

AN ACT concerning revenue.

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

Section 3. The Retailers' Occupation Tax Act is amended by changing Section 2a and by adding Section 13.7 as follows:

(35 ILCS 120/2a) (from Ch. 120, par. 441a)

Sec. 2a. It is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration from the Department. Application for a certificate of registration shall be made to the Department upon forms furnished by it. Each such application shall be signed and verified and shall state: (1) the name and social security number of the applicant; (2) the address of his principal place of business; (3) the address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of selling tangible personal property at retail in this State; (4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under

this Act; (5) in the case of a corporation, the name, title, and social security number of each corporate officer; (6) in the case of a limited liability company, the name, social security number, and FEIN number of each manager and member; and (7) such other information as the Department may reasonably require. The application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of the taxes due under this Act. If the applicant will sell tangible personal property at retail through vending machines, his application to register shall indicate the number of vending machines to be so operated; and thereafter, he shall notify the Department by January 31 of the number of vending machines which such person was using in his business of selling tangible personal property at retail on the preceding December 31.

The Department may deny a certificate of registration to any applicant if the owner, any partner, any manager or member of a limited liability company, or a corporate officer of the applicant, is or has been the owner, a partner, a manager or member of a limited liability company, or a corporate officer, of another retailer that is in default for moneys due under this Act.

Every applicant for a certificate of registration hereunder shall, at the time of filing such application, furnish a bond from a surety company authorized to do business in the State of Illinois, or an irrevocable bank letter of

credit or a bond signed by 2 personal sureties who have filed, with the Department, sworn statements disclosing net assets equal to at least 3 times the amount of the bond to be required of such applicant, or a bond secured by an assignment of a bank account or certificate of deposit, stocks or bonds, conditioned upon the applicant paying to the State of Illinois all moneys becoming due under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution. The Department shall fix the amount of such security in each case, taking into consideration the amount of money expected to become due from the applicant under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution. The amount of security required by the Department shall be such as, in its opinion, will protect the State of Illinois against failure to pay the amount which may become due from the applicant under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in

business without registering separately under such other law, ordinance or resolution, but the amount of the security required by the Department shall not exceed three times the amount of the applicant's average monthly tax liability, or \$50,000.00, whichever amount is lower.

No certificate of registration under this Act shall be issued by the Department until the applicant provides the Department with satisfactory security as herein provided for.

Upon receipt of the application for certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, the Department shall issue to such applicant a certificate of registration which shall permit the person to whom it is issued to engage in the business of selling tangible personal property at retail in this State. The certificate of registration shall be conspicuously displayed at the place of business which the person so registered states in his application to be the principal place of business from which he engages in the business of selling tangible personal property at retail in this State.

No certificate of registration issued to a taxpayer who files returns required by this Act on a monthly basis shall be valid after the expiration of 5 years from the date of its issuance or last renewal. The expiration date of a sub-certificate of registration shall be that of the certificate of registration to which the sub-certificate

relates. A certificate of registration shall automatically be renewed, subject to revocation as provided by this Act, for an additional 5 years from the date of its expiration unless otherwise notified by the Department as provided by this paragraph. Where a taxpayer to whom a certificate of registration is issued under this Act is in default to the State of Illinois for delinquent returns or for moneys due under this Act or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 120 days before the expiration date of such certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full. A taxpayer to whom such a notice is issued shall be deemed an applicant for renewal. The Department shall promulgate regulations establishing procedures for taxpayers who file returns on a monthly basis but desire and qualify to change to a quarterly or yearly filing basis and will no longer be subject to renewal under this Section, and for taxpayers who file returns on a yearly or quarterly basis but who desire or are required to change to a monthly filing basis and will be

subject to renewal under this Section.

The Department may in its discretion approve renewal by an applicant who is in default if, at the time of application for renewal, the applicant files all of the delinquent returns or pays to the Department such percentage of the defaulted amount as may be determined by the Department and agrees in writing to waive all limitations upon the Department for collection of the remaining defaulted amount to the Department over a period not to exceed 5 years from the date of renewal of the certificate; however, no renewal application submitted by an applicant who is in default shall be approved if the immediately preceding renewal by the applicant was conditioned upon the installment payment agreement described in this Section. The payment agreement herein provided for shall be in addition to and not in lieu of the security required by this Section of a taxpayer who is no longer considered a prior continuous compliance taxpayer. The execution of the payment agreement as provided in this Act shall not toll the accrual of interest at the statutory rate.

The Department may suspend a certificate of registration if the Department finds that the person to whom the certificate of registration has been issued knowingly sold contraband cigarettes.

A certificate of registration issued under this Act more than 5 years before the effective date of this amendatory Act of 1989 shall expire and be subject to the renewal provisions

of this Section on the next anniversary of the date of issuance of such certificate which occurs more than 6 months after the effective date of this amendatory Act of 1989. A certificate of registration issued less than 5 years before the effective date of this amendatory Act of 1989 shall expire and be subject to the renewal provisions of this Section on the 5th anniversary of the issuance of the certificate.

If the person so registered states that he operates other places of business from which he engages in the business of selling tangible personal property at retail in this State, the Department shall furnish him with a sub-certificate of registration for each such place of business, and the applicant shall display the appropriate sub-certificate of registration at each such place of business. All sub-certificates of registration shall bear the same registration number as that appearing upon the certificate of registration to which such sub-certificates relate.

If the applicant will sell tangible personal property at retail through vending machines, the Department shall furnish him with a sub-certificate of registration for each such vending machine, and the applicant shall display the appropriate sub-certificate of registration on each such vending machine by attaching the sub-certificate of registration to a conspicuous part of such vending machine.

Where the same person engages in 2 or more businesses of selling tangible personal property at retail in this State,

which businesses are substantially different in character or engaged in under different trade names or engaged in under other substantially dissimilar circumstances (so that it is more practicable, from an accounting, auditing or bookkeeping standpoint, for such businesses to be separately registered), the Department may require or permit such person (subject to the same requirements concerning the furnishing of security as those that are provided for hereinbefore in this Section as to each application for a certificate of registration) to apply for and obtain a separate certificate of registration for each such business or for any of such businesses, under a single certificate of registration supplemented by related sub-certificates of registration.

