



Sen. Karen McConnaughay

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1 AMENDMENT TO SENATE BILL 3141

2 AMENDMENT NO. _____. Amend Senate Bill 3141 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Section
5 11 as follows:

6 (35 ILCS 105/11) (from Ch. 120, par. 439.11)

7 Sec. 11. Every retailer required or authorized to collect
8 taxes hereunder and every person using in this State tangible
9 personal property purchased at retail from a retailer on or
10 after the effective date hereof shall keep such records,
11 receipts, invoices and other pertinent books, documents,
12 memoranda and papers as the Department shall require, in such
13 form as the Department shall require. The Department may adopt
14 rules that establish requirements, including record forms and
15 formats, for records required to be kept and maintained by
16 taxpayers. For purposes of this Section, "records" means all

1 data maintained by the taxpayer, including data on paper,
2 microfilm, microfiche or any type of machine-sensible data
3 compilation. For the purpose of administering and enforcing the
4 provisions hereof, the Department, or any officer or employee
5 of the Department designated, in writing, by the Director
6 thereof, may hold investigations and hearings concerning any
7 matters covered herein and may examine any books, papers,
8 records, documents or memoranda of any retailer or purchaser
9 bearing upon the sales or purchases of tangible personal
10 property, the privilege of using which is taxed hereunder, and
11 may require the attendance of such person or any officer or
12 employee of such person, or of any person having knowledge of
13 the facts, and may take testimony and require proof for its
14 information.

15 Any person who fails to keep books and records or fails to
16 produce books and records for examination as required by this
17 Section and the rules adopted by the Department, is liable to
18 pay to the Department, for deposit into the Tax Compliance and
19 Administration Fund, a penalty of \$1,000 for the first failure
20 to keep books and records or produce books and records for
21 examination and a penalty of \$3,000 for each subsequent failure
22 to keep books and records or produce books and records for
23 examination as required by this Section and the rules adopted
24 by the Department.

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

1 Section 10. The Service Use Tax Act is amended by changing
2 Section 11 as follows:

3 (35 ILCS 110/11) (from Ch. 120, par. 439.41)

4 Sec. 11. Every serviceman required or authorized to collect
5 taxes hereunder and every user who is subject to the tax
6 imposed by this Act shall keep such records, receipts, invoices
7 and other pertinent books, documents, memoranda and papers as
8 the Department shall require, in such form as the Department
9 shall require. The Department may adopt rules that establish
10 requirements, including record forms and formats, for records
11 required to be kept and maintained by taxpayers. For purposes
12 of this Section, "records" means all data maintained by the
13 taxpayer, including data on paper, microfilm, microfiche or any
14 type of machine-sensible data compilation. For the purpose of
15 administering and enforcing the provisions hereof, the
16 Department, or any officer or employee of the Department
17 designated, in writing, by the Director thereof, may hold
18 investigations and hearings concerning any matters covered
19 herein and not otherwise delegated to the Illinois Independent
20 Tax Tribunal and may examine any relevant books, papers,
21 records, documents or memoranda of any serviceman or any
22 taxable purchaser for use hereunder, and may require the
23 attendance of such person or any officer or employee of such
24 person, or of any person having knowledge of the facts, and may
25 take testimony and require proof for its information.

1 Any person who fails to keep books and records or fails to
2 produce books and records for examination as required by this
3 Section and the rules adopted by the Department, is liable to
4 pay to the Department, for deposit into the Tax Compliance and
5 Administration Fund, a penalty of \$1,000 for the first failure
6 to keep books and records or produce books and records for
7 examination and a penalty of \$3,000 for each subsequent failure
8 to keep books and records or produce books and records for
9 examination as required by this Section and the rules adopted
10 by the Department.

11 (Source: P.A. 97-1129, eff. 8-28-12.)

12 Section 15. The Service Occupation Tax Act is amended by
13 changing Section 11 as follows:

14 (35 ILCS 115/11) (from Ch. 120, par. 439.111)

15 Sec. 11. Every supplier required or authorized to collect
16 taxes hereunder and every serviceman making sales of service in
17 this State on or after the effective date hereof shall keep
18 such records, receipts, invoices and other pertinent books,
19 documents, memoranda and papers as the Department shall
20 require, in such form as the Department shall require. The
21 Department may adopt rules that establish requirements,
22 including record forms and formats, for records required to be
23 kept and maintained by taxpayers. For purposes of this Section,
24 "records" means all data maintained by the taxpayer, including

1 data on paper, microfilm, microfiche or any type of
2 machine-sensible data compilation. For the purpose of
3 administering and enforcing the provisions hereof, the
4 Department, or any officer or employee of the Department
5 designated, in writing, by the Director thereof, may hold
6 investigations and hearings not otherwise delegated to the
7 Illinois Independent Tax Tribunal concerning any matters
8 covered herein and may examine any books, papers, records,
9 documents or memoranda of any supplier or serviceman bearing
10 upon the sales of services or the sales of tangible personal
11 property to servicemen, and may require the attendance of such
12 person or any officer or employee of such person, or of any
13 person having knowledge of the facts, and may take testimony
14 and require proof for its information.

