



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB0417**

Introduced 2/16/2005, by Sen. Jeffrey M. Schoenberg

**SYNOPSIS AS INTRODUCED:**

30 ILCS 167/15  
30 ILCS 167/20  
30 ILCS 167/25  
30 ILCS 167/30  
30 ILCS 167/35

Amends the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003. Deletes provisions concerning the Director of Revenue's powers and duties in relation to the registration of agents by non-participating manufacturers. In a provision concerning the reporting of information, authorizes the Attorney General to disclose information to the Director of Revenue (now, the Director is authorized to disclose information to the Attorney General). Upon a distributor's violation of certain provisions of the Act, authorizes the Director of Revenue to revoke or suspend the license of the distributor (now, the license of a stamping agent) and authorizes the Attorney General to seek injunctive relief against a distributor (now, a stamping agent). Provides that the administrative decisions of the Attorney General concerning inclusions on the directory of certified manufacturers and brand families are subject to administrative review under the Administrative Review Law (now, subject to review in a manner prescribed by rule). Effective immediately.

LRB094 06046 BDD 36106 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning finance.

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

4 Section 5. The Tobacco Products Manufacturers' Escrow  
5 Enforcement Act of 2003 is amended by changing Sections 15, 20,  
6 25, 30, and 35 as follows:

7 (30 ILCS 167/15)

8 Sec. 15. Certifications; directory; tax stamps.

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

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

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

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

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

14 (A) that the non-participating manufacturer is  
15 registered to do business in this State or has  
16 appointed a resident agent for service of process and  
17 provided notice thereof as required by Section 20 ~~item~~  
18 ~~4 of subsection (a) of this Section;~~

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

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

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

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

36 (F) the amount the non-participating manufacturer

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (Source: P.A. 93-446, eff. 1-1-04; 93-930, eff. 1-1-05.)

8 (30 ILCS 167/20)

9 Sec. 20. Agent for service of process.

10 (a) Any non-resident or foreign non-participating  
11 manufacturer that has not registered to do business in this  
12 State as a foreign corporation or business entity shall, as a  
13 condition precedent to having its brand families listed or  
14 retained in the directory, appoint and continually engage  
15 without interruption the services of an agent in this State to  
16 act as agent for the service of process on whom all process,  
17 and any action or proceeding against it concerning or arising  
18 out of the enforcement of this Act and the Escrow Act, may be  
19 served in any manner authorized by law. The service shall  
20 constitute legal and valid service of process on the  
21 non-participating manufacturer. The non-participating  
22 manufacturer shall provide the name, address, phone number, and  
23 proof of the appointment and availability of the agent to and  
24 to the satisfaction of the ~~Director and~~ Attorney General.

25 (b) The non-participating manufacturer shall provide  
26 notice to the ~~Director and~~ Attorney General 30 calendar days  
27 prior to termination of the authority of an agent and shall  
28 further provide proof to the satisfaction of the Attorney  
29 General of the appointment of a new agent no less than 5  
30 calendar days prior to the termination of an existing agent  
31 appointment. In the event an agent terminates an agency  
32 appointment, the non-participating manufacturer shall notify  
33 the Director and Attorney General of the termination within 5  
34 calendar days and shall include proof to the satisfaction of  
35 the Attorney General of the appointment of a new agent.

1 (c) Any non-participating manufacturer whose products are  
2 sold in this State, without appointing or designating an agent  
3 as herein required shall be deemed to have appointed the  
4 Secretary of State as the agent and may be proceeded against in  
5 courts of this State by service of process upon the Secretary  
6 of State; however, the appointment of the Secretary of State as  
7 an agent shall not satisfy the condition precedent to having  
8 its brand families listed or retained in the directory.

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

10 (30 ILCS 167/25)

11 Sec. 25. Reporting of information; escrow installments.

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

25 (b) The Attorney General ~~Director~~ is authorized to disclose  
26 to the Director ~~Attorney General~~ any information received under  
27 this Act ~~and requested by the Attorney General~~ for purposes of  
28 determining compliance with and enforcing the provisions of  
29 this Act. The Director and Attorney General shall share with  
30 each other the information received under this Act, and may  
31 share the information with other federal, State, or local  
32 agencies only for purposes of enforcement of this Act, the  
33 Escrow Act, or corresponding laws of other states.

