

1 AN ACT concerning tobacco.

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

4 Section 1. Short title. This Act may be cited as the
5 Tobacco Products Manufacturers' Escrow Enforcement Act of
6 2003.

7 Section 5. Findings; purpose. The General Assembly finds
8 that violations of the Tobacco Product Manufacturers' Escrow
9 Act threaten the integrity of the tobacco Master Settlement
10 Agreement, the fiscal soundness of the State, and the public
11 health. The General Assembly finds that enacting procedural
12 enhancements will help prevent violations and aid the
13 enforcement of the Tobacco Product Manufacturers' Escrow Act
14 and thereby safeguard the Master Settlement Agreement, the
15 fiscal soundness of the State, and the public health. The
16 provisions of this Act are not intended to and shall not be
17 interpreted to amend the Tobacco Product Manufacturers'
18 Escrow Act.

19 Section 10. Definitions. As used in this Act:

20 "Brand family" means all styles of cigarettes sold under
21 the same trade mark and differentiated from one another by
22 means of additional modifiers or descriptors, including, but
23 not limited to, menthol, lights, kings, and 100s and includes
24 any brand name (alone or in conjunction with any other word)
25 trademark, logo, symbol, motto, selling message, recognizable
26 pattern of colors, or any other indicia of product
27 identification identical or similar to, or identifiable with,
28 a previously known brand of cigarettes.

29 "Cigarette" has the same meaning in Section 10 of the
30 Escrow Act.

1 "Director" means the Director of Revenue.

2 "Distributor" has the same meaning prescribed in Section
3 1 of the Cigarette Tax Act, Section 1 of the Cigarette Use
4 Tax Act, and, in addition, means a distributor of
5 roll-your-own tobacco in accordance with Section 10-5 of the
6 Tobacco Products Tax Act of 1995, as appropriate.

7 "Escrow Act" means the Tobacco Product Manufacturers'
8 Escrow Act.

9 "Non-participating manufacturer" means any Tobacco
10 Product Manufacturer that is not a participating
11 manufacturer.

12 "Participating manufacturer" has the meaning given that
13 term in Section II(j) of the Master Settlement Agreement and
14 all amendments thereto.

15 "Qualified escrow fund" has the same meaning as that term
16 is defined in Section 10 of the Escrow Act.

17 "Tobacco product manufacturer" has the same meaning as
18 that term is defined in Section 10 of the Escrow Act.

19 "Units sold" has the same meaning as that term is defined
20 in Section 10 of the Escrow Act.

21 Section 15. Certifications; directory; tax stamps.

22 (a) Every tobacco product manufacturer whose cigarettes
23 are sold in this State whether directly or through a
24 distributor, retailer, or similar intermediary or
25 intermediaries shall execute and deliver on a form prescribed
26 by the Attorney General a certification to the Attorney
27 General, no later than the thirtieth day of April each year,
28 certifying under penalty of perjury that, as of the date of
29 the certification, the tobacco product manufacturer either:
30 (i) is a participating manufacturer; or (ii) is in full
31 compliance with the Escrow Act, including all quarterly
32 installment payments.

33 (1) A participating manufacturer shall include in

1 its certification a list of its brand families. The
2 participating manufacturer shall update the list 30 days
3 prior to any addition to or modification of its brand
4 families by executing and delivering a supplemental
5 certification to the Attorney General.

6 (2) A non-participating manufacturer shall include
7 in its certification a complete list of all of its brand
8 families: (i) separately listing brand families of
9 cigarettes and the number of units sold for each brand
10 family that were sold in the State during the preceding
11 calendar year; (ii) listing all of its brand families
12 that have been sold in the State at any time during the
13 current calendar year; (iii) indicating by an asterisk,
14 any brand family sold in the State during the preceding
15 calendar year that is no longer being sold in the State
16 as of the date of the certification; and (iv) identifying
17 by name and address any other manufacturer of the brand
18 families in the preceding calendar year. The
19 non-participating manufacturer shall update the list 30
20 days prior to any addition to or modification of its
21 brand families by executing and delivering a supplemental
22 certification to the Attorney General.