15 Any person who fails to keep books and records or fails to
16 produce books and records for examination as required by this
17 Section and the rules adopted by the Department, is liable to
18 pay to the Department, for deposit into the Tax Compliance and
19 Administration Fund, a penalty of \$1,000 for the first failure
20 to keep books and records or produce books and records for
21 examination and a penalty of \$3,000 for each subsequent failure
22 to keep books and records or produce books and records for
23 examination as required by this Section and the rules adopted
24 by the Department.

25 (Source: P.A. 97-1129, eff. 8-28-12.)

1 Section 20. The Retailers' Occupation Tax Act is amended by
2 changing Section 7 as follows:

3 (35 ILCS 120/7) (from Ch. 120, par. 446)

4 Sec. 7. Every person engaged in the business of selling
5 tangible personal property at retail in this State shall keep
6 records and books of all sales of tangible personal property,
7 together with invoices, bills of lading, sales records, copies
8 of bills of sale, inventories prepared as of December 31 of
9 each year or otherwise annually as has been the custom in the
10 specific trade and other pertinent papers and documents. Every
11 person who is engaged in the business of selling tangible
12 personal property at retail in this State and who, in
13 connection with such business, also engages in other activities
14 (including, but not limited to, engaging in a service
15 occupation) shall keep such additional records and books of all
16 such activities as will accurately reflect the character and
17 scope of such activities and the amount of receipts realized
18 therefrom. The Department may adopt rules that establish
19 requirements, including record forms and formats, for records
20 required to be kept and maintained by taxpayers. For purposes
21 of this Section, "records" means all data maintained by the
22 taxpayer, including data on paper, microfilm, microfiche or any
23 type of machine-sensible data compilation.

24 All books and records and other papers and documents which
25 are required by this Act to be kept shall be kept in the

1 English language and shall, at all times during business hours
2 of the day, be subject to inspection by the Department or its
3 duly authorized agents and employees.

4 To support deductions made on the tax return form, or
5 authorized under this Act, on account of receipts from isolated
6 or occasional sales of tangible personal property, on account
7 of receipts from sales of tangible personal property for
8 resale, on account of receipts from sales to governmental
9 bodies or other exempted types of purchasers, on account of
10 receipts from sales of tangible personal property in interstate
11 commerce, and on account of receipts from any other kind of
12 transaction that is not taxable under this Act, entries in any
13 books, records or other pertinent papers or documents of the
14 taxpayer in relation thereto shall be in detail sufficient to
15 show the name and address of the taxpayer's customer in each
16 such transaction, the character of every such transaction, the
17 date of every such transaction, the amount of receipts realized
18 from every such transaction and such other information as may
19 be necessary to establish the non-taxable character of such
20 transaction under this Act.

21 Except in the case of a sale to a purchaser who will always
22 resell and deliver the property to his customers outside
23 Illinois, anyone claiming that he has made a nontaxable sale
24 for resale in some form as tangible personal property shall
25 also keep a record of the purchaser's registration number or
26 resale number with the Department.

1 It shall be presumed that all sales of tangible personal
2 property are subject to tax under this Act until the contrary
3 is established, and the burden of proving that a transaction is
4 not taxable hereunder shall be upon the person who would be
5 required to remit the tax to the Department if such transaction
6 is taxable. In the course of any audit or investigation or
7 hearing by the Department with reference to a given taxpayer,
8 if the Department finds that the taxpayer lacks documentary
9 evidence needed to support the taxpayer's claim to exemption
10 from tax hereunder, the Department is authorized to notify the
11 taxpayer in writing to produce such evidence, and the taxpayer
12 shall have 60 days subject to the right in the Department to
13 extend this period either on request for good cause shown or on
14 its own motion from the date when such notice is sent to the
15 taxpayer by certified or registered mail (or delivered to the
16 taxpayer if the notice is served personally) in which to obtain
17 and produce such evidence for the Department's inspection,
18 failing which the matter shall be closed, and the transaction
19 shall be conclusively presumed to be taxable hereunder.

20 Books and records and other papers reflecting gross
21 receipts received during any period with respect to which the
22 Department is authorized to issue notices of tax liability as
23 provided by Sections 4 and 5 of this Act shall be preserved
24 until the expiration of such period unless the Department, in
25 writing, shall authorize their destruction or disposal prior to
26 such expiration.

