report or return or file

1 such report or return when due, shall be guilty of a Class 4  
2 felony.

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

4 (35 ILCS 130/26) (from Ch. 120, par. 453.26)

5 Sec. 26. Whoever acts as a distributor or secondary  
6 distributor of original packages without having a license, as  
7 required by this Act, shall be guilty of a Class 4 felony.

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

9 Section 20. The Cigarette Use Tax Act is amended by  
10 changing Sections 1, 3, 3-10, 4d, 5, 6, 9, 12, 16, 17, 20, 21,  
11 23, 29, 30, and 31 and by adding Sections 4b, 4e, 7a, 11a, and  
12 15a as follows:

13 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

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

1 cigarettes are not offered for resale.

2 "Brand Style" means a variety of cigarettes distinguished  
3 by the tobacco used, tar and nicotine content, flavoring used,  
4 size of the cigarette, filtration on the cigarette or  
5 packaging.

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

11 "Contraband cigarettes" means:

12 (a) cigarettes that do not bear a required tax stamp  
13 under this Act;

14 (b) cigarettes for which any required federal taxes  
15 have not been paid;

16 (c) cigarettes that bear a counterfeit tax stamp;

17 (d) cigarettes that are manufactured, fabricated,  
18 assembled, processed, packaged, or labeled by any person  
19 other than (i) the owner of the trademark rights in the  
20 cigarette brand or (ii) a person that is directly or  
21 indirectly authorized by such owner;

22 (e) cigarettes imported into the United States, or  
23 otherwise distributed, in violation of the federal  
24 Imported Cigarette Compliance Act of 2000 (Title IV of  
25 Public Law 106-476);

26 (f) cigarettes that have false manufacturing labels;

1 (g) cigarettes identified in Section 3-10(a)(1) of  
2 this Act; or

3 (h) cigarettes that are improperly tax stamped,  
4 including cigarettes that bear a tax stamp of another state  
5 or taxing jurisdiction.

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

12 "Department" means the Department of Revenue.

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

16 "Original Package" means the individual packet, box or  
17 other container whatsoever used to contain and to convey  
18 cigarettes to the consumer.

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 who transfers  
14 cigarettes to a not-for-profit research institution that  
15 conducts tests concerning the health effects of tobacco  
16 products and who does not offer the cigarettes for resale.

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



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

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

20 "Secondary distributor" means any person engaged in the  
21 business of selling cigarettes who purchases stamped original  
22 packages of cigarettes from a licensed distributor under this  
23 Act or the Cigarette Tax Act, sells 75% or more of those  
24 cigarettes to retailers for resale, and maintains an  
25 established business where a substantial stock of cigarettes is  
26 available to retailers for resale.

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

11       "Stamp" or "stamps" mean the indicia required to be affixed  
12 on a pack of cigarettes that evidence payment of the tax on  
13 cigarettes under Section 2 of this Act.

14       "Related party" means any person that is associated with  
15 any other person because he or she:

16             (a) is an officer or director of a business; or

17             (b) is legally recognized as a partner in business.

18       (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;  
19 96-782, eff. 1-1-10.)

20       (35 ILCS 135/3) (from Ch. 120, par. 453.33)

21       Sec. 3. Stamp payment. The tax hereby imposed shall be  
22 collected by a distributor maintaining a place of business in  
23 this State or a distributor authorized by the Department  
24 pursuant to Section 7 hereof to collect the tax, and the amount  
25 of the tax shall be added to the price of the cigarettes sold

1 by such distributor. Collection of the tax shall be evidenced  
2 by a stamp or stamps affixed to each original package of  
3 cigarettes or by an authorized substitute for such stamp  
4 imprinted on each original package of such cigarettes  
5 underneath the sealed transparent outside wrapper of such  
6 original package, except as hereinafter provided. Each  
7 distributor who is required or authorized to collect the tax  
8 herein imposed, before delivering or causing to be delivered  
9 any original packages of cigarettes in this State to any  
10 purchaser, shall firmly affix a proper stamp or stamps to each  
11 such package, or (in the case of manufacturers of cigarettes in  
12 original packages which are contained inside a sealed  
13 transparent wrapper) shall imprint the required language on the  
14 original package of cigarettes beneath such outside wrapper as  
15 hereinafter provided. Such stamp or stamps need not be affixed  
16 to the original package of any cigarettes with respect to which  
17 the distributor is required to affix a like stamp or stamps by  
18 virtue of the Cigarette Tax Act, however, and no tax imprint  
19 need be placed underneath the sealed transparent wrapper of an  
20 original package of cigarettes with respect to which the  
21 distributor is required or authorized to employ a like tax  
22 imprint by virtue of the Cigarette Tax Act.

23 No stamp or imprint may be affixed to, or made upon, any  
24 package of cigarettes unless that package complies with all  
25 requirements of the federal Cigarette Labeling and Advertising  
26 Act, 15 U.S.C. 1331 and following, for the placement of labels,

1 warnings, or any other information upon a package of cigarettes  
2 that is sold within the United States. Under the authority of  
3 Section 6, the Department shall revoke the license of any  
4 distributor that is determined to have violated this paragraph.  
5 A person may not affix a stamp on a package of cigarettes,  
6 cigarette papers, wrappers, or tubes if that individual package  
7 has been marked for export outside the United States with a  
8 label or notice in compliance with Section 290.185 of Title 27  
9 of the Code of Federal Regulations. It is not a defense to a  
10 proceeding for violation of this paragraph that the label or  
11 notice has been removed, mutilated, obliterated, or altered in  
12 any manner.