Any person who is registered under the "Retailers' Occupation Tax Act" as of March 8, 1963, and who, during the 3-year period immediately prior to March 8, 1963, or during a continuous 3-year period part of which passed immediately before and the remainder of which passes immediately after March 8, 1963, has been so registered continuously and who is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the registrant under this Act will permit the registrant to engage in business without registering separately under such other law, ordinance or

resolution, shall be considered to be a Prior Continuous Compliance taxpayer. Also any taxpayer who has, as verified by the Department, faithfully and continuously complied with the condition of his bond or other security under the provisions of this Act for a period of 3 consecutive years shall be considered to be a Prior Continuous Compliance taxpayer.

Every Prior Continuous Compliance taxpayer shall be exempt from all requirements under this Act concerning the furnishing of security as a condition precedent to his being authorized to engage in the business of selling tangible personal property at retail in this State. This exemption shall continue for each such taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return which admits tax that is not paid to be due) to be delinquent or deficient in the paying of any tax under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the registrant under this Act will permit the registrant to engage in business without registering separately under such other law, ordinance or resolution, at which time that taxpayer shall become subject to all the financial responsibility requirements of this Act and, as a condition of being allowed to continue to engage in the business of selling tangible

personal property at retail, shall be required to post bond or other acceptable security with the Department covering liability which such taxpayer may thereafter incur. Any taxpayer who fails to pay an admitted or established liability under this Act may also be required to post bond or other acceptable security with this Department guaranteeing the payment of such admitted or established liability.

No certificate of registration shall be issued to any person who is in default to the State of Illinois for moneys due under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution.

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

With respect to security other than bonds (upon which the

Department may sue in the event of a forfeiture), if the taxpayer fails to pay, when due, any amount whose payment such security guarantees, the Department shall, after such liability is admitted by the taxpayer or established by the Department through the issuance of a final assessment that has become final under the law, convert the security which that taxpayer has furnished into money for the State, after first giving the taxpayer at least 10 days' written notice, by registered or certified mail, to pay the liability or forfeit such security to the Department. If the security consists of stocks or bonds or other securities which are listed on a public exchange, the Department shall sell such securities through such public exchange. If the security consists of an irrevocable bank letter of credit, the Department shall convert the security in the manner provided for in the Uniform Commercial Code. If the security consists of a bank certificate of deposit, the Department shall convert the security into money by demanding and collecting the amount of such bank certificate of deposit from the bank which issued such certificate. If the security consists of a type of stocks or other securities which are not listed on a public exchange, the Department shall sell such security to the highest and best bidder after giving at least 10 days' notice of the date, time and place of the intended sale by publication in the "State Official Newspaper". If the Department realizes more than the amount of such liability from the security, plus the expenses

incurred by the Department in converting the security into money, the Department shall pay such excess to the taxpayer who furnished such security, and the balance shall be paid into the State Treasury.

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

(1) such taxpayer becomes a Prior Continuous Compliance taxpayer; or

(2) such taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability, as determined by the Department, under this Act and under every other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration issued under this Act permits the registrant to engage in business without registering separately under such other law, ordinance or resolution. The Department shall make a final determination of the taxpayer's outstanding tax liability as expeditiously as possible after his final tax return has been filed; if the Department cannot make such final determination within 45 days after receiving the final tax return, within such period it shall so notify the taxpayer, stating its reasons

therefor.

(Source: P.A. 90-491, eff. 1-1-98; 91-357, eff. 7-29-99.)

(35 ILCS 120/13.7 new)

Sec. 13.7. Rulemaking. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

Section 5. The Cigarette Tax Act is amended by changing Sections 1, 3, 3-10, 4, 20, and 21 and by adding Sections 3-15, 4d, and 29.5 as follows:

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

Sec. 1. For the purposes of this Act:

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

"Cigarette", means any ~~when used in this Act, shall be construed to mean:~~ Any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other

ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Contraband cigarettes" means:

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

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

(c) cigarettes that bear a counterfeit tax stamp;

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

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

(f) cigarettes that have false manufacturing labels.

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

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee

for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act for a period of 5 consecutive years shall be considered to be a "Prior continuous compliance taxpayer". In calculating the consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

"Department" means the Department of Revenue.

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

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

"Distributor" means any and each of the following:

(1) Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no

authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business.

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

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

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

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

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

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

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

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

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

"Stamp" or "stamps" mean the indicia required to be affixed on a pack of cigarettes that evidence payment of the tax on cigarettes under Section 2 of this Act (35 ILCS 130/2), or the indicia used to indicate that the cigarettes are intended for a sale or distribution within this State that is exempt from

State tax under any applicable provision of law.

"Within this State" means within the exterior limits of the State of Illinois and includes all territory within these limits owned by or ceded to the United States of America.

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

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

(b) is legally recognized as a partner in business; or

(c) is directly or indirectly controlled by another.

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

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

Sec. 3. Affixing tax stamp; remitting tax to the Department. Payment of the taxes imposed by Section 2 of this Act shall (except as hereinafter provided) be evidenced by revenue tax stamps affixed to each original package of cigarettes. Each distributor of cigarettes, before delivering or causing to be delivered any original package of cigarettes in this State to a purchaser, shall firmly affix a proper stamp or stamps to each such package, or (in case of manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper) shall imprint the required language on the original package of cigarettes beneath such outside wrapper, as hereinafter provided. Any stamp required by this Act shall note whether the State tax under Section 2 of this Act (35 ILCS 130/2) was paid.

No stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331 and following, for the placement of labels, warnings, or any other information upon a package of cigarettes that is sold within the United States. Under the authority of Section 6, the Department shall revoke the license of any distributor that is determined to have violated this paragraph. A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with Section 290.185 of Title 27 of the Code of Federal Regulations. It is not a defense to a proceeding for violation of this paragraph that the label or notice has been removed, mutilated, obliterated, or altered in any manner.