1 Any person who fails to keep books and records or fails to
2 produce books and records for examination as required by this
3 Section and the rules adopted by the Department, is liable to
4 pay to the Department, for deposit into the Tax Compliance and
5 Administration Fund, a penalty of \$1,000 for the first failure
6 to keep books and records or produce books and records for
7 examination and a penalty of \$3,000 for each subsequent failure
8 to keep books and records or produce books and records for
9 examination as required by this Section and the rules adopted
10 by the Department.

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

12 Section 25. The Cigarette Tax Act is amended by changing
13 Sections 12, 13, 14, 15, 18b, and 18c and by adding Sections
14 13a, 15a, and 18d as follows:

15 (35 ILCS 130/12) (from Ch. 120, par. 453.12)

16 Sec. 12. Every distributor or secondary distributor who is
17 required to procure a license under this Act and who purchases
18 cigarettes for shipment into Illinois from a point outside this
19 State shall procure invoices in duplicate covering each such
20 shipment, shall make the invoices available for inspection upon
21 demand by a duly authorized employee of the Department, and
22 shall, if the Department so requires, furnish one copy of each
23 such invoice to the Department at the time of filing a return
24 or a report required by this Act.

1 (Source: P.A. 96-1027, eff. 7-12-10.)

2 (35 ILCS 130/13) (from Ch. 120, par. 453.13)

3 Sec. 13. Whenever any original package of cigarettes is
4 found in the place of business or in the possession of any
5 person who is not a licensed distributor under this Act without
6 proper stamps affixed thereto, or an authorized substitute
7 therefor imprinted thereon, underneath the sealed transparent
8 wrapper of such original package, as required by this Act, the
9 prima facie presumption shall arise that such original package
10 of cigarettes is kept therein or is held by such person in
11 violation of the provisions of this Act. If a presumption is
12 raised, the Department may, in addition to the penalties
13 imposed by Sections 18b and 18c of this Act and any other civil
14 or criminal penalties provided for in this Act, assess tax,
15 penalty, and interest on the original packages of cigarettes.

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

17 (35 ILCS 130/13a new)

18 Sec. 13a. Contraband cigarettes. Whenever a retailer
19 obtains original packages of cigarettes from an unlicensed
20 in-State or out-of-State distributor or person, a prima facie
21 presumption shall arise that such original packages of
22 cigarettes are contraband and are possessed by such retailer or
23 were possessed by such retailer in violation of the provisions
24 of this Act and subject to the penalties imposed by Sections

1 18b and 18c of this Act. Invoices or other documents kept in
2 the normal course of business in the possession of a retailer
3 reflecting purchases of original packages of cigarettes from an
4 unlicensed in-state or out-of-state distributor or person or
5 invoices or other documents kept in the normal course of
6 business obtained by the Department from an in-state or
7 out-of-state distributor or person, are sufficient to raise the
8 presumption that such original packages of cigarettes are
9 contraband and are possessed, or were possessed, by such
10 retailer in violation of the provisions of this Act and the
11 retailer is subject to the penalties imposed by Sections 18b
12 and 18c. If a presumption is raised, the Department may, in
13 addition to the penalties imposed by Sections 18b and 18c and
14 any other civil or criminal penalties provided for in this Act,
15 assess tax, penalty, and interest on the original packages of
16 cigarettes.

17 (35 ILCS 130/14) (from Ch. 120, par. 453.14)

18 Sec. 14. Any person required by this Act to keep records of
19 any kind whatsoever, who shall fail to keep the records so
20 required or who shall falsify such records, shall be guilty of
21 a Class 4 felony. If a person fails to produce the records for
22 inspection by the Department upon request, a prima facie
23 presumption shall arise that the person has failed to keep the
24 records so required. A person who is unable to rebut this
25 presumption is in violation of this Act and is subject to the

1 penalties provided in this Section.

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

3 (35 ILCS 130/15) (from Ch. 120, par. 453.15)

4 Sec. 15. Any person who shall fail to safely maintain and
5 preserve the records required by Sections ~~Section 11,~~ and
6 ~~Section 11a,~~ 11b, and 11c of this Act for the period of 3 ~~three~~
7 years, as required therein, in such manner as to insure
8 permanency and accessibility for inspection by the Department,
9 shall be guilty of a business offense and may be fined up to
10 \$5,000.

11 (Source: P.A. 96-1027, eff. 7-12-10.)