13 Only distributors licensed under this Act and  
14 transporters, as defined in Section 9c of the Cigarette Tax  
15 Act, may possess unstamped original packages of cigarettes.  
16 Prior to shipment to an Illinois retailer or secondary  
17 distributor, a stamp shall be applied to each original package  
18 of cigarettes sold to the retailer or secondary distributor. A  
19 distributor may apply a tax stamp only to an original package  
20 of cigarettes purchased or obtained directly from an in-state  
21 maker, manufacturer, or fabricator licensed as a distributor  
22 under Section 4 of this Act or an out-of-state maker,  
23 manufacturer, or fabricator holding a permit under Section 7 of  
24 this Act. A licensed distributor may ship or otherwise cause to  
25 be delivered unstamped original packages of cigarettes in,  
26 into, or from this State. A licensed distributor may transport

1 unstamped original packages of cigarettes to a facility,  
2 wherever located, owned or controlled by such distributor;  
3 however, a distributor may not transport unstamped original  
4 packages of cigarettes to a facility where retail sales of  
5 cigarettes take place or to a facility where a secondary  
6 distributor makes sales for resale. Any licensed distributor  
7 that ships or otherwise causes to be delivered unstamped  
8 original packages of cigarettes into, within, or from this  
9 State shall ensure that the invoice or equivalent documentation  
10 and the bill of lading or freight bill for the shipment  
11 identifies the true name and address of the consignor or  
12 seller, the true name and address of the consignee or  
13 purchaser, and the quantity by brand style of the cigarettes so  
14 transported, provided that this Section shall not be construed  
15 as to impose any requirement or liability upon any common or  
16 contract carrier.

17 Distributors making sales of cigarettes to secondary  
18 distributors shall add the amount of the tax to the price of  
19 the cigarettes sold by the distributors. Secondary  
20 distributors making sales of cigarettes to retailers shall  
21 include the amount of the tax in the price of the cigarettes  
22 sold to retailers. The amount of tax shall not be less than the  
23 amount of taxes imposed by the State and all local  
24 jurisdictions. The amount of local taxes shall be calculated  
25 based on the location of the retailer's place of business shown  
26 on the retailer's certificate of registration or

1 sub-registration issued to the retailer pursuant to Section 2a  
2 of the Retailers' Occupation Tax Act. The original packages of  
3 cigarettes sold by the retailer shall bear all the required  
4 stamps, or other indicia, for the taxes included in the price  
5 of cigarettes.

6 Stamps, when required hereunder, shall be purchased from  
7 the Department, or any person authorized by the Department, by  
8 distributors. On and after July 1, 2003, payment for such  
9 stamps must be made by means of electronic funds transfer. The  
10 Department may refuse to sell stamps to any person who does not  
11 comply with the provisions of this Act. Beginning on June 6,  
12 2002 and through June 30, 2002, persons holding valid licenses  
13 as distributors may purchase cigarette tax stamps up to an  
14 amount equal to 115% of the distributor's average monthly  
15 cigarette tax stamp purchases over the 12 calendar months prior  
16 to June 6, 2002.

17 Prior to December 1, 1985, the Department shall allow a  
18 distributor 21 days in which to make final payment of the  
19 amount to be paid for such stamps, by allowing the distributor  
20 to make payment for the stamps at the time of purchasing them  
21 with a draft which shall be in such form as the Department  
22 prescribes, and which shall be payable within 21 days  
23 thereafter: Provided that such distributor has filed with the  
24 Department, and has received the Department's approval of, a  
25 bond, which is in addition to the bond required under Section 4  
26 of this Act, payable to the Department in an amount equal to

1 80% of such distributor's average monthly tax liability to the  
2 Department under this Act during the preceding calendar year or  
3 \$500,000, whichever is less. The bond shall be joint and  
4 several and shall be in the form of a surety company bond in  
5 such form as the Department prescribes, or it may be in the  
6 form of a bank certificate of deposit or bank letter of credit.  
7 The bond shall be conditioned upon the distributor's payment of  
8 the amount of any 21-day draft which the Department accepts  
9 from that distributor for the delivery of stamps to that  
10 distributor under this Act. The distributor's failure to pay  
11 any such draft, when due, shall also make such distributor  
12 automatically liable to the Department for a penalty equal to  
13 25% of the amount of such draft.

14 On and after December 1, 1985 and until July 1, 2003, the  
15 Department shall allow a distributor 30 days in which to make  
16 final payment of the amount to be paid for such stamps, by  
17 allowing the distributor to make payment for the stamps at the  
18 time of purchasing them with a draft which shall be in such  
19 form as the Department prescribes, and which shall be payable  
20 within 30 days thereafter, and beginning on January 1, 2003 and  
21 thereafter, the draft shall be payable by means of electronic  
22 funds transfer: Provided that such distributor has filed with  
23 the Department, and has received the Department's approval of,  
24 a bond, which is in addition to the bond required under Section  
25 4 of this Act, payable to the Department in an amount equal to  
26 150% of such distributor's average monthly tax liability to the

1 Department under this Act during the preceding calendar year or  
2 \$750,000, whichever is less, except that as to bonds filed on  
3 or after January 1, 1987, such additional bond shall be in an  
4 amount equal to 100% of such distributor's average monthly tax  
5 liability under this Act during the preceding calendar year or  
6 \$750,000, whichever is less. The bond shall be joint and  
7 several and shall be in the form of a surety company bond in  
8 such form as the Department prescribes, or it may be in the  
9 form of a bank certificate of deposit or bank letter of credit.  
10 The bond shall be conditioned upon the distributor's payment of  
11 the amount of any 30-day draft which the Department accepts  
12 from that distributor for the delivery of stamps to that  
13 distributor under this Act. The distributor's failure to pay  
14 any such draft, when due, shall also make such distributor  
15 automatically liable to the Department for a penalty equal to  
16 25% of the amount of such draft.

17 Every prior continuous compliance taxpayer shall be exempt  
18 from all requirements under this Section concerning the  
19 furnishing of such bond, as defined in this Section, as a  
20 condition precedent to his being authorized to engage in the  
21 business licensed under this Act. This exemption shall continue  
22 for each such taxpayer until such time as he may be determined  
23 by the Department to be delinquent in the filing of any  
24 returns, or is determined by the Department (either through the  
25 Department's issuance of a final assessment which has become  
26 final under the Act, or by the taxpayer's filing of a return



1 which admits tax to be due that is not paid) to be delinquent  
2 or deficient in the paying of any tax under this Act, at which  
3 time that taxpayer shall become subject to the bond  
4 requirements of this Section and, as a condition of being  
5 allowed to continue to engage in the business licensed under  
6 this Act, shall be required to furnish bond to the Department  
7 in such form as provided in this Section. Such taxpayer shall  
8 furnish such bond for a period of 2 years, after which, if the  
9 taxpayer has not been delinquent in the filing of any returns,  
10 or delinquent or deficient in the paying of any tax under this  
11 Act, the Department may reinstate such person as a prior  
12 continuance compliance taxpayer. Any taxpayer who fails to pay  
13 an admitted or established liability under this Act may also be  
14 required to post bond or other acceptable security with the  
15 Department guaranteeing the payment of such admitted or  
16 established liability.