Only distributors licensed under this Act or out-of-state manufacturers holding a permit under this Act may receive unstamped packs of cigarettes. Prior to shipment to another person, each licensed distributor or out-of-state manufacturer holding a permit shall apply a stamp to each pack of cigarettes imported, distributed, or sold whether or not such cigarettes are subject to State tax under Section 2 of this Act (35 ILCS 130/2) or any other provision of State law, provided that a distributor or out-of-state manufacturer may only apply a tax stamp to a pack of cigarettes purchased or obtained directly

from a licensed distributor or an out-of-state manufacturer holding a permit. Only a licensed distributor or an out-of-state manufacturer holding a permit may ship or otherwise cause to be delivered unstamped packs of cigarettes in, into, or from this State, provided that a licensed distributor or an out-of-state manufacturer holding a permit may transport unstamped packs of cigarettes to a facility, wherever located, owned by such distributor or manufacturer. Any person that ships or otherwise causes to be delivered unstamped packs of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the cosignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this Section shall not be construed as to impose any requirement or liability upon any common or contract carrier.

The Department, or any person authorized by the Department, shall sell such stamps only to persons holding valid licenses as distributors under this Act. On and after July 1, 2003, payment for such stamps must be made by means of electronic funds transfer. The Department may refuse to sell stamps to any person who does not comply with the provisions of this Act. Beginning on the effective date of this amendatory Act of the 92nd General Assembly and through June 30, 2002, persons holding valid licenses as distributors may purchase cigarette

tax stamps up to an amount equal to 115% of the distributor's average monthly cigarette tax stamp purchases over the 12 calendar months prior to the effective date of this amendatory Act of the 92nd General Assembly.

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

amount of such draft.

On and after December 1, 1985 and until July 1, 2003, the Department shall allow a distributor 30 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes, and which shall be payable within 30 days thereafter, and beginning on January 1, 2003 and thereafter, the draft shall be payable by means of electronic funds transfer: Provided that such distributor has filed with the Department, and has received the Department's approval of, a bond, which is in addition to the bond required under Section 4 of this Act, payable to the Department in an amount equal to 150% of such distributor's average monthly tax liability to the Department under this Act during the preceding calendar year or \$750,000, whichever is less, except that as to bonds filed on or after January 1, 1987, such additional bond shall be in an amount equal to 100% of such distributor's average monthly tax liability under this Act during the preceding calendar year or \$750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond in such form as the Department prescribes, or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that

distributor under this Act. The distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable to the Department for a penalty equal to 25% of the amount of such draft.

Every prior continuous compliance taxpayer shall be exempt from all requirements under this Section concerning the furnishing of such bond, as defined in this Section, as a condition precedent to his being authorized to engage in the business licensed under this Act. This exemption shall continue for each such taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return which admits tax to be due that is not paid) to be delinquent or deficient in the paying of any tax under this Act, at which time that taxpayer shall become subject to the bond requirements of this Section and, as a condition of being allowed to continue to engage in the business licensed under this Act, shall be required to furnish bond to the Department in such form as provided in this Section. Such taxpayer shall furnish such bond for a period of 2 years, after which, if the taxpayer has not been delinquent in the filing of any returns, or delinquent or deficient in the paying of any tax under this Act, the Department may reinstate such person as a prior continuance compliance taxpayer. Any taxpayer who fails to pay

an admitted or established liability under this Act may also be required to post bond or other acceptable security with the Department guaranteeing the payment of such admitted or established liability.

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

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

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

(2) Such taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability as determined by the Department under this Act. The Department shall make a final determination of the taxpayer's outstanding tax liability as expeditiously as possible after his final tax

return has been filed. If the Department cannot make such final determination within 45 days after receiving the final tax return, within such period it shall so notify the taxpayer, stating its reasons therefor.

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

Illinois cigarette manufacturers who place their cigarettes in original packages which are contained inside a sealed transparent wrapper, and similar out-of-State cigarette manufacturers who elect to qualify and are accepted by the Department as distributors under Section 4b of this Act, shall pay the taxes imposed by this Act by remitting the amount thereof to the Department by the 5th day of each month covering cigarettes shipped or otherwise delivered in Illinois to

purchasers during the preceding calendar month. Such manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper, before delivering such cigarettes or causing such cigarettes to be delivered in this State to purchasers, shall evidence their obligation to remit the taxes due with respect to such cigarettes by imprinting language to be prescribed by the Department on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, in such place thereon and in such manner as the Department may designate. Such imprinted language shall acknowledge the manufacturer's payment of or liability for the tax imposed by this Act with respect to the distribution of such cigarettes.

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

(Source: P.A. 92-322, eff. 1-1-02; 92-536, eff. 6-6-02; 92-737, eff. 7-25-02; 93-22, eff. 6-20-03.)

(35 ILCS 130/3-10)

Sec. 3-10. Cigarette enforcement.

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

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

(A) any cigarettes the package of which:

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

(ii) does not comply with:

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

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

(bb) all federal trademark and copyright laws;

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

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

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

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

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

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

1333; ~~or~~

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

(4) to knowingly possess, or possess for sale, contraband cigarettes.

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

(1) a copy of:

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

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

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

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

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

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

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

(c) Administrative sanctions.

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

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

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

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

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

outside of the ordinary channels of trade.

(f) General provisions.

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

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

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

sustained by reason of the violation.

(g) Definitions. As used in this Section:

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

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

(h) Applicability.

(1) This Section does not apply to:

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

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

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

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

(35 ILCS 130/3-15 new)

Sec. 3-15. Criminal penalties.

(1) Fraudulent offenses. Whoever intentionally fails to comply with any of the requirements of this Act or regulations prescribed hereunder shall, in addition to any other penalty provided in this Act, for each such offense, be guilty of a

Class 3 felony.

(2) Knowing offenses. Whoever, knowingly violates any of the requirements of this Act or regulations prescribed hereunder shall, in addition to any other penalty provided in this Act, for each such offense, be guilty of a Class 4 felony.

(3) Penalties for contraband. Notwithstanding any other provision of law, the possession for sale of contraband cigarettes by a manufacturer, distributor, or retailer shall be punishable as follows:

(A) A person who commits a first knowing violation shall be guilty of a Class 4 felony.

(B) A person who commits a subsequent knowing violation shall be guilty of a Class 3 felony and shall have his or her license, permit, or certificate of registration revoked by the Department. In no case shall the fine imposed under this paragraph exceed ten times the retail value of the cigarettes.