12 (35 ILCS 130/15a new)

13 Sec. 15a. Failure to keep and produce books and records.
14 Any person who fails to keep books and records or fails to
15 produce books and records for inspection, as required by
16 Sections 11, 11a, 11b, and 11c of this Act, is liable to pay to
17 the Department, for deposit in the Tax Compliance and
18 Administration Fund, a penalty of \$1,000 for the first failure
19 to keep books and records or failure to produce books and
20 records for inspection, as required by Sections 11, 11a, 11b,
21 and 11c, and \$3,000 for each subsequent failure to keep books
22 and records or failure to produce books and records for
23 inspection, as required by Sections 11, 11a, 11b, and 11c. The
24 Department may adopt rules to administer the penalties under

1 this Section.

2 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

3 Sec. 18b. Possession of more than 100 original packages of
4 contraband cigarettes; penalty. With the exception of licensed
5 distributors and transporters, as defined in Section 9c of this
6 Act, possessing unstamped original packages of cigarettes, and
7 licensed distributors possessing original packages of
8 cigarettes that bear a tax stamp of another state or taxing
9 jurisdiction, anyone possessing or having possessed contraband
10 cigarettes contained in original packages is liable to pay, to
11 the Department for deposit in the Tax Compliance and
12 Administration Fund, a penalty of \$25 for each such package of
13 cigarettes in excess of 100 packages, unless reasonable cause
14 can be established by the person upon whom the penalty is
15 imposed. This penalty is in addition to the taxes imposed by
16 this Act. Reasonable cause shall be determined in each
17 situation in accordance with rules adopted by the Department.
18 The provisions of the Uniform Penalty and Interest Act do not
19 apply to this Section.

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

21 (35 ILCS 130/18c)

22 Sec. 18c. Possession of not less than 10 and not more than
23 100 original packages of contraband cigarettes; penalty. With
24 the exception of licensed distributors and transporters, as

1 defined in Section 9c of this Act, possessing unstamped
2 original packages of cigarettes, and licensed distributors
3 possessing original packages of cigarettes that bear a tax
4 stamp of another state or taxing jurisdiction, anyone
5 possessing or having possessed not less than 10 and not more
6 than 100 packages of contraband cigarettes contained in
7 original packages is liable to pay to the Department, for
8 deposit into the Tax Compliance and Administration Fund, a
9 penalty of \$15 ~~\$10~~ for each such package of cigarettes, unless
10 reasonable cause can be established by the person upon whom the
11 penalty is imposed. Reasonable cause shall be determined in
12 each situation in accordance with rules adopted by the
13 Department. The provisions of the Uniform Penalty and Interest
14 Act do not apply to this Section.

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

16 (35 ILCS 130/18d new)

17 Sec. 18d. Cigarette package sizes; sale of individual or
18 loose cigarettes prohibited. Cigarettes may only be sold in
19 packages of 20 or 25 cigarettes. The sale of individual or
20 loose cigarettes is prohibited. Any person who violates this
21 Section of the Act is liable to pay to the Department, for
22 deposit in the Tax Compliance and Administration Fund, a
23 penalty of \$1,000 for the first violation and \$3,000 for any
24 subsequent violation. Any person who violates this Section
25 shall be guilty of a Class 4 felony. The Department may adopt

1 rules to administer the penalties under this Section.

2 Section 30. The Cigarette Use Tax Act is amended by
3 changing Sections 12, 22, 23, 25a, and 25b and by adding
4 Sections 8a, 23a, and 25c as follows:

5 (35 ILCS 135/8a new)

6 Sec. 8a. Contraband cigarettes. Whenever any person
7 obtains original packages of cigarettes from an unlicensed
8 in-State or out-of-State distributor or person, a prima facie
9 presumption shall arise that such original packages of
10 cigarettes are contraband and are possessed or were possessed
11 by such person in violation of the provisions of this Act and
12 subject to the penalties imposed by Sections 25a and 25b.
13 Invoices or other documents kept in the normal course of
14 business in the possession of a person reflecting purchases of
15 original packages of cigarettes from an unlicensed in-state or
16 out-of-state distributor or person or invoices or other
17 documents kept in the normal course of business obtained by the
18 Department from an in-state or out-of-state distributor or
19 person, are sufficient to raise the presumption that such
20 original packages of cigarettes are contraband and are
21 possessed, or were possessed, by such person in violation of
22 the provisions of this Act and the person is subject to the
23 penalties imposed by Sections 25a and 25b. If a presumption is
24 raised, the Department may, in addition to the penalties

1 imposed by Sections 25a and 25b and any other civil or criminal
2 penalties provided for in this Act, assess tax, penalty, and
3 interest on the original packages of cigarettes.

4 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

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

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

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

19 (c) The return referred to in paragraph (a) shall contain
20 the name and address of the person possessing the cigarettes
21 involved, the location of the cigarettes and the quantity,
22 brand name, place, and date of the acquisition of the
23 cigarettes.

24 (d) Nothing in this Section shall permit a secondary
25 distributor to purchase unstamped original packages of

1 cigarettes or to purchase original packages of cigarettes from
2 a person other than a licensed distributor.