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

26 The Department shall discharge any surety and shall release

1 and return any bond or security deposited, assigned, pledged,  
2 or otherwise provided to it by a taxpayer under this Section  
3 within 30 days after:

4 (1) such Taxpayer becomes a prior continuous  
5 compliance taxpayer; or

6 (2) such taxpayer has ceased to collect receipts on  
7 which he is required to remit tax to the Department, has  
8 filed a final tax return, and has paid to the Department an  
9 amount sufficient to discharge his remaining tax liability  
10 as determined by the Department under this Act. The  
11 Department shall make a final determination of the  
12 taxpayer's outstanding tax liability as expeditiously as  
13 possible after his final tax return has been filed. If the  
14 Department cannot make such final determination within 45  
15 days after receiving the final tax return, within such  
16 period it shall so notify the taxpayer, stating its reasons  
17 therefor.

18 At the time of purchasing such stamps from the Department  
19 when purchase is required by this Act, or at the time when the  
20 tax which he has collected is remitted by a distributor to the  
21 Department without the purchase of stamps from the Department  
22 when that method of remitting the tax that has been collected  
23 is required or authorized by this Act, the distributor shall be  
24 allowed a discount during any year commencing July 1 and ending  
25 the following June 30 in accordance with the schedule set out  
26 hereinbelow, from the amount to be paid by him to the

1 Department for such stamps, or to be paid by him to the  
2 Department on the basis of monthly remittances (as the case may  
3 be), to cover the cost, to such distributor, of collecting the  
4 tax herein imposed by affixing such stamps to the original  
5 packages of cigarettes sold by such distributor or by placing  
6 tax imprints underneath the sealed transparent wrapper of  
7 original packages of cigarettes sold by such distributor (as  
8 the case may be): (1) Prior to December 1, 1985, a discount  
9 equal to 1-2/3% of the amount of the tax up to and including  
10 the first \$700,000 paid hereunder by such distributor to the  
11 Department during any such year; 1-1/3% of the next \$700,000 of  
12 tax or any part thereof, paid hereunder by such distributor to  
13 the Department during any such year; 1% of the next \$700,000 of  
14 tax, or any part thereof, paid hereunder by such distributor to  
15 the Department during any such year; and 2/3 of 1% of the  
16 amount of any additional tax paid hereunder by such distributor  
17 to the Department during any such year or (2) On and after  
18 December 1, 1985, a discount equal to 1.75% of the amount of  
19 the tax payable under this Act up to and including the first  
20 \$3,000,000 paid hereunder by such distributor to the Department  
21 during any such year and 1.5% of the amount of any additional  
22 tax paid hereunder by such distributor to the Department during  
23 any such year.

24 Two or more distributors that use a common means of  
25 affixing revenue tax stamps or that are owned or controlled by  
26 the same interests shall be treated as a single distributor for

1 the purpose of computing the discount.

2 Cigarette manufacturers who are distributors under Section  
3 7(a) of this Act, and who place their cigarettes in original  
4 packages which are contained inside a sealed transparent  
5 wrapper, shall be required to remit the tax which they are  
6 required to collect under this Act to the Department by  
7 remitting the amount thereof to the Department by the 5th day  
8 of each month, covering cigarettes shipped or otherwise  
9 delivered to points in Illinois to purchasers during the  
10 preceding calendar month, but a distributor need not remit to  
11 the Department the tax so collected by him from purchasers  
12 under this Act to the extent to which such distributor is  
13 required to remit the tax imposed by the Cigarette Tax Act to  
14 the Department with respect to the same cigarettes. All taxes  
15 upon cigarettes under this Act are a direct tax upon the retail  
16 consumer and shall conclusively be presumed to be precollected  
17 for the purpose of convenience and facility only. Cigarette  
18 manufacturers that are distributors licensed under Section  
19 7(a) of this Act and who place their cigarettes in original  
20 packages which are contained inside a sealed transparent  
21 wrapper, before delivering such cigarettes or causing such  
22 cigarettes to be delivered in this State to purchasers, shall  
23 evidence their obligation to collect and remit the tax due with  
24 respect to such cigarettes by imprinting language to be  
25 prescribed by the Department on each original package of such  
26 cigarettes underneath the sealed transparent outside wrapper

1 of such original package, in such place thereon and in such  
2 manner as the Department may prescribe; provided (as stated  
3 hereinbefore) that this requirement does not apply when such  
4 distributor is required or authorized by the Cigarette Tax Act  
5 to place the tax imprint provided for in the last paragraph of  
6 Section 3 of that Act underneath the sealed transparent wrapper  
7 of such original package of cigarettes. Such imprinted language  
8 shall acknowledge the manufacturer's collection and payment of  
9 or liability for the tax imposed by this Act with respect to  
10 such cigarettes.

11 The Department shall adopt the design or designs of the tax  
12 stamps and shall procure the printing of such stamps in such  
13 amounts and denominations as it deems necessary to provide for  
14 the affixation of the proper amount of tax stamps to each  
15 original package of cigarettes.

16 Where tax stamps are required, the Department may authorize  
17 distributors to affix revenue tax stamps by imprinting tax  
18 meter stamps upon original packages of cigarettes. The  
19 Department shall adopt rules and regulations relating to the  
20 imprinting of such tax meter stamps as will result in payment  
21 of the proper taxes as herein imposed. No distributor may affix  
22 revenue tax stamps to original packages of cigarettes by  
23 imprinting meter stamps thereon unless such distributor has  
24 first obtained permission from the Department to employ this  
25 method of affixation. The Department shall regulate the use of  
26 tax meters and may, to assure the proper collection of the

1 taxes imposed by this Act, revoke or suspend the privilege,  
2 theretofore granted by the Department to any distributor, to  
3 imprint tax meter stamps upon original packages of cigarettes.

4 The tax hereby imposed and not paid pursuant to this  
5 Section shall be paid to the Department directly by any person  
6 using such cigarettes within this State, pursuant to Section 12  
7 hereof.

8 A distributor shall not affix, or cause to be affixed, any  
9 stamp or imprint to a package of cigarettes, as provided for in  
10 this Section, if the tobacco product manufacturer, as defined  
11 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
12 that made or sold the cigarettes has failed to become a  
13 participating manufacturer, as defined in subdivision (a)(1)  
14 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
15 or has failed to create a qualified escrow fund for any  
16 cigarettes manufactured by the tobacco product manufacturer  
17 and sold in this State or otherwise failed to bring itself into  
18 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
19 Product Manufacturers' Escrow Act.