(4) For purposes of this Section, the term contraband cigarettes includes cigarettes that have false manufacturing labels or packs of cigarettes bearing counterfeit tax stamps. Any contraband cigarette seized by this State shall be destroyed. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes.

(5) The penalties provided in paragraph (3) shall not apply where a licensed distributor is in possession of contraband cigarettes as a result of such cigarettes being returned to the distributor by a retailer if such distributor promptly notified appropriate law enforcement authorities.

(6) Criminal forfeiture.

(A) Notwithstanding any other provision of law, the knowing possession for sale of contraband cigarettes by a manufacturer, distributor, or retailer shall, after notice and hearing, result in the forfeiture to this State of the product and related machinery and equipment used in the production of contraband cigarettes, or to falsely mark cigarettes to reflect the payment of excise taxes.

(B) The knowing sale or possession for sale of contraband cigarettes shall, after notice and hearing, result in the seizure of all related machinery and equipment.

(C) All cigarettes forfeited to this State under this Section shall be destroyed. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes.

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

Sec. 4. Distributor's license. No person may engage in

business as a distributor of cigarettes in this State within the meaning of the first 2 definitions of distributor in Section 1 of this Act without first having obtained a license therefor from the Department. Application for license shall be made to the Department in form as furnished and prescribed by the Department. Each applicant for a license under this Section shall furnish to the Department on the form signed and verified by the applicant under penalty of perjury the following information:

(a) The name and address of the applicant;

(b) The address of the location at which the applicant proposes to engage in business as a distributor of cigarettes in this State;

(c) Such other additional information as the Department may lawfully require by its rules and regulations.

The annual license fee payable to the Department for each distributor's license shall be \$250. The purpose of such annual license fee is to defray the cost, to the Department, of serializing cigarette tax stamps. Each applicant for license shall pay such fee to the Department at the time of submitting his application for license to the Department.

Every applicant who is required to procure a distributor's license shall file with his application a joint and several bond. Such bond shall be executed to the Department of Revenue, with good and sufficient surety or sureties residing or

licensed to do business within the State of Illinois, in the amount of \$2,500, conditioned upon the true and faithful compliance by the licensee with all of the provisions of this Act. Such bond, or a reissue thereof, or a substitute therefor, shall be kept in effect during the entire period covered by the license. A separate application for license shall be made, a separate annual license fee paid, and a separate bond filed, for each place of business at which a person who is required to procure a distributor's license under this Section proposes to engage in business as a distributor in Illinois under this Act.

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

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

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

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

(4) a person, or any person who owns more than 15

percent of the ownership interests in a person or a related party who:

(a) owes, at the time of application, \$500 or more in delinquent cigarette taxes that have been determined by law to be due and unpaid, unless the license applicant has entered into an agreement approved by the Department to pay the amount due;

(b) had a license under this Act revoked within the past two years by the Department for willful misconduct relating to stolen or contraband cigarettes or has been convicted of a State or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;

(c) is a distributor who manufactures cigarettes who is neither (i) a participating manufacturer as defined in subsection II(jj) of the "Master Settlement Agreement" as defined in Sections 10 of the Tobacco Products Manufacturers' Escrow Act and the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 (30 ILCS 168/10 and 30 ILCS 167/10); nor (ii) in full compliance with Tobacco Products Manufacturers' Escrow Act and the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

(d) has been found to have willfully imported

or caused to be imported into the United States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a;

(e) has been found to have willfully imported or caused to be imported into the United States for sale or distribution or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331, et seq.); or

(f) has willfully made a material false statement in the application or has willfully failed to produce records required to be maintained by this Act.

The Department, upon receipt of an application, license fee and bond in proper form, from a person who is eligible to receive a distributor's license under this Act, shall issue to such applicant a license in form as prescribed by the Department, which license shall permit the applicant to which it is issued to engage in business as a distributor at the place shown in his application. All licenses issued by the Department under this Act shall be valid for not to exceed one year after issuance unless sooner revoked, canceled or suspended as provided in this Act. No license issued under this Act is transferable or assignable. Such license shall be conspicuously displayed in the place of business conducted by

the licensee in Illinois under such license. No distributor licensee acquires any vested interest or compensable property right in a license issued under this Act.

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

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

(Source: P.A. 91-901, eff. 1-1-01; 92-322, eff. 1-1-02.)

(35 ILCS 130/4d new)

Sec. 4d. Transactions only with licensed distributors, out-of-state manufacturers holding a permit, and retailers holding a certificate of registration. A distributor or manufacturer may sell or distribute cigarettes to a person located or doing business within this State only if such person

is a licensed distributor or a retailer holding a certificate of registration. A retailer may only sell cigarettes obtained from a licensed distributor or an out-of-state manufacturer holding a permit.

(35 ILCS 130/20) (from Ch. 120, par. 453.20)

Sec. 20. Whenever any peace officer of the State or any duly authorized officer or employee of the Department shall have reason to believe that any violation of this Act has occurred and that the person so violating the Act has in his, her or its possession any original package of cigarettes, not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original package as required by this Act, or any vending device containing such original packages to which stamps have not been affixed, or on which an authorized substitute for stamps has not been imprinted underneath the sealed transparent wrapper of such original packages, as required by this Act, he may file or cause to be filed his complaint in writing, verified by affidavit, with any court within whose jurisdiction the premises to be searched are situated, stating the facts upon which such belief is founded, the premises to be searched, and the property to be seized, and procure a search warrant and execute the same. Upon the execution of such search warrant, the peace officer, or officer or employee of the Department, executing such search warrant shall make due return thereof to the court issuing the same,

together with an inventory of the property taken thereunder. The court shall thereupon issue process against the owner of such property if he is known; otherwise, such process shall be issued against the person in whose possession the property so taken is found, if such person is known. In case of inability to serve such process upon the owner or the person in possession of the property at the time of its seizure, as hereinbefore provided, notice of the proceedings before the court shall be given as required by the statutes of the State governing cases of Attachment. Upon the return of the process duly served or upon the posting or publishing of notice made, as hereinabove provided, the court or jury, if a jury shall be demanded, shall proceed to determine whether or not such property so seized was held or possessed in violation of this Act, or whether, if a vending device has been so seized, it contained at the time of its seizure original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act. In case of a finding that the original packages seized were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act, or that any vending device so seized contained at the time of its seizure original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act, judgment shall be entered confiscating

and forfeiting the property to the State and ordering its delivery to the Department, and in addition thereto, the court shall have power to tax and assess the costs of the proceedings.