3 (e) Any distributor who violates this Section is liable to
4 pay to the Department, for deposit in the Tax Compliance and
5 Administration Fund, a penalty of \$1,000 for the first
6 violation and \$3,000 for any subsequent violation. The
7 Department may adopt rules to administer the penalties under
8 this Section. The Department may, in addition to the penalties
9 imposed by this Section, and any other civil or criminal
10 penalties provided for in this Act, assess tax, penalty, and
11 interest on the original packages of cigarettes.

12 (Source: P.A. 96-1027, eff. 7-12-10.)

13 (35 ILCS 135/22) (from Ch. 120, par. 453.52)

14 Sec. 22.

15 Any person required by this Act to maintain or keep records
16 of any kind whatsoever, who shall fail to keep the records so
17 required or who shall falsify such records, shall be guilty of
18 a Class 4 felony ~~A misdemeanor~~. If a person fails to produce
19 the records for inspection by the Department upon request, a
20 prima facie presumption shall arise that the person has failed
21 to keep the records so required. A person who is unable to
22 rebut this presumption is in violation of this Act and is
23 subject to the penalties provided in this Section.

24 This Section shall not apply if the violation in a
25 particular case also constitutes a criminal violation of the

1 Cigarette Tax Act.

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

3 (35 ILCS 135/23) (from Ch. 120, par. 453.53)

4 Sec. 23. Any person who shall fail to safely preserve the
5 records required by Section 15 and Section 15a of this Act for
6 the period of three (3) years, as required therein, in such
7 manner as to insure permanency and accessibility for inspection
8 by the Department, shall be guilty of a business offense and
9 may be fined up to \$5,000 ~~One Thousand Dollars (\$1000)~~.

10 This Section shall not apply if the violation in a
11 particular case also constitutes a criminal violation of the
12 Cigarette Tax Act.

13 (Source: P.A. 96-1027, eff. 7-12-10.)

14 (35 ILCS 135/23a new)

15 Sec. 23a. Failure to keep and produce books and records.
16 Any person who fails to keep books and records or fails to
17 produce books and records for inspection, as required by
18 Sections 15 and 15a of this Act, is liable to pay to the
19 Department, for deposit in the Tax Compliance and
20 Administration Fund, a penalty of \$1,000 for the first failure
21 to keep books and records or failure to produce books and
22 records for inspection, as required by Sections 15 and 15a, and
23 \$3,000 for each subsequent failure to keep books and records or
24 failure to produce books and records for inspection, as

1 required by Sections 15 and 15a. The Department may adopt rules
2 to administer the penalties under this Section.

3 (35 ILCS 135/25a) (from Ch. 120, par. 453.55a)

4 Sec. 25a. Possession of more than 100 original packages of
5 contraband cigarettes; penalty. With the exception of licensed
6 distributors or transporters, as defined in Section 9c of the
7 Cigarette Tax Act, possessing unstamped original packages of
8 cigarettes, and licensed distributors possessing original
9 packages of cigarettes that bear a tax stamp of another state
10 or taxing jurisdiction, anyone possessing or having possessed
11 more than 100 packages of contraband cigarettes contained in
12 original packages is liable to pay, to the Department for
13 deposit into the Tax Compliance and Administration Fund, a
14 penalty of \$25 for each such package of cigarettes in excess of
15 100 packages, unless reasonable cause can be established by the
16 person upon whom the penalty is imposed. Reasonable cause shall
17 be determined in each situation in accordance with rules
18 adopted by the Department. The provisions of the Uniform
19 Penalty and Interest Act do not apply to this Section.

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

21 (35 ILCS 135/25b)

22 Sec. 25b. Possession of not less than 10 and not more than
23 100 original packages not tax stamped or improperly tax
24 stamped; penalty. With the exception of licensed distributors

1 and transporters, as defined in Section 9c of the Cigarette Tax
2 Act, possessing unstamped packages of cigarettes, and licensed
3 distributors possessing original packages of cigarettes that
4 bear a tax stamp of another state or taxing jurisdiction,
5 anyone possessing or having possessed not less than 10 and not
6 more than 100 packages of contraband cigarettes contained in
7 original packages is liable to pay to the Department, for
8 deposit into the Tax Compliance and Administration Fund, a
9 penalty of \$20 for each such package of cigarettes, unless
10 reasonable cause can be established by the person upon whom the
11 penalty is imposed. Reasonable cause shall be determined in
12 each situation in accordance with rules adopted by the
13 Department. Any person who purchases and possesses a total of 9
14 or fewer original packages of unstamped cigarettes per month is
15 exempt from the penalties of this Section. The provisions of
16 the Uniform Penalty and Interest Act do not apply to this
17 Section.

