

AN ACT concerning finance.

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

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

(30 ILCS 167/15)

Sec. 15. Certifications; directory; tax stamps.

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

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

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

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

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

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

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

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

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

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

(F) the amount the non-participating manufacturer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(30 ILCS 167/30)

Sec. 30. Penalties and other remedies.

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

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

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

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

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

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

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