20 (Source: P.A. 96-782, eff. 1-1-10.)

21 (35 ILCS 135/3-10)

22 Sec. 3-10. Cigarette enforcement.

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

24 (1) to sell or distribute in this State; to acquire,  
25 hold, own, possess, or transport, for sale or distribution

1 in this State; or to import, or cause to be imported into  
2 this State for sale or distribution in this State:

3 (A) any cigarettes the package of which:

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

11 (ii) does not comply with:

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

21 (bb) all federal trademark and copyright  
22 laws;

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

26 (C) any cigarettes that such person otherwise

1 knows or has reason to know the manufacturer did not  
2 intend to be sold, distributed, or used in the United  
3 States; or

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

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

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

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

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

24 (b) Documentation. On the first business day of each month,  
25 each person licensed to affix the State tax stamp to cigarettes  
26 shall file with the Department, for all cigarettes imported



1 into the United States to which the person has affixed the tax  
2 stamp in the preceding month:

3 (1) a copy of:

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

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

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

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

1 with:

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

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

13 (c) Administrative sanctions.

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

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

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

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

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

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

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

4 (f) General provisions.

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

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

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

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

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

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

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

7 (h) Applicability.

8 (1) This Section does not apply to:

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

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

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

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

22 (35 ILCS 135/4b new)

23 Sec. 4b. Secondary distributor's license. No person may  
24 engage in business as a secondary distributor of cigarettes in  
25 this State without first having obtained a license therefor

1 from the Department. A secondary distributor maintaining a  
2 place of business within this State, if required to procure a  
3 license as a secondary distributor under the Cigarette Tax Act,  
4 need not obtain an additional license or permit under this Act,  
5 but shall be deemed to be sufficiently licensed or registered  
6 by virtue of his being licensed or registered under the  
7 Cigarette Tax Act.

8 Every secondary distributor maintaining a place of  
9 business in this State, if not required to procure a license  
10 under the Cigarette Tax Act, shall make application for a  
11 license on a form as furnished and prescribed by the  
12 Department. Such applicant shall furnish the following  
13 information to the Department on a form signed and verified by  
14 the applicant under penalty of perjury:

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

16 (2) the address of the location at which the applicant  
17 proposes to engage in business as a secondary distributor  
18 of cigarettes in this State; and

19 (3) such other additional information as the  
20 Department may reasonably require.

21 The annual license fee payable to the Department for each  
22 secondary distributor's license shall be \$250. The applicant  
23 for license shall pay such fee to the Department at the time of  
24 submitting the application for license to the Department.

25 A separate application for license shall be made and a  
26 separate annual license fee paid, for each place of business at

1 or from which the applicant proposes to act as a secondary  
2 distributor under this Act and for which the applicant is not  
3 required to procure a license as a secondary distributor under  
4 the Cigarette Tax Act.

5 The following are ineligible to receive a secondary  
6 distributor's license under this Act:

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

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

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

19 (4) a person who manufactures cigarettes, whether in  
20 this State or out of this State;

21 (5) a person, or any person who owns more than 15  
22 percent of the ownership interests in a person or a related  
23 party who:

24 (A) owes, at the time of application, any  
25 delinquent cigarette taxes that have been determined  
26 by law to be due and unpaid, unless the license

1       applicant has entered into an agreement approved by the  
2       Department to pay the amount due;

3       (B) had a license under this Act or the Cigarette  
4       Tax Act revoked within the past 2 years by the  
5       Department for misconduct relating to stolen or  
6       contraband cigarettes or has been convicted of a State  
7       or federal crime, punishable by imprisonment of one  
8       year or more, relating to stolen or contraband  
9       cigarettes;

10       (C) has been found by the Department, after notice  
11       and a hearing, to have imported or caused to be  
12       imported into the United States for sale or  
13       distribution any cigarette in violation of 19 U.S.C.  
14       1681a;

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

22       (E) has been found by the Department, after notice  
23       and a hearing, to have made a material false statement  
24       in the application or has failed to produce records  
25       required to be maintained by this Act.

26       Upon approval of such application and payment of the



1 required annual license fee, the Department shall issue a  
2 license to the applicant. Such license shall permit the  
3 applicant to engage in business as a secondary distributor at  
4 or from the place shown in his application. All licenses issued  
5 by the Department under this Act shall be valid for not to  
6 exceed one year after issuance unless sooner revoked, canceled  
7 or suspended as in this Act provided. No license issued under  
8 this Act is transferable or assignable. Such license shall be  
9 conspicuously displayed at the place of business for which it  
10 is issued.

11 No secondary distributor licensee acquires any vested  
12 interest or compensable property right in a license issued  
13 under this Act.

14 A licensed secondary distributor shall notify the  
15 Department of any change in the information contained on the  
16 application form, including any change in ownership, and shall  
17 do so within 30 days after any such change.

18 Any person aggrieved by any decision of the Department  
19 under this Section may, within 20 days after notice of the  
20 decision, protest and request a hearing. Upon receiving a  
21 request for a hearing, the Department shall give notice to the  
22 person requesting the hearing of the time and place fixed for  
23 the hearing and shall hold a hearing in conformity with the  
24 provisions of this Act and then issue its final administrative  
25 decision in the matter to that person. In the absence of a  
26 protest and request for a hearing within 20 days, the

1 Department's decision shall become final without any further  
2 determination being made or notice given.

3 (35 ILCS 135/4d)

4 Sec. 4d. Sales of cigarettes to and by retailers. In-state  
5 makers, manufacturers, or fabricators licensed as distributors  
6 under Section 4 of this Act and out-of-state makers,  
7 manufacturers, or fabricators holding permits under Section 7  
8 of this Act may not sell original packages of cigarettes to  
9 retailers. A retailer may sell only original packages of  
10 cigarettes obtained from licensed secondary distributors or  
11 licensed distributors other than in-state makers,  
12 manufacturers, or fabricators licensed as distributors under  
13 Section 4 of this Act and out-of-state makers, manufacturers,  
14 or fabricators holding permits under Section 7 of this Act.

15 (Source: P.A. 96-782, eff. 1-1-10.)