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

19 (35 ILCS 135/25c new)

20 Sec. 25c. Cigarette package sizes; sale of individual or
21 loose cigarettes prohibited. Cigarettes may only be sold in
22 packages of 20 or 25 cigarettes. The sale of individual or
23 loose cigarettes is prohibited. Any person who violates this
24 Section is liable to pay to the Department, for deposit in the
25 Tax Compliance and Administration Fund, a penalty of \$1,000 for

1 the first violation and \$3,000 for any subsequent violation.
2 Any person who violates this Section shall be guilty of a Class
3 4 felony. This Section shall not apply if the violation in a
4 particular case also constitutes a violation of the Cigarette
5 Tax Act.

6 Section 35. The Tobacco Products Tax Act of 1995 is amended
7 by changing Sections 10-25, 10-35, 10-37, 10-40, and 10-50 and
8 by adding Sections 10-35a and 10-38 as follows:

9 (35 ILCS 143/10-25)

10 Sec. 10-25. License actions.

11 (a) The Department may, after notice and a hearing, revoke,
12 cancel, or suspend the license of any distributor or retailer
13 who violates any of the provisions of this Act, fails to keep
14 books and records as required under this Act, fails to make
15 books and records available for inspection upon demand by a
16 duly authorized employee of the Department, or violates a rule
17 or regulation of the Department for the administration and
18 enforcement of this Act. The notice shall specify the alleged
19 violation or violations upon which the revocation,
20 cancellation, or suspension proceeding is based.

21 (b) The Department may revoke, cancel, or suspend the
22 license of any distributor for a violation of the Tobacco
23 Product Manufacturers' Escrow Enforcement Act as provided in
24 Section 20 of that Act.

1 (c) If the retailer has a training program that facilitates
2 compliance with minimum-age tobacco laws, the Department shall
3 suspend for 3 days the license of that retailer for a fourth or
4 subsequent violation of the Prevention of Tobacco Use by Minors
5 and Sale and Distribution of Tobacco Products Act, as provided
6 in subsection (a) of Section 2 of that Act. For the purposes of
7 this Section, any violation of subsection (a) of Section 2 of
8 the Prevention of Tobacco Use by Minors and Sale and
9 Distribution of Tobacco Products Act occurring at the
10 retailer's licensed location, during a 24-month period, shall
11 be counted as a violation against the retailer.

12 If the retailer does not have a training program that
13 facilitates compliance with minimum-age tobacco laws, the
14 Department shall suspend for 3 days the license of that
15 retailer for a second violation of the Prevention of Tobacco
16 Use by Minors and Sale and Distribution of Tobacco Products
17 Act, as provided in subsection (a-5) of Section 2 of that Act.

18 If the retailer does not have a training program that
19 facilitates compliance with minimum-age tobacco laws, the
20 Department shall suspend for 7 days the license of that
21 retailer for a third violation of the Prevention of Tobacco Use
22 by Minors and Sale and Distribution of Tobacco Products Act, as
23 provided in subsection (a-5) of Section 2 of that Act.

24 If the retailer does not have a training program that
25 facilitates compliance with minimum-age tobacco laws, the
26 Department shall suspend for 30 days the license of a retailer

1 for a fourth or subsequent violation of the Prevention of
2 Tobacco Use by Minors and Sale and Distribution of Tobacco
3 Products Act, as provided in subsection (a-5) of Section 2 of
4 that Act.

5 A training program that facilitates compliance with
6 minimum-age tobacco laws must include at least the following
7 elements: (i) it must explain that only individuals displaying
8 valid identification demonstrating that they are 18 years of
9 age or older shall be eligible to purchase cigarettes or
10 tobacco products and (ii) it must explain where a clerk can
11 check identification for a date of birth. The training may be
12 conducted electronically. Each retailer that has a training
13 program shall require each employee who completes the training
14 program to sign a form attesting that the employee has received
15 and completed tobacco training. The form shall be kept in the
16 employee's file and may be used to provide proof of training.

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

1 court may result in punishment for contempt.

2 (Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

3 (35 ILCS 143/10-35)

4 Sec. 10-35. Record keeping.

5 (a) Every distributor, as defined in Section 10-5, shall
6 keep complete and accurate records of tobacco products held,
7 purchased, manufactured, brought in or caused to be brought in
8 from without the State, and tobacco products sold, or otherwise
9 disposed of, and shall preserve and keep all invoices, bills of
10 lading, sales records, and copies of bills of sale, the
11 wholesale price for tobacco products sold or otherwise disposed
12 of, an inventory of tobacco products prepared as of December 31
13 of each year or as of the last day of the distributor's fiscal
14 year if he or she files federal income tax returns on the basis
15 of a fiscal year, and other pertinent papers and documents
16 relating to the manufacture, purchase, sale, or disposition of
17 tobacco products. Every sales invoice issued by a licensed
18 distributor to a retailer in this State shall contain the
19 distributor's Tobacco Products License number unless the
20 distributor has been granted a waiver by the Department in
21 response to a written request in cases where (i) the
22 distributor sells little cigars or other tobacco products only
23 to licensed retailers that are wholly-owned by the distributor
24 or owned by a wholly-owned subsidiary of the distributor; (ii)
25 the licensed retailer obtains little cigars or other tobacco