When any original packages or any cigarette vending device shall have been declared forfeited to the State by any court, as hereinbefore provided, and when such confiscated and forfeited property shall have been delivered to the Department, as provided in this Act, the said Department shall destroy ~~sell~~ such property. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes. ~~for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer; provided, however, that if the value of such property to be sold at any one time shall be \$500 or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.~~

~~Upon making such a sale of original packages of cigarettes which were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that~~

~~the same are sold pursuant to the provisions of this Section.~~

(Source: Laws 1965, p. 3707.)

(35 ILCS 130/21) (from Ch. 120, par. 453.21)

Sec. 21. Destruction or use of forfeited property.

(a) When any original packages of cigarettes or any cigarette vending device shall have been declared forfeited to the State by the Department, as provided in Section 18a of this Act, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy, or maintain and use such property in an undercover capacity, ~~or sell such property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer. If the value of such property to be sold at any one time is \$500 or more, however, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.~~

(b) The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes in order to assist the Department in any investigation regarding such cigarettes. ~~If no complaint for review, as provided in Section 8 of this Act, has been filed within the time required~~

~~by the Administrative Review Law, and if no stay order has been entered thereunder, the Department shall proceed to sell the property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer. If the value of such property to be sold at any one time is \$500 or more, however, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.~~

~~(c) Upon making a sale of unstamped original packages of cigarettes as provided in this Section, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that the same are sold under this Section.~~

~~(d) Notwithstanding the foregoing, any cigarettes seized under this Act or under the Cigarette Use Tax Act may, at the discretion of the Director of Revenue, be distributed to any eleemosynary institution within the State of Illinois.~~

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

(35 ILCS 130/29.5 new)

Sec. 29.5. Rulemaking. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason,

is unauthorized.

(35 ILCS 130/9c rep.)

(35 ILCS 130/28 rep.)

Section 10. The Cigarette Tax Act is amended by repealing Sections 9c and 28.

Section 15. The Cigarette Use Tax Act is amended by changing Sections 1, 3-10, 4, 26, and 27 and by adding Sections 3-15 and 35.5 as follows:

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

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

"Use" means the exercise by any person of any right or power over cigarettes incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes and shall include the keeping or retention of cigarettes for use.

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

"Cigarette" means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any

other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Contraband cigarettes" means:

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

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

(c) cigarettes that bear a counterfeit tax stamp;

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

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

(f) cigarettes that have false manufacturing labels.

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

"Department" means the Department of Revenue.

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

or by any means whatsoever for a consideration, and includes and means all sales made by any person.

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

"Distributor" means any and each of the following:

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

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

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

"Distributor" does not include any person who transfers

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

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

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

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act of a period of 5 consecutive years shall be considered to be a "prior continuous compliance taxpayer". In calculating the

consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

"Stamp" or "stamps" mean the indicia required to be affixed on a pack of cigarettes that evidence payment of the tax on cigarettes under Section 2 of this Act (35 ILCS 130/2), or the indicia used to indicate that the cigarettes are intended for a sale or distribution within this State that is exempt from State tax under any applicable provision of law.

"Within this State" means within the exterior limits of the State of Illinois and includes all territory within these limits owned by or ceded to the United States of America.

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

- (a) is an officer or director of a business;
- (b) is legally recognized as a partner in business; or
- (c) is directly or indirectly controlled by another.

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

(35 ILCS 135/3-10)

Sec. 3-10. Cigarette enforcement.

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

- (1) to sell or distribute in this State; to acquire,

hold, own, possess, or transport, for sale or distribution in this State; or to import, or cause to be imported into this State for sale or distribution in this State:

(A) any cigarettes the package of which:

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

(ii) does not comply with:

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

(bb) all federal trademark and copyright laws;

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

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

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

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

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

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

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

(4) to knowingly possess, or possess for sale, contraband cigarettes.

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

(1) a copy of:

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

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

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

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

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

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

(c) Administrative sanctions.

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

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

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

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

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

(f) General provisions.

(1) This Section shall be enforced by the Department; provided that, at the request of the Director of Revenue or the Director's duly authorized agent, the State police and all local police authorities shall enforce the provisions of this Section. The Attorney General has concurrent power

with the State's Attorney of any county to enforce this Section.

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

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

(g) Definitions. As used in this Section:

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

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

(h) Applicability.

(1) This Section does not apply to:

(A) cigarettes allowed to be imported or brought

into the United States for personal use; and

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

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

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

(35 ILCS 135/3-15 new)

Sec. 3-15. Criminal penalties.

(1) Fraudulent offenses. Whoever intentionally fails to comply with any of the requirements of this Act or regulations prescribed hereunder shall, in addition to any other penalty provided in this Act, for each such offense, be guilty of a Class 3 felony.

(2) Knowing offenses. Whoever, knowingly violates any of the requirements of this Act or regulations prescribed hereunder shall, in addition to any other penalty provided in this Act, for each such offense, be guilty of a Class 4 felony.

(3) Penalties for contraband. Notwithstanding any other provision of law, the possession for sale of contraband

cigarettes by a manufacturer, distributor, or retailer shall be punishable as follows:

(A) A person who commits a first knowing violation shall be guilty of a Class 4 felony.

(B) A person who commits a subsequent knowing violation shall be guilty of a Class 3 felony and shall have his or her license, permit, or certificate of registration revoked by the Department. In no case shall the fine imposed under this paragraph exceed ten times the retail value of the cigarettes.

(4) For purposes of this Section, the term contraband cigarettes includes cigarettes that have false manufacturing labels or packs of cigarettes bearing counterfeit tax stamps. Any contraband cigarette seized by this State shall be destroyed. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes.

(5) The penalties provided in paragraph (3) shall not apply where a licensed distributor is in possession of contraband cigarettes as a result of such cigarettes being returned to the distributor by a retailer if such distributor promptly notified appropriate law enforcement authorities.

(6) Criminal forfeiture.

