

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.