1 products only from the distributor requesting the waiver; and
2 (iii) the distributor affixes the tax stamps to the original
3 packages of little cigars or has or will pay the tax on the
4 other tobacco products sold to the licensed retailer. The
5 distributor shall file a written request with the Department,
6 and, if the Department determines that the distributor meets
7 the conditions for a waiver, the Department shall grant the
8 waiver.

9 (b) Every retailer, as defined in Section 10-5, whether or
10 not the retailer has obtained a retailer's license pursuant to
11 Section 4g, shall keep complete and accurate records of tobacco
12 products held, purchased, sold, or otherwise disposed of, and
13 shall preserve and keep all invoices, bills of lading, sales
14 records, and copies of bills of sale, returns and other
15 pertinent papers and documents relating to the purchase, sale,
16 or disposition of tobacco products. Such records need not be
17 maintained on the licensed premises, but must be maintained in
18 the State of Illinois; however, if access is available
19 electronically, the records may be maintained out of state.
20 However, all original invoices or copies thereof covering
21 purchases of tobacco products must be retained on the licensed
22 premises for a period of 90 days after such purchase, unless
23 the Department has granted a waiver in response to a written
24 request in cases where records are kept at a central business
25 location within the State of Illinois or in cases where records
26 that are available electronically are maintained out of state.

1 The Department shall adopt rules regarding the eligibility for
2 a waiver, revocation of a waiver, and requirements and
3 standards for maintenance and accessibility of records located
4 at a central location out-of-State pursuant to a waiver
5 provided under this Section.

6 (c) Books, records, papers, and documents that are required
7 by this Act to be kept shall, at all times during the usual
8 business hours of the day, be subject to inspection by the
9 Department or its duly authorized agents and employees. The
10 books, records, papers, and documents for any period with
11 respect to which the Department is authorized to issue a notice
12 of tax liability shall be preserved until the expiration of
13 that period.

14 (Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

15 (35 ILCS 143/10-35a new)

16 Sec. 10-35a. Failure to keep and produce books and records.
17 Any person who fails to keep books and records or fails to
18 produce books and records for inspection, as required by
19 Section 10-35, is liable to pay to the Department, for deposit
20 in the Tax Compliance and Administration Fund, a penalty of
21 \$1,000 for the first failure to keep books and records or
22 failure to produce books and records for inspection, as
23 required by Section 10-35, and \$3,000 for each subsequent
24 failure to keep books and records or failure to produce books
25 and records for inspection, as required by Section 10-35. The

1 Department may adopt rules to administer the penalties under
2 this Section.

3 (35 ILCS 143/10-37)

4 Sec. 10-37. Proof of payment of tax imposed by this Act.
5 Every licensed distributor of tobacco products in this State is
6 required to show proof of the tax having been paid as required
7 by this Act by displaying its Tobacco Products License number
8 on every sales invoice issued to a retailer in this State. No
9 retailer shall possess tobacco products without either a proper
10 invoice indicating that the tobacco products tax was paid by a
11 distributor for the tobacco products in the retailer's
12 possession or other proof that the tax was paid by the retailer
13 if it has purchased tobacco products on which tax has not been
14 paid as required by this Act. Failure to comply with the
15 provisions of this paragraph may be grounds for revocation of a
16 distributor's or retailer's license in accordance with Section
17 10-25 of this Act or Section 6 of the Cigarette Tax Act. In
18 addition, the Department may impose a civil penalty not to
19 exceed \$1,000 for the first violation and \$3,000 for each
20 subsequent violation, which shall be deposited into the Tax
21 Compliance and Administration Fund.

22 (Source: P.A. 98-1055, eff. 1-1-16.)