(A) Notwithstanding any other provision of law, the

knowing possession for sale of contraband cigarettes by a manufacturer, distributor, or retailer shall, after notice and hearing, result in the forfeiture to this State of the product and related machinery and equipment used in the production of contraband cigarettes, or to falsely mark cigarettes to reflect the payment of excise taxes.

(B) The knowing sale or possession for sale of contraband cigarettes shall, after notice and hearing, result in the seizure of all related machinery and equipment.

(C) All cigarettes forfeited to this State under this Section shall be destroyed. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes.

(35 ILCS 135/4) (from Ch. 120, par. 453.34)

Sec. 4. Distributor's license. A distributor maintaining a place of business in this State, if required to procure a license or allowed to obtain a permit as a distributor under the Cigarette Tax Act, need not obtain an additional license or permit under this Act, but shall be deemed to be sufficiently licensed or registered by virtue of his being licensed or registered under the Cigarette Tax Act.

Every distributor maintaining a place of business in this

State, if not required to procure a license or allowed to obtain a permit as a distributor under the Cigarette Tax Act, shall make a verified application to the Department (upon a form prescribed and furnished by the Department) for a license to act as a distributor under this Act. In completing such application, the applicant shall furnish such information as the Department may reasonably require.

The annual license fee payable to the Department for each distributor's license shall be \$250. The purpose of such annual license fee is to defray the cost, to the Department, of serializing cigarette tax stamps. The applicant for license shall pay such fee to the Department at the time of submitting the application for license to the Department.

Such applicant shall file, with his application, a joint and several bond. Such bond shall be executed to the Department of Revenue, with good and sufficient surety or sureties residing or licensed to do business within the State of Illinois, in the amount of \$2,500, conditioned upon the true and faithful compliance by the licensee with all of the provisions of this Act. Such bond, or a reissue thereof, or a substitute therefor, shall be kept in effect during the entire period covered by the license. A separate application for license shall be made, a separate annual license fee paid, and a separate bond filed, for each place of business at or from which the applicant proposes to act as a distributor under this Act and for which the applicant is not required to procure a

license or allowed to obtain a permit as a distributor under the Cigarette Tax Act.

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

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

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

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

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

(a) owes, at the time of application, \$500 or more in delinquent cigarette taxes that have been determined by law to be due and unpaid, unless the license applicant has entered into an agreement approved by the Department to pay the amount due;

(b) had a license under this Act revoked within the past 2 years by the Department for willful misconduct

relating to stolen or contraband cigarettes or has been convicted of a State or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;

(c) is a distributor who manufactures cigarettes who is neither (i) a participating manufacturer as defined in subsection II(jj) of the "Master Settlement Agreement" as defined in Sections 10 of the Tobacco Products Manufacturers' Escrow Act and the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 (30 ILCS 168/10 and 30 ILCS 167/10); nor (ii) in full compliance with Tobacco Products Manufacturers' Escrow Act and the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

(d) has been found to have willfully imported or caused to be imported into the United States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a;

(e) has been found to have willfully imported or caused to be imported into the United States for sale or distribution or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331, et seq.);
or

(f) has willfully made a material false statement in the application or has willfully failed to produce records required to be maintained by this Act.

Upon approval of such application and bond and payment of the required annual license fee, the Department shall issue a license to the applicant. Such license shall permit the applicant to engage in business as a distributor at or from the place shown in his application. All licenses issued by the Department under this Act shall be valid for not to exceed one year after issuance unless sooner revoked, canceled or suspended as in this Act provided. No license issued under this Act is transferable or assignable. Such license shall be conspicuously displayed at the place of business for which it is issued.

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

(Source: P.A. 91-901, eff. 1-1-01; 92-322, eff. 1-1-02.)

(35 ILCS 135/26) (from Ch. 120, par. 453.56)

Sec. 26. Whenever any peace officer of the State or any duly authorized officer or employee of the Department shall have reason to believe that any violation of this Act has occurred and that the person so violating the Act has in his, her or its possession any original package of cigarettes, not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages, as required by this Act, or any vending device containing such original packages to which stamps have not been affixed, or on which an authorized substitute for stamps has not been imprinted underneath the sealed transparent wrapper of such original packages, as required by this Act, he may file or cause to be filed his complaint in writing, verified by affidavit, with any circuit court within whose jurisdiction the premises to be searched are situated, stating the facts upon which such belief is founded, the premises to be searched, and the property to be seized, and procure a search warrant and execute the same. Upon the execution of such search warrant, the peace officer, or officer or employee of the Department, executing such search warrant shall make due return thereof to the court issuing the same, together with an inventory of the property taken thereunder. The court shall thereupon issue process against the owner of such property if he is known; otherwise, such process shall be issued against the person in whose possession the property so

taken is found, if such person is known. In case of inability to serve such process upon the owner or the person in possession of the property at the time of its seizure, as hereinbefore provided, notice of the proceedings before the court shall be given as required by the statutes of the State governing cases of Attachment. Upon the return of the process duly served or upon the posting or publishing of notice made, as hereinabove provided, the court or jury, if a jury shall be demanded, shall proceed to determine whether or not such property so seized was held or possessed in violation of this Act, or whether, if a vending device has been so seized, it contained at the time of its seizure original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act. In case of a finding that the original packages seized were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act, or that any vending device so seized contained at the time of its seizure original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act, judgment shall be entered confiscating and forfeiting the property to the State and ordering its delivery to the Department, and in addition thereto, the court shall have power to tax and assess the costs of the proceedings.