34 (c) The Attorney General may require at any time, from the  
35 non-participating manufacturer, proof from the financial

1 institution in which the manufacturer has established a  
2 qualified escrow fund for the purpose of compliance with the  
3 Escrow Act of the amount of money in the fund being held on  
4 behalf of the State and the dates of deposits, and listing the  
5 amounts of all withdrawals from the fund and the dates thereof.

6 (d) In addition to the information required to be submitted  
7 pursuant to this Act, the Attorney General may require a  
8 distributor or tobacco product manufacturer to submit any  
9 additional information including, but not limited to, samples  
10 of the packaging or labeling of each brand family, as is  
11 necessary to enable the Attorney General to determine whether a  
12 tobacco product manufacturer is in compliance with this Act.

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

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

23 (30 ILCS 167/30)

24 Sec. 30. Penalties and other remedies.

25 (a) In addition to or in lieu of any other civil or  
26 criminal remedy provided by law, upon a determination that a  
27 distributor has violated subsection (e) of Section 15 or any  
28 regulation adopted pursuant thereto, the Director may revoke or  
29 suspend the license of any distributor ~~stamping agent~~ in the  
30 manner provided by Section 6 of the Cigarette Tax Act, Section  
31 6 of the Cigarette Use Tax Act, or Section 10-25 of the Tobacco  
32 Products Tax Act of 1995, as appropriate. Each stamp affixed  
33 and each offer to sell cigarettes in violation of subsection  
34 (e) of Section 15 shall constitute a separate violation. For  
35 each violation, the Director may also impose a civil penalty in



1 an amount not to exceed the greater of 500% of the retail value  
2 of the cigarettes sold or \$5,000 upon a determination of  
3 violation of subsection (e) of Section 15 or any regulations  
4 adopted pursuant thereto.

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

13 (c) The Attorney General may seek an injunction to restrain  
14 a threatened or actual violation of subsection (e) of Section  
15 15, subsection (a) of Section 25, or subsection (d) of Section  
16 25 by a distributor ~~stamping agent~~ and to compel the  
17 distributor ~~stamping agent~~ to comply with such subsections. In  
18 any action brought pursuant to this Section, the State shall be  
19 entitled to recover the costs of investigation, costs of the  
20 action, and reasonable attorney fees.

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

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

30 (Source: P.A. 93-446, eff. 1-1-04; 93-930, eff. 1-1-05.)

31 (30 ILCS 167/35)

32 Sec. 35. Miscellaneous provisions.

33 (a) Every final administrative decision ~~A determination~~ of  
34 the Attorney General to not list or to remove from the  
35 directory a brand family or tobacco product manufacturer shall

1 be subject to judicial review only under and in accordance with  
2 the Administrative Review Law. The provisions of the  
3 Administrative Review Law, and the rules adopted pursuant  
4 thereto, apply to and govern all proceedings for the judicial  
5 review of final administrative decisions of the Attorney  
6 General under this subsection. The term "administrative  
7 decision" is defined as in Section 3-101 of the Code of Civil  
8 Procedure in the manner prescribed by rule.

9 (b) No person shall be issued a license or granted a  
10 renewal of a license to act as a distributor unless the person  
11 has certified in writing, under penalty of perjury, that the  
12 person will comply fully with this Act.

13 (c) The Attorney General may promulgate rules necessary to  
14 effect the purposes of this Act.

15 (d) In any action brought by the State to enforce this Act,  
16 the State shall be entitled to recover the costs of  
17 investigation, expert witness fees, costs of the action, and  
18 reasonable attorney fees.

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

23 (f) Unless otherwise expressly provided the remedies or  
24 penalties provided by this Act are cumulative to each other and  
25 to the remedies or penalties available under all other laws of  
26 this State.

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

28 Section 99. Effective date. This Act takes effect upon  
29 becoming law.