23 (35 ILCS 143/10-38 new)

24 Sec. 10-38. Presumption for out-of-state or unlicensed

1 distributors. Whenever any person obtains tobacco products
2 from an unlicensed in-State or out-of-State distributor or
3 person, a prima facie presumption shall arise that the tax
4 imposed by this Act on such tobacco products has not been paid
5 in violation of this Act. Invoices or other documents kept in
6 the normal course of business in the possession of a person
7 reflecting purchases of tobacco products from an unlicensed
8 in-state or out-of-state distributor or person or invoices or
9 other documents kept in the normal course of business obtained
10 by the Department from in-state or out-of-state distributors or
11 persons, are sufficient to raise the presumption that the tax
12 imposed by this Act has not been paid. If a presumption is
13 raised, the Department may assess tax penalty and interest on
14 the tobacco products. In addition, any person who violates this
15 Section is liable to pay to the Department, for deposit in the
16 Tax Compliance and Administration Fund, a penalty of \$1,000 for
17 the first violation and \$3,000 for any subsequent violation.
18 The Department may adopt rules to administer the penalties
19 under this Section.

20 (35 ILCS 143/10-40)

21 Sec. 10-40. Invoices. Every distributor or other person who
22 purchases tobacco products for resale for shipment into
23 Illinois from a point outside Illinois shall procure invoices
24 in duplicate covering each shipment and shall make the invoices
25 available for inspection upon demand by a duly authorized

1 employee of the Department, and shall, if the Department so
2 requires, furnish one copy of each invoice to the Department at
3 the time of filing the return required by this Act.

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

5 (35 ILCS 143/10-50)

6 Sec. 10-50. Violations and penalties. When the amount due
7 is under \$300, any distributor who fails to file a return,
8 willfully fails or refuses to make any payment to the
9 Department of the tax imposed by this Act, or files a
10 fraudulent return, or any officer or agent of a corporation
11 engaged in the business of distributing tobacco products to
12 retailers and consumers located in this State who signs a
13 fraudulent return filed on behalf of the corporation, or any
14 accountant or other agent who knowingly enters false
15 information on the return of any taxpayer under this Act is
16 guilty of a Class 4 felony.

17 Any person who violates any provision of Section 10-20,
18 10-21, or 10-22 of this Act, fails to keep books and records as
19 required under this Act, or willfully violates a rule or
20 regulation of the Department for the administration and
21 enforcement of this Act is guilty of a Class 4 felony. A person
22 commits a separate offense on each day that he or she engages
23 in business in violation of Section 10-20, 10-21, or 10-22 of
24 this Act. If a person fails to produce the books and records
25 for inspection by the Department upon request, a prima facie

1 presumption shall arise that the person has failed to keep
2 books and records as required under this Act. A person who is
3 unable to rebut this presumption is in violation of this Act
4 and is subject to the penalties provided in this Section.

5 When the amount due is under \$300, any person who accepts
6 money that is due to the Department under this Act from a
7 taxpayer for the purpose of acting as the taxpayer's agent to
8 make the payment to the Department, but who fails to remit the
9 payment to the Department when due, is guilty of a Class 4
10 felony.

11 Any person who violates any provision of Sections 10-20,
12 10-21 and 10-22 of this Act, fails to keep books and records as
13 required under this Act, or willfully violates a rule or
14 regulation of the Department for the administration and
15 enforcement of this Act is guilty of a business offense and may
16 be fined up to \$5,000. If a person fails to produce books and
17 records for inspection by the Department upon request, a prima
18 facie presumption shall arise that the person has failed to
19 keep books and records as required under this Act. A person who
20 is unable to rebut this presumption is in violation of this Act
21 and is subject to the penalties provided in this Section. A
22 person commits a separate offense on each day that he or she
23 engages in business in violation of Sections 10-20, 10-21 and
24 10-22 of this Act.

25 When the amount due is \$300 or more, any distributor who
26 files, or causes to be filed, a fraudulent return, or any

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

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

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

1 for a first offense and a Class 4 felony for each subsequent
2 offense.

3 When the amount due is \$300 or more, any retailer who fails
4 to file a return, willfully fails or refuses to make any
5 payment to the Department of the tax imposed by this Act, or
6 files a fraudulent return, or any officer or agent of a
7 corporation engaged in the retail business of selling tobacco
8 products to purchasers of tobacco products for use and
9 consumption located in this State who signs a fraudulent return
10 filed on behalf of the corporation, or any accountant or other
11 agent who knowingly enters false information on the return of
12 any taxpayer under this Act is guilty of a Class 4 felony.

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

21 Any taxpayer or agent of a taxpayer who with the intent to
22 defraud purports to make a payment due to the Department by
23 issuing or delivering a check or other order upon a real or
24 fictitious depository for the payment of money, knowing that it
25 will not be paid by the depository, is guilty of a deceptive
26 practice in violation of Section 17-1 of the Criminal Code of

1 2012.

2 A prosecution for a violation described in this Section may
3 be commenced within 3 years after the commission of the act
4 constituting the violation.

5 (Source: P.A. 100-201, eff. 8-18-17.)

6 (35 ILCS 143/10-36 rep.)

7 Section 40. The Tobacco Products Tax Act of 1995 is amended
8 by repealing Section 10-36.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.".