16 (35 ILCS 135/4e new)

17 Sec. 4e. Sales of cigarettes to and by secondary  
18 distributors. In-state makers, manufacturers, and fabricators  
19 licensed as distributors under Section 4 of this Act and  
20 out-of-state makers, manufacturers, and fabricators holding  
21 permits under Section 7 of this Act may not sell original  
22 packages of cigarettes to secondary distributors. A secondary  
23 distributor may sell only original packages of cigarettes  
24 obtained from licensed distributors other than in-state

1 makers, manufacturers, or fabricators licensed as distributors  
2 under Section 4 of this Act and out-of-state makers,  
3 manufacturers, or fabricators holding permits under Section 7  
4 of this Act. Secondary distributors may sell cigarettes to  
5 Illinois retailers for resale, and are also authorized to make  
6 retail sales of cigarettes at the location on the secondary  
7 distributor's license as long as the secondary distributor  
8 sells 75% or more of the cigarettes sold at such location to  
9 retailers for resale.

10 All sales by secondary distributors to Illinois retailers  
11 must be made at the location on the secondary distributor's  
12 license. Retailers must take possession of all cigarettes sold  
13 by the secondary distributor at the secondary distributor's  
14 licensed address. Secondary distributors may not make  
15 deliveries of cigarettes to Illinois retailers.

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

18 (35 ILCS 135/5) (from Ch. 120, par. 453.35)

19 Sec. 5. If a distributor licensee shall be convicted of the  
20 violation of this Act, or if his or her license shall be  
21 revoked and no review is had of the order of revocation, or if  
22 on review thereof the decision is adverse to the distributor  
23 licensee, or if a distributor licensee fails to pay an  
24 assessment as to which no judicial review is sought and which  
25 has become final, or pursuant to which, upon review thereof,

1 the circuit court has entered a judgment that is in favor of  
2 the Department and that has become final, the bond filed  
3 pursuant to this Act shall thereupon be forfeited, and the  
4 Department may institute a suit upon such bond in its own name  
5 for the entire amount of such bond and costs. Such suit upon  
6 the bond shall be in addition to any other remedy provided for  
7 herein.

8 (Source: P.A. 79-1366.)

9 (35 ILCS 135/6) (from Ch. 120, par. 453.36)

10 Sec. 6. Revocation, cancellation, or suspension of  
11 license. The Department may, after notice and hearing as  
12 provided for by this Act, revoke, cancel or suspend the license  
13 of any distributor or secondary distributor for the violation  
14 of any provision of this Act, or for non-compliance with any  
15 provision herein contained, or for any non-compliance with any  
16 lawful rule or regulation promulgated by the Department under  
17 Section 21 of this Act, or because the licensee is determined  
18 to be ineligible for a distributor's license for any one or  
19 more of the reasons provided for in Section 4 of this Act, or  
20 because the licensee is determined to be ineligible for a  
21 secondary distributor's license for any one or more of the  
22 reasons provided for in Section 4b or Section 7a of this Act.  
23 However, no such license shall be revoked, canceled or  
24 suspended, except after a hearing by the Department with notice  
25 to the distributor or secondary distributor, as aforesaid, and

1 affording such distributor or secondary distributor a  
2 reasonable opportunity to appear and defend, and any  
3 distributor or secondary distributor aggrieved by any decision  
4 of the Department with respect thereto may have the  
5 determination of the Department judicially reviewed, as herein  
6 provided.

7 The Department may revoke, cancel, or suspend the license  
8 of any distributor for a violation of the Tobacco Product  
9 Manufacturers' Escrow Enforcement Act as provided in Section 30  
10 ~~20~~ of that Act. The Department may revoke, cancel, or suspend  
11 the license of any secondary distributor for a violation of  
12 subsection (e) of Section 15 of the Tobacco Product  
13 Manufacturers' Escrow Enforcement Act.

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

1 become final without any further determination being made or  
2 notice given.

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

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

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

18 (35 ILCS 135/7a new)

19 Sec. 7a. Discretionary secondary distributor's license.  
20 The Department may, in its discretion, upon application, issue  
21 a secondary distributor's license to persons who are not  
22 required to be licensed as secondary distributors of cigarettes  
23 in this State, but who elect to qualify under this Act as  
24 secondary distributors of cigarettes. Such secondary  
25 distributor shall be issued, without charge, a license to make

1 sales for resale to Illinois retailers, subject to such  
2 reasonable requirements as the Department shall prescribe.  
3 Each applicant for a license under this Section shall furnish  
4 the following information to the Department on a form signed  
5 and verified by the applicant under penalty of perjury:

6 (a) the name and address of the applicant;

7 (b) the address of the location at which the applicant  
8 proposes to engage in business as a secondary distributor of  
9 cigarettes; and

10 (c) such other additional information as the Department may  
11 reasonably require.

12 A separate application for license shall be made for each  
13 place of business at or from which the applicant proposes to  
14 act as a secondary distributor under this Act and for which the  
15 applicant is not required to procure a license as a secondary  
16 distributor under the Cigarette Tax Act or Cigarette Use Tax  
17 Act.

18 The following are ineligible to receive a secondary  
19 distributor's license under this Act:

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

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

1           (3) a corporation, if any officer, manager or director  
2           thereof, or any stockholder or stockholders owning in the  
3           aggregate more than 5% of the stock of such corporation,  
4           would not be eligible to receive a license hereunder for  
5           any reason;

6           (4) a person who manufactures cigarettes, whether in  
7           this State or out of this State;

8           (5) a person, or any person who owns more than 15  
9           percent of the ownership interests in a person or a related  
10          party who:

11           (A) owes, at the time of application, any  
12           delinquent cigarette taxes that have been determined  
13           by law to be due and unpaid, unless the license  
14           applicant has entered into an agreement approved by the  
15           Department to pay the amount due;

16           (B) had a license under this Act or the Cigarette  
17           Tax Act revoked within the past 2 years by the  
18           Department for misconduct relating to stolen or  
19           contraband cigarettes or has been convicted of a State  
20           or federal crime, punishable by imprisonment of one  
21           year or more, relating to stolen or contraband  
22           cigarettes;

23           (C) has been found by the Department, after notice  
24           and a hearing, to have imported or caused to be  
25           imported into the United States for sale or  
26           distribution any cigarette in violation of 19 U.S.C.