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

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

30 (B) that the non-participating manufacturer
31 has (i) established and continues to maintain a
32 qualified escrow fund as that term is defined in
33 Section 10 of the Escrow Act, and (ii) executed a
34 qualified escrow agreement that has been reviewed

1 and approved by the Attorney General and that
2 governs the qualified escrow fund;

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

7 (D) the name, address and telephone number of
8 the financial institution where the
9 non-participating manufacturer has established the
10 qualified escrow fund required pursuant to Section
11 15 of the Escrow Act and all regulations promulgated
12 thereto;

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

15 (F) the amount the non-participating
16 manufacturer placed in the fund for cigarettes sold
17 in the State during the preceding calendar year,
18 including the dates and amount of each deposit, and
19 such evidence or verification as may be deemed
20 necessary by the Attorney General to confirm the
21 foregoing; and

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

28 (4) A tobacco product manufacturer may not include
29 a brand family in its certification unless: (i) in the
30 case of a participating manufacturer, the participating
31 manufacturer affirms that the brand family is to be
32 deemed to be its cigarettes for purposes of calculating
33 its payments under the master settlement agreement for
34 the relevant year, in the volume and shares determined

1 pursuant to the master settlement agreement; and (ii) in
2 the case of a non-participating manufacturer, the
3 non-participating manufacturer affirms that the brand
4 family is to be deemed to be its cigarettes for purposes
5 of Section 15 of the Escrow Act.

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

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

18 (b) Not later than 6 months after the effective date of
19 this Act, the Attorney General shall develop and make
20 available for public inspection, through publishing on its
21 website, a directory listing all tobacco product
22 manufacturers that have provided current and accurate
23 certifications conforming to the requirements of subsection
24 (a) of Section 15 and all brand families that are listed in
25 the certifications, except for the following:

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

34 (2) Neither a tobacco product manufacturer nor

1 brand family shall be included or retained in the
2 directory if the Attorney General concludes that: (i) in
3 the case of a non-participating manufacturer all escrow
4 payments required pursuant to Section 15 of the Escrow
5 Act for any period for any brand family, whether or not
6 listed by the non-participating manufacturer, have not
7 been fully paid into a qualified escrow fund governed by
8 a qualified escrow agreement that has been approved by
9 the Attorney General; or (ii) all outstanding final
10 judgments, including interest thereon, for violations of
11 Section 15 of the Escrow Act have not been fully
12 satisfied for that brand family and manufacturer.

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

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

22 (c) It shall be unlawful for any person: (i) to affix a
23 stamp to a package or other container of cigarettes of a
24 tobacco product manufacturer or brand family not included in
25 the directory or to sell, offer, or possess for sale in this
26 State; or (ii) import for personal consumption in this State,
27 cigarettes of a tobacco product manufacturer or brand family
28 not included in the directory.

29 Section 20. Agent for Service of Process.

30 (a) Any non-resident or foreign non-participating
31 manufacturer that has not registered to do business in this
32 State as a foreign corporation or business entity shall, as a
33 condition precedent to having its brand families listed or

1 retained in the directory, appoint and continually engage
2 without interruption the services of an agent in this State
3 to act as agent for the service of process on whom all
4 process, and any action or proceeding against it concerning
5 or arising out of the enforcement of this Act and the Escrow
6 Act, may be served in any manner authorized by law. The
7 service shall constitute legal and valid service of process
8 on the non-participating manufacturer. The non-participating
9 manufacturer shall provide the name, address, phone number,
10 and proof of the appointment and availability of the agent to
11 and to the satisfaction of the Commissioner and Attorney
12 General.

13 (b) The non-participating manufacturer shall provide
14 notice to the Commissioner and Attorney General 30 calendar
15 days prior to termination of the authority of an agent and
16 shall further provide proof to the satisfaction of the
17 Attorney General of the appointment of a new agent no less
18 than 5 calendar days prior to the termination of an existing
19 agent appointment. In the event an agent terminates an agency
20 appointment, the non-participating manufacturer shall notify
21 the Commissioner and Attorney General of the termination
22 within 5 calendar days and shall include proof to the
23 satisfaction of the Attorney General of the appointment of a
24 new agent.

25 (c) Any non-participating manufacturer whose products
26 are sold in this State, without appointing or designating an
27 agent as herein required shall be deemed to have appointed
28 the Secretary of State as the agent and may be proceeded
29 against in courts of this State by service of process upon
30 the Secretary of State; however, the appointment of the
31 Secretary of State as an agent shall not satisfy the
32 condition precedent to having its brand families listed or
33 retained in the directory.

1 Section 25. Reporting of information; escrow
2 installments.

3 (a) Not later than 20 days after the end of each
4 calendar quarter, and more frequently if so directed by the
5 Attorney General, each distributor shall submit the
6 information as the Attorney General requires to facilitate
7 compliance with this Section, including, but not limited to,
8 a list by brand family of the total number of cigarettes or
9 in the case of roll-your-own, the equivalent stick count for
10 which the distributor affixed stamps during the previous
11 calendar quarter or otherwise paid the tax due for these
12 cigarettes. The distributor shall maintain, and make
13 available to the Attorney General, all invoices and
14 documentation of sales of all non-participating manufacturer
15 cigarettes and any other information relied upon in reporting
16 to the Attorney General for a period of 5 years.