When any original packages or any cigarette vending device shall have been declared forfeited to the State by any court, as hereinbefore provided, and when such confiscated and forfeited property shall have been delivered to the Department, as provided in this Act, the said Department shall destroy, or maintain and use such property in an undercover capacity. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes., or ~~sell such property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer; provided, however, that if the value of such property to be sold at any one time shall be \$500 or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.~~

~~Upon making such a sale of original packages of cigarettes which were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that the same are sold pursuant to the provisions of this Section.~~

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

(35 ILCS 135/27) (from Ch. 120, par. 453.57)

Sec. 27. Destruction or use of forfeited property. When any original packages of cigarettes or any cigarette vending device shall have been declared forfeited to the State by the Department, as provided in Section 25 of this Act, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy, or maintain and use such property in an undercover capacity. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes., or ~~sell such property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer; provided, however, that if the value of such property to be sold at any one time shall be Five Hundred Dollars (\$500) or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.~~

~~If no complaint for review, as provided in Section 21 of this Act, has been filed within the time required by the "Administrative Review Law," and if no stay order has been entered thereunder, the Department shall proceed to sell said~~

~~property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer; provided, however, that if the value of such property to be sold at any one time shall be \$500 or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.~~

~~Upon making a sale of unstamped original packages of cigarettes as provided in this Section, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that the same are sold pursuant to the provisions of this Section.~~

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

(35 ILCS 135/35.5 new)

Sec. 35.5. Rulemaking. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

Section 20. The Prevention of Cigarette Sales to Minors Act is amended by changing Sections 5 and 10 and by adding Sections

2, 6, 7, 8, 9, 20, 25, 30, and 35 as follows:

(720 ILCS 678/2 new)

Sec. 2. Definitions. For the purpose of this Act:

"Clear and conspicuous statement" means the statement is of sufficient type size to be clearly readable by the recipient of the communication.

"Consumer" means an individual who acquires or seeks to acquire cigarettes for personal use.

"Delivery sale" means any sale of cigarettes to a consumer if:

(a) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(b) the cigarettes are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes.

"Delivery service" means any person (other than a person that makes a delivery sale) who delivers to the consumer the cigarettes sold in a delivery sale.

"Department" means the Department of Revenue.

"Government-issued identification" means a State driver's license, State identification card, passport, a military

identification or an official naturalization or immigration document, such as an alien registration recipient card (commonly known as a "green card") or an immigrant visa.

"Legal minimum age" means the minimum age at which an individual may legally purchase cigarettes within this State, as determined by either State or local government.

"Mails" or "mailing" mean the shipment of cigarettes through the United States Postal Service.

"Out-of-state sale" means a sale of cigarettes to a consumer located outside of this State where the consumer submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, facsimile transmission, or the Internet or other online service and where the cigarettes are delivered by use of the mails or other delivery service.

"Person" means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for-profit or not-for-profit activities.

"Shipping package" means a container in which packs or cartons of cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, air bills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

"Within this State" means within the exterior limits of the

State of Illinois and includes all territory within these limits owned by or ceded to the United States of America.

(720 ILCS 678/5)

Sec. 5. Unlawful shipment or transportation of cigarettes.

(a) It is unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes unless the person shipping the cigarettes:

(1) is licensed as a distributor under either the Cigarette Tax Act, or the Cigarette Use Tax Act; or delivers the cigarettes to a distributor licensed under either the Cigarette Tax Act or the Cigarette Use Tax Act; or

(2) ships them to an export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code, or an operator of a customs bonded warehouse pursuant to Section 1311 or 1555 of Title 19 of the United States Code.

For purposes of this subsection (a), a person is a licensed distributor if the person's name appears on a list of licensed distributors published by the Illinois Department of Revenue. The term cigarette has the same meaning as defined in Section 1 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax Act. Nothing in this Act prohibits a person licensed as a distributor under the Cigarette Tax Act or the Cigarette Use Tax Act from shipping or causing to be shipped any cigarettes to a registered retailer under the Retailers' Occupation Tax

Act and the Cigarette Tax Act provided the cigarette tax or cigarette use tax has been paid.

(b) A common or contract carrier may transport cigarettes to any individual person in this State only if the carrier reasonably believes such cigarettes have been received from a person described in paragraph (a)(1). Common or contract carriers may make deliveries of cigarettes to licensed distributors described in paragraph (a)(1) of this Section. Nothing in this subsection (b) shall be construed to prohibit a person other than a common or contract carrier from transporting not more than 1,000 cigarettes at any one time to any person in this State.

(c) A common or contract carrier may not complete the delivery of any cigarettes to persons other than those described in paragraph (a)(1) of this Section without first obtaining from the purchaser an official written identification from any state or federal agency that displays the person's date of birth or a birth certificate that includes a reliable confirmation that the purchaser is at least 18 years of age; that the cigarettes purchased are not intended for consumption by an individual who is younger than 18 years of age; and a written statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least 18 years of age. The statement shall also confirm: (1) that the purchaser understands that signing another person's name to the certification is illegal; (2) that the sale of

cigarettes to individuals under 18 years of age is illegal; and
(3) that the purchase of cigarettes by individuals under 18 years of age is illegal under the laws of Illinois.

(d) When a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to any person in this State, other than in the cigarette manufacturer's or tobacco products manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the word "cigarettes".

(e) When a peace officer of this State or any duly authorized officer or employee of the Illinois Department of Public Health or Department of Revenue discovers any cigarettes which have been or which are being shipped or transported in violation of this Section, he or she shall seize and take possession of the cigarettes, and the cigarettes shall be subject to a forfeiture action pursuant to the procedures provided under the Cigarette Tax Act or Cigarette Use Tax Act.

(Source: P.A. 93-960, eff. 8-20-04.)

(720 ILCS 678/6 new)

Sec. 6. Prevention of delivery sales to minors.

(a) No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum age.

(b) Each person accepting a purchase order for a delivery sale shall comply with the provisions of this Act and all other laws of this State generally applicable to sales of cigarettes

that occur entirely within this State, including, but not limited to, those laws imposing: (i) excise taxes; (ii) sales taxes; (iii) license and revenue-stamping requirements; and (iv) escrow payment obligations.

(720 ILCS 678/7 new)

Sec. 7. Age verification and shipping requirements to prevent delivery sales to minors.