1           1681a;

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

9           (E) has been found by the Department, after notice  
10           and a hearing, to have made a material false statement  
11           in the application or has failed to produce records  
12           required to be maintained by this Act.

13           Upon approval of such application, the Department shall  
14           issue a license to the applicant. Such license shall permit the  
15           applicant to engage in business as a secondary distributor at  
16           or from the place shown in his application. All licenses issued  
17           by the Department under this Act shall be valid for not to  
18           exceed one year after issuance unless sooner revoked, canceled  
19           or suspended as in this Act provided. No license issued under  
20           this Act is transferable or assignable. Such license shall be  
21           conspicuously displayed at the place of business for which it  
22           is issued.

23           No secondary distributor licensee acquires any vested  
24           interest or compensable property right in a license issued  
25           under this Act.

26           A licensed secondary distributor shall notify the

1 Department of any change in the information contained on the  
2 application form, including any change in ownership, and shall  
3 do so within 30 days after any such change.

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

15 Such authority and license may be suspended, canceled or  
16 revoked whenever the licensee violates any provision of this  
17 Act or any lawful rule or regulation issued by the Department  
18 pursuant to this Act or is determined to be ineligible for a  
19 secondary distributor's permit under this Act as provided in  
20 this Section, or whenever the licensee shall notify the  
21 Department in writing of his desire to have the license  
22 canceled. The Department shall have the power, in its  
23 discretion, to issue a new license after such suspension,  
24 cancellation or revocation, except when the person who would  
25 receive the license is ineligible to receive a secondary  
26 distributor's license under this Act.

1 (35 ILCS 135/9) (from Ch. 120, par. 453.39)

2 Sec. 9. It shall be unlawful for any distributor or  
3 secondary distributor to advertise or hold out or state to the  
4 public or to any purchaser, consumer or user, directly or  
5 indirectly, that the tax or any part thereof imposed by this  
6 Act will be assumed or absorbed by the distributor or secondary  
7 distributor or that it will not be added to the selling price  
8 of the cigarettes sold, or if added that it or any part thereof  
9 will be refunded. Any person violating any of the provisions of  
10 this Section within this State shall be guilty of a Class B  
11 misdemeanor.

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

13 (35 ILCS 135/11a new)

14 Sec. 11a. Secondary distributors; reports. Every secondary  
15 distributor who is required to procure, or is authorized to  
16 procure, a license under this Act shall, on or before the 15th  
17 day of each calendar month, file a report with the Department,  
18 showing the quantity of cigarettes purchased during the  
19 preceding calendar month either within or outside this State,  
20 and the quantity of cigarettes sold to Illinois retailers or  
21 otherwise disposed of during the preceding calendar month. Such  
22 reports shall be filed electronically in such form prescribed  
23 by the Department and shall contain such other information as  
24 the Department may reasonably require. The secondary

1 distributor's report shall be accompanied by appropriate  
2 computer generated magnetic media supporting schedule data in  
3 the format required by the Department, unless, as provided by  
4 rule, the Department grants an exception upon petition of a  
5 secondary distributor.

6 A certification by the Director of the Department that a  
7 report has not been filed, or that information has not been  
8 supplied pursuant to the provisions of this Act, shall be prima  
9 facie evidence thereof.

10 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

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

13 (a) When cigarettes are acquired for use in this State by a  
14 person (including a distributor as well as any other person),  
15 who did not pay the tax herein imposed to a distributor, the  
16 person, within 30 days after acquiring the cigarettes, shall  
17 file with the Department a return declaring the possession of  
18 the cigarettes and shall transmit with the return to the  
19 Department the tax imposed by this Act.

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

25 (c) The return referred to in paragraph (a) shall contain

1 the name and address of the person possessing the cigarettes  
2 involved, the location of the cigarettes and the quantity,  
3 brand name, place, and date of the acquisition of the  
4 cigarettes.

5 (d) Nothing in this Section shall permit a secondary  
6 distributor to purchase unstamped original packages of  
7 cigarettes or to purchase original packages of cigarettes from  
8 a person other than a licensed distributor.

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

10 (35 ILCS 135/15a new)

11 Sec. 15a. Secondary distributors; records. Every secondary  
12 distributor of cigarettes who is required to procure, or is  
13 allowed to procure, a license under this Act, shall keep at his  
14 licensed address, complete and accurate records of cigarettes  
15 held, purchased, brought in from without the State, and sold,  
16 or otherwise disposed of, and shall preserve and keep within  
17 Illinois at his licensed address all invoices, bills of lading,  
18 sales records, copies of bills of sale, inventory at the close  
19 of each period for which a report is required of all cigarettes  
20 on hand, and other pertinent papers and documents relating to  
21 the purchase, sale or disposition of cigarettes. All books and  
22 records and other papers and documents that are required by  
23 this Act to be kept shall be kept in the English language, and  
24 shall, at all times during the usual business hours of the day,  
25 be subject to inspection by the Department or its duly

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

23 (35 ILCS 135/16) (from Ch. 120, par. 453.46)

24 Sec. 16. Every person who purchases cigarettes for shipment  
25 into Illinois from a point outside this State, and who is

1 required to file a return or report with the Department with  
2 respect to such cigarettes, shall procure invoices in duplicate  
3 covering each such shipment and shall furnish one copy of each  
4 such invoice to the Department at the time of filing the return  
5 or report required by this Act.

6 (Source: Laws 1967, p. 242.)

7 (35 ILCS 135/17) (from Ch. 120, par. 453.47)

8 Sec. 17. For the purpose of administering and enforcing the  
9 provisions of this Act, the Department, or any officer or  
10 employee of the Department designated, in writing, by the  
11 Director thereof, may hold investigations and hearings  
12 concerning any matters covered by this Act and may examine any  
13 books, papers, records, documents or memoranda of any  
14 distributor, secondary distributor, or user bearing upon the  
15 sales or purchases of cigarettes the use of which is taxed  
16 hereunder and may require the attendance of such person or any  
17 officer or employee of such person, or of any person having  
18 knowledge of the facts, and may take testimony and require  
19 proof for its information. In the conduct of any investigation  
20 or hearing, neither the Department nor any officer or employee  
21 thereof shall be bound by the technical rules of evidence and  
22 no informality in any proceeding, or in the manner of taking  
23 testimony, shall invalidate any order, decision, rule or  
24 regulation made or approved or confirmed by the Department. The  
25 Director of Revenue, or any officer or employee of the

1 Department authorized by the Director thereof, shall have power  
2 to administer oaths to such persons. The books, papers,  
3 records, documents and memoranda of the Department, or parts  
4 thereof, may be proved in any hearing, investigation, or legal  
5 proceeding by a reproduced copy thereof under the certificate  
6 of the Director of Revenue. Such reproduced copy shall, without  
7 further proof, be admitted into evidence before the Department  
8 or in any legal proceeding.