17 (b) The Director is authorized to disclose to the
18 Attorney General any information received under this Act and
19 requested by the Attorney General for purposes of determining
20 compliance with and enforcing the provisions of this Act. The
21 Director and Attorney General shall share with each other the
22 information received under this Act, and may share the
23 information with other federal, State, or local agencies only
24 for purposes of enforcement of this Act, the Escrow Act, or
25 corresponding laws of other states.

26 (c) The Attorney General may require at any time, from
27 the non-participating manufacturer, proof from the financial
28 institution in which the manufacturer has established a
29 qualified escrow fund for the purpose of compliance with the
30 Escrow Act of the amount of money in the fund being held on
31 behalf of the State and the dates of deposits, and listing
32 the amounts of all withdrawals from the fund and the dates
33 thereof.

34 (d) In addition to the information required to be

1 submitted pursuant to this Act, the Attorney General may
2 require a distributor or tobacco product manufacturer to
3 submit any additional information including, but not limited
4 to, samples of the packaging or labeling of each brand
5 family, as is necessary to enable the Attorney General to
6 determine whether a tobacco product manufacturer is in
7 compliance with this Act.

8 (e) To promote compliance with the provisions of this
9 Act, the Attorney General may promulgate regulations
10 requiring a tobacco product manufacturer subject to the
11 requirements of subsection (a)(2) of Section 15 to make the
12 escrow deposits required in quarterly installments during the
13 year in which the sales covered by the deposits are made. The
14 Attorney General may require production of information
15 sufficient to enable the Attorney General to determine the
16 adequacy of the amount of the installment deposit.

17 Section 30. Penalties and other remedies.

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

33 (b) Any cigarettes that have been sold, offered for

1 sale, or possessed for sale in this State, or imported for
2 personal consumption in this State in violation of subsection
3 (c) of Section 15 shall be subject to seizure and forfeiture
4 as provided in Sections 18, 18a, and 20 of the Cigarette Tax
5 Act and Sections 24, 25, 25a and 26 of the Cigarette Use Tax
6 Act, and all cigarettes so seized and forfeited shall be
7 destroyed and not resold.

8 (c) The Attorney General may seek an injunction to
9 restrain a threatened or actual violation of subsection (c)
10 of Section 15, subsection (a) of Section 25, or subsection
11 (d) of Section 25 by a stamping agent and to compel the
12 stamping agent to comply with such subsections. In any action
13 brought pursuant to this Section, the State shall be entitled
14 to recover the costs of investigation, costs of the action,
15 and reasonable attorney fees.

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

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

26 Section 35. Miscellaneous provisions.

27 (a) A determination of the Attorney General to not list
28 or to remove from the directory a brand family or tobacco
29 product manufacturer shall be subject to review in the manner
30 prescribed by rule.

31 (b) No person shall be issued a license or granted a
32 renewal of a license to act as a distributor unless the
33 person has certified in writing, under penalty of perjury,

1 that the person will comply fully with this Section.

2 (c) The Attorney General may promulgate regulations
3 necessary to effect the purposes of this Act.

4 (d) In any action brought by the State to enforce this
5 Act, the State shall be entitled to recover the costs of
6 investigation, expert witness fees, costs of the action, and
7 reasonable attorney fees.

8 (e) If a court determines that a person has violated
9 this Act, the court shall order any profits, gain, gross
10 receipts, or other benefit from the violation to be disgorged
11 and paid to the General Revenue Fund.

12 (f) Unless otherwise expressly provided the remedies or
13 penalties provided by this Act are cumulative to each other
14 and to the remedies or penalties available under all other
15 laws of this State.

16 Section 40. Severability.

17 (a) If any provision of this Act or its application to
18 any person or circumstance is held invalid, the invalidity
19 does not affect other provisions or applications of this Act
20 that can be given effect without the invalid provision or
21 application.

22 (b) If a court of competent jurisdiction finds that the
23 provisions of this Act and of the Escrow Act conflict and
24 cannot be harmonized, then the provisions of the Escrow Act
25 shall control.

26 (c) If any Section, subsection, subdivision, paragraph,
27 sentence, clause, or phrase of this Act causes the Escrow Act
28 to no longer constitute a qualifying or model statute, as
29 those terms are defined in the Master Settlement Agreement,
30 then that portion of this Act shall not be valid.

31 (30 ILCS 169/Act rep.)

32 Section 200. The Tobacco Products Manufacturers' Escrow

1 Enforcement Act is repealed.