(a) No person, other than a delivery service, shall mail, ship, or otherwise cause to be delivered a shipping package in connection with a delivery sale unless the person:

(1) prior to the first delivery sale to the prospective consumer, obtains from the prospective consumer a written certification which includes a statement signed by the prospective consumer that certifies:

(A) the prospective consumer's current address;
and

(B) that the prospective consumer is at least the legal minimum age;

(2) informs, in writing, such prospective consumer that:

(A) the signing of another person's name to the certification described in this Section is illegal;

(B) sales of cigarettes to individuals under the legal minimum age are illegal;

(C) the purchase of cigarettes by individuals

under the legal minimum age is illegal; and

(D) the name and identity of the prospective consumer may be reported to the state of the consumer's current address under the Act of October 19, 1949 (15 U.S.C. § 375, et seq.), commonly known as the Jenkins Act;

(3) makes a good faith effort to verify the date of birth of the prospective consumer provided pursuant to this Section by:

(A) comparing the date of birth against a commercially available database or

(B) obtaining a photocopy or other image of a valid, government-issued identification stating the date of birth or age of the prospective consumer;

(4) provides to the prospective consumer a notice that meets the requirements of subsection (b);

(5) receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by a check or other written instrument in such consumer's name; and

(6) ensures that the shipping package is delivered to the same address as is shown on the government-issued identification or contained in the commercially available database.

(b) The notice required under this Section shall include:

(1) a statement that cigarette sales to consumers below

the legal minimum age are illegal;

(2) a statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (a);

(3) a statement that cigarette sales are subject to tax under Section 2 of the Cigarette Tax Act (35 ILCS 130/2) and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(c) A statement meets the requirement of this Section if:

(1) the statement is clear and conspicuous;

(2) the statement is contained in a printed box set apart from the other contents of the communication;

(3) the statement is printed in bold, capital letters;

(4) the statement is printed with a degree of color contrast between the background and the printed statement that is no less than the color contrast between the background and the largest text used in the communication;
and

(5) for any printed material delivered by electronic means, the statement appears at both the top and the bottom of the electronic mail message or both the top and the bottom of the Internet website homepage.

(d) Each person, other than a delivery service, who mails, ships, or otherwise causes to be delivered a shipping package in connection with a delivery sale shall:

(1) include as part of the shipping documents a clear

and conspicuous statement stating: "Cigarettes: Illinois Law Prohibits Shipping to Individuals Under 18 and Requires the Payment of All Applicable Taxes";

(2) use a method of mailing, shipping, or delivery that requires a signature before the shipping package is released to the consumer; and

(3) ensure that the shipping package is not delivered to any post office box.

(720 ILCS 678/8 new)

Sec. 8. Registration and reporting requirements to prevent delivery sales to minors.

(a) Each person who makes a delivery sale of cigarettes to a consumer located within this State shall file with the Department for each individual sale:

(1) a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business; and

(2) not later than the tenth day of each calendar month, a memorandum or copy of the invoice for each and every such delivery sale made during the previous calendar month, which includes the following information:

(A) the name and address of the consumer to whom such delivery sale was made;

(B) the brand style or brand styles of the cigarettes that were sold in such delivery sale;

(C) the quantity of cigarettes that were sold in such delivery sale; and

(D) an indication of whether or not the cigarettes sold in the delivery sale bore a tax stamp evidencing payment of the tax under Section 2 of the Cigarette Tax Act (35 ILCS 130/2).

(b) Each person engaged in business within this State who makes an out-of-state sale shall, for each individual sale, submit to the appropriate tax official of the state in which the consumer is located the information required in subsection (a).

(c) Any person that satisfies the requirements of 15 U.S.C. Section 376 shall be deemed to satisfy the requirements of subsections (a) and (b).

(d) The Department is authorized to disclose to the Attorney General any information received under this title and requested by the Attorney General. The Department and the Attorney General shall share with each other the information received under this title and may share the information with other federal, State, or local agencies for purposes of enforcement of this title or the laws of the federal government or of other states.

(e) This Section shall not be construed to impose liability upon any delivery service, or officers or employees thereof, when acting within the scope of business of the delivery service.

(720 ILCS 678/9 new)

Sec. 9. Statements for delivery sales.

(a) Each person who makes a delivery sale shall collect and remit to the Department all excise taxes imposed by this State with respect to such delivery sale and maintain evidence of such payment unless the person is located outside the State and includes a statement on the outside of the shipping package stating: "Illinois law requires the payment of state taxes on this shipment of cigarettes. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

(b) A statement meets the requirements of subsection (a) if the statement is:

(1) clear and conspicuous;

(2) contained in a printed box set apart from the shipping label and other markings contained on the shipping package;

(3) printed in bold, capital letters;

(4) printed with a degree of color contrast between the background and the printed statement that is no less than the color contrast between the background and the largest text used on the shipping label; and

(5) located on the same side of the shipping package as the shipping label.

(720 ILCS 678/10)

Sec. 10. Violation.

(a) A person who violates subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A misdemeanor. A second or subsequent violation of subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a Class 4 felony.

(b) The Department of Revenue shall impose a civil penalty not to exceed \$5,000 on any person who violates subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The Department of Revenue shall impose a civil penalty not to exceed \$5,000 on any person engaged in the business of selling cigarettes who ships or causes to be shipped any such cigarettes to any person in this State in violation of subsection (d) of Section 5.

(c) All cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this Act shall be forfeited to the State. All cigarettes forfeited to this State under this Act shall be destroyed. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes.

(d) ~~(e)~~ Any person aggrieved by any decision of the Department of Revenue may, within 60 days after notice of that decision, protest in writing and request a hearing. The Department of Revenue shall give notice to the person of the

time and place for the hearing and shall hold a hearing before it issues a final administrative decision. Absent a written protest within 60 days, the Department's decision shall become final without any further determination made or notice given.

(Source: P.A. 93-960, eff. 8-20-04.)

(720 ILCS 678/20 new)

Sec. 20. Tip line.

(a) Not later than 120 days after the effective date of this amendatory Act of the 95th General Assembly, the Department shall establish, publicize, and maintain a toll-free telephone number to receive information related to the sale and delivery of contraband cigarettes.

(b) The Attorney General may pay a reward of up to \$5,000 to any person who furnishes information leading to the Department's collection of excise taxes imposed upon delivery sales which otherwise would not have been collected but for the information provided by the person.

(720 ILCS 678/25 new)

Sec. 25. Construction. The requirements imposed by this Act shall not apply where such application would be contrary to the Constitution and laws of the United States.

(720 ILCS 678/30 new)

Sec. 30. Severability. If any provision of this Act is for

any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining provisions of this Act, and to this end the provisions of this Act are expressly declared to be severable.

(720 ILCS 678/35 new)

Sec. 35. Rulemaking. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

Section 99. Effective date. This Act takes effect January 1, 2010.