9 (Source: Laws 1965, p. 195.)

10 (35 ILCS 135/20) (from Ch. 120, par. 453.50)

11 Sec. 20. All information received by the Department from  
12 returns or reports filed under this Act, or from any  
13 investigation conducted under this Act, shall be confidential,  
14 except for official purposes, and any person who divulges any  
15 such information in any manner, except in accordance with a  
16 proper judicial order or as otherwise provided by law, shall be  
17 guilty of a Class A misdemeanor.

18 Nothing in this Act prevents the Director of Revenue from  
19 publishing or making available to the public the names and  
20 addresses of persons filing returns or reports under this Act,  
21 or reasonable statistics concerning the operation of the tax by  
22 grouping the contents of returns or reports so that the  
23 information in any individual return is not disclosed.

24 Nothing in this Act prevents the Director of Revenue from  
25 divulging to the United States Government or the government of



1 any other state, or any officer or agency thereof, for  
2 exclusively official purposes, information received by the  
3 Department in administering this Act, provided that such other  
4 governmental agency agrees to divulge requested tax  
5 information to the Department.

6 The furnishing upon request of the Auditor General, or his  
7 authorized agents, for official use, of returns or reports  
8 filed and information related thereto under this Act is deemed  
9 to be an official purpose within the meaning of this Section.

10 The furnishing of financial information to a home rule unit  
11 with a population in excess of 2,000,000 that has imposed a tax  
12 similar to that imposed by this Act under its home rule powers,  
13 upon request of the Chief Executive of the home rule unit, is  
14 an official purpose within the meaning of this Section,  
15 provided the home rule unit agrees in writing to the  
16 requirements of this Section. Information so provided is  
17 subject to all confidentiality provisions of this Section. The  
18 written agreement shall provide for reciprocity, limitations  
19 on access, disclosure, and procedures for requesting  
20 information.

21 The Director may make available to any State agency,  
22 including the Illinois Supreme Court, which licenses persons to  
23 engage in any occupation, information that a person licensed by  
24 such agency has failed to file returns or reports under this  
25 Act or pay the tax, penalty and interest shown therein, or has  
26 failed to pay any final assessment of tax, penalty or interest

1 due under this Act. An assessment is final when all proceedings  
2 in court for review of such assessment have terminated or the  
3 time for the taking thereof has expired without such  
4 proceedings being instituted.

5 The Director shall make available for public inspection in  
6 the Department's principal office and for publication, at cost,  
7 administrative decisions issued on or after January 1, 1995.  
8 These decisions are to be made available in a manner so that  
9 the following taxpayer or licensee information is not  
10 disclosed:

11 (1) The names, addresses, and identification numbers  
12 of the taxpayer or licensee, related entities, and  
13 employees.

14 (2) At the sole discretion of the Director, trade  
15 secrets or other confidential information identified as  
16 such by the taxpayer or licensee, no later than 30 days  
17 after receipt of an administrative decision, by such means  
18 as the Department shall provide by rule.

19 The Director shall determine the appropriate extent of the  
20 deletions allowed in paragraph (2). In the event the taxpayer  
21 or licensee does not submit deletions, the Director shall make  
22 only the deletions specified in paragraph (1).

23 The Director shall make available for public inspection and  
24 publication an administrative decision within 180 days after  
25 the issuance of the administrative decision. The term  
26 "administrative decision" has the same meaning as defined in

1 Section 3-101 of Article III of the Code of Civil Procedure.  
2 Costs collected under this Section shall be paid into the Tax  
3 Compliance and Administration Fund.

4 Nothing contained in this Act shall prevent the Director  
5 from divulging information to any person pursuant to a request  
6 or authorization made by the taxpayer or licensee or by an  
7 authorized representative of the taxpayer or licensee.

8 (Source: P.A. 94-1074, eff. 12-26-06.)

9 (35 ILCS 135/21) (from Ch. 120, par. 453.51)

10 Sec. 21. The Department may make, promulgate and enforce  
11 such reasonable rules and regulations relating to the  
12 administration and enforcement of this Act as may be deemed  
13 expedient.

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

21 Hearings provided for in this Act shall be held:

22 (1) In Cook County, if the taxpayer's or licensee's  
23 principal place of business is in that county;

24 (2) At the Department's office nearest the taxpayer's or  
25 licensee's principal place of business, if the taxpayer's or

1 licensee's principal place of business is in Illinois but  
2 outside Cook County;

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

5 The Circuit Court of the County wherein the hearing is held  
6 shall have power to review all final administrative decisions  
7 of the Department in administering this Act. The provisions of  
8 the Administrative Review Law, as amended, and the rules  
9 adopted pursuant thereto, shall apply to and govern all  
10 proceedings for the judicial review of final administrative  
11 decisions of the Department under this Act. The term  
12 "administrative decision" is defined as in Section 3-101 of the  
13 Code of Civil Procedure.

14 Service upon the Director of Revenue or Assistant Director  
15 of Revenue of the Department of Revenue of summons issued in  
16 any action to review a final administrative decision shall be  
17 service upon the Department. The Department shall certify the  
18 record of its proceedings if the plaintiff in the action for  
19 judicial review shall pay to it the sum of 75¢ per page of  
20 testimony taken before the Department and 25¢ per page of all  
21 other matters contained in such record, except that these  
22 charges may be waived where the Department is satisfied that  
23 the aggrieved party is a poor person who cannot afford to pay  
24 such charges. However, before the delivery of such record to  
25 the person applying for it payment of these charges must be  
26 made, and if the record is not paid for within 30 days after

1 notice that such record is available, the complaint may be  
2 dismissed by the court upon motion of the Department.

3 No stay order shall be entered by the Circuit Court unless  
4 the plaintiff in the action for judicial review files with the  
5 court a bond in an amount fixed and approved by the court, to  
6 indemnify the State against all loss and injury which may be  
7 sustained by it on account of the review proceedings and to  
8 secure all costs which may be occasioned by such proceedings.

9 Whenever any proceeding provided by this Act is commenced  
10 before the Department, either by the Department or by a person  
11 subject to this Act, and such person thereafter dies or becomes  
12 a person under legal disability before such proceeding is  
13 concluded, the legal representative of the deceased or a person  
14 under legal disability shall notify the Department of such  
15 death or legal disability. Such legal representative, as such,  
16 shall then be substituted by the Department for such person. If  
17 the legal representative fails to notify the Department of his  
18 or her appointment as such legal representative, the Department  
19 may, upon its own motion, substitute such legal representative  
20 in the proceeding pending before the Department for the person  
21 who died or became a person under legal disability.

22 (Source: P.A. 83-345.)

23 (35 ILCS 135/23) (from Ch. 120, par. 453.53)

24 Sec. 23. Any person who shall fail to safely preserve the  
25 records required by Section 15 and Section 15a of this Act for

1 the period of three (3) years, as required therein, in such  
2 manner as to insure permanency and accessibility for inspection  
3 by the Department, shall be guilty of a business offense and  
4 may be fined up to One Thousand Dollars (\$1000).

5 This Section shall not apply if the violation in a  
6 particular case also constitutes a criminal violation of the  
7 Cigarette Tax Act.

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

9 (35 ILCS 135/29) (from Ch. 120, par. 453.59)

10 Sec. 29. Every distributor, secondary distributor, or  
11 other person who shall knowingly and wilfully sell or offer for  
12 sale any original package, as defined in this Act, having  
13 affixed thereto any fraudulent, spurious, imitation or  
14 counterfeit stamp, or stamp which has been previously affixed,  
15 or affixes a stamp which has previously been affixed to an  
16 original package, or who shall knowingly and wilfully sell or  
17 offer for sale any original package, as defined in this Act,  
18 having imprinted thereon underneath the sealed transparent  
19 wrapper thereof any fraudulent, spurious, imitation or  
20 counterfeit tax imprint, shall be deemed guilty of a Class 2  
21 felony.

22 This Section shall not apply if the violation in a  
23 particular case also constitutes a criminal violation of the  
24 Cigarette Tax Act.

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

1 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

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

5 (a) Possession or sale of more than 9 but less than 101  
6 unstamped packages of cigarettes. With the exception of  
7 licensed distributors, licensed secondary distributors, or  
8 licensed transporters, as defined in Section 9c of the  
9 Cigarette Tax Act, any person who has in his or her possession  
10 or sells more than 9 but less than 101 original packages of  
11 contraband cigarettes is guilty of a Class A misdemeanor.

12 (b) Possession or sale of more than 100 but less than 251  
13 unstamped packages of cigarettes. With the exception of  
14 licensed distributors, licensed secondary distributors, or  
15 licensed transporters, as defined in Section 9c of the  
16 Cigarette Tax Act, any person who has in his or her possession  
17 or sells more than 100 but less than 251 original packages of  
18 contraband cigarettes is guilty of a Class A misdemeanor for  
19 the first offense and a Class 4 felony for each subsequent  
20 offense.

21 (c) Possession or sale of more than 250 but less than 1,001  
22 unstamped packages of cigarettes. With the exception of  
23 licensed distributors, licensed secondary distributors, or  
24 licensed transporters, as defined in Section 9c of the  
25 Cigarette Tax Act, any person who has in his or her possession

1 or sells more than 250 but less than 1,001 original packages of  
2 contraband cigarettes is guilty of a Class 4 felony.

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

10 (e) Any person licensed as a distributor, secondary  
11 distributor, or transporter, as defined in Section 9c of the  
12 Cigarette Tax Act, who has in his or her possession or sells  
13 100 or less original packages of contraband cigarettes is  
14 guilty of a Class A misdemeanor.

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

20 (g) Notwithstanding subsections (e) through (f), licensed  
21 distributors and transporters, as defined in Section 9c of the  
22 Cigarette Tax Act, may possess unstamped packages of  
23 cigarettes. Notwithstanding subsections (e) through (f),  
24 licensed distributors may possess cigarettes that bear a tax  
25 stamp of another state or taxing jurisdiction. Notwithstanding  
26 subsections (e) through (f), a licensed distributor or licensed



1 secondary distributor may possess contraband cigarettes  
2 returned to the distributor or licensed secondary distributor  
3 by a retailer if the distributor or licensed secondary  
4 distributor immediately conducts an inventory of the  
5 cigarettes being returned, the distributor or licensed  
6 secondary distributor and the retailer returning the  
7 contraband cigarettes sign the inventory, the distributor or  
8 licensed secondary distributor provides a copy of the signed  
9 inventory to the retailer, and the distributor or licensed  
10 secondary distributor retains the inventory in its books and  
11 records and promptly notifies the Department of Revenue.

12 (h) Notwithstanding subsections (a) through (d) of this  
13 Section, a retailer unknowingly possessing contraband  
14 cigarettes obtained from a licensed distributor or licensed  
15 secondary distributor or knowingly possessing contraband  
16 cigarettes obtained from a licensed distributor or licensed  
17 secondary distributor is not subject to penalties under this  
18 Section if the retailer, within 48 hours after discovering that  
19 the cigarettes are contraband cigarettes, excluding Saturdays,  
20 Sundays, and holidays: (i) notifies the Department and the  
21 licensed distributor or licensed secondary distributor from  
22 whom the cigarettes were obtained, orally and in writing, that  
23 he or she possesses contraband cigarettes obtained from a  
24 licensed distributor or licensed secondary distributor; (ii)  
25 places the contraband cigarettes in one or more containers and  
26 seals those containers; and (iii) places on the containers the

1 following or similar language: "Contraband Cigarettes. Not For  
2 Sale." All contraband cigarettes in the possession of a  
3 retailer remain subject to forfeiture under the provisions of  
4 this Act.

5 (Source: P.A. 96-782, eff. 1-1-10.)

6 (35 ILCS 135/31) (from Ch. 120, par. 453.61)

7 Sec. 31. Any person, or any officer, agent or employee of  
8 any person, required by this Act to make, file, render, sign or  
9 verify any report or return, who makes any false or fraudulent  
10 return or report or files any false or fraudulent return or  
11 report, shall be guilty of a misdemeanor and shall be guilty of  
12 a Class 4 felony.

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

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.