



Sen. Michael Bond

Filed: 4/20/2010

09600HB5833sam001

LRB096 19186 HLH 40218 a

1 AMENDMENT TO HOUSE BILL 5833

2 AMENDMENT NO. _____. Amend House Bill 5833 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Department of Revenue Law of the Civil
5 Administrative Code of Illinois is amended by changing Section
6 2505-210 as follows:

7 (20 ILCS 2505/2505-210) (was 20 ILCS 2505/39c-1)

8 Sec. 2505-210. Electronic funds transfer.

9 (a) The Department may provide means by which persons
10 having a tax liability under any Act administered by the
11 Department may use electronic funds transfer to pay the tax
12 liability.

13 (b) Mandatory payment by electronic funds transfer.
14 Beginning on October 1, 2002, and through September 30, 2010, a
15 taxpayer who has an annual tax liability of \$200,000 or more
16 shall make all payments of that tax to the Department by

1 electronic funds transfer. Beginning October 1, 2010, a
2 taxpayer (other than an individual taxpayer) who has an annual
3 tax liability of \$20,000 or more and an individual taxpayer who
4 has an annual tax liability of \$200,000 or more shall make all
5 payments of that tax to the Department by electronic funds
6 transfer. Before August 1 of each year, beginning in 2002, the
7 Department shall notify all taxpayers required to make payments
8 by electronic funds transfer. All taxpayers required to make
9 payments by electronic funds transfer shall make those payments
10 for a minimum of one year beginning on October 1. For purposes
11 of this subsection (b), the term "annual tax liability" means,
12 except as provided in subsections (c) and (d) of this Section,
13 the sum of the taxpayer's liabilities under a tax Act
14 administered by the Department, except the Motor Fuel Tax Law
15 and the Environmental Impact Fee Law, for the immediately
16 preceding calendar year.

17 (c) For purposes of subsection (b), the term "annual tax
18 liability" means, for a taxpayer that incurs a tax liability
19 under the Retailers' Occupation Tax Act, Service Occupation Tax
20 Act, Use Tax Act, Service Use Tax Act, or any other State or
21 local occupation or use tax law that is administered by the
22 Department, the sum of the taxpayer's liabilities under the
23 Retailers' Occupation Tax Act, Service Occupation Tax Act, Use
24 Tax Act, Service Use Tax Act, and all other State and local
25 occupation and use tax laws administered by the Department for
26 the immediately preceding calendar year.

1 (d) For purposes of subsection (b), the term "annual tax
2 liability" means, for a taxpayer that incurs an Illinois income
3 tax liability, the greater of:

4 (1) the amount of the taxpayer's tax liability under
5 Article 7 of the Illinois Income Tax Act for the
6 immediately preceding calendar year; or

7 (2) the taxpayer's estimated tax payment obligation
8 under Article 8 of the Illinois Income Tax Act for the
9 immediately preceding calendar year.

10 (e) The Department shall adopt such rules as are necessary
11 to effectuate a program of electronic funds transfer and the
12 requirements of this Section.

13 (Source: P.A. 91-239, eff. 1-1-00; 92-492, eff. 1-1-02.)

14 Section 10. The Illinois Income Tax Act is amended by
15 changing Section 704A as follows:

16 (35 ILCS 5/704A)

17 Sec. 704A. Employer's return and payment of tax withheld.

18 (a) In general, every employer who deducts and withholds or
19 is required to deduct and withhold tax under this Act on or
20 after January 1, 2008 shall make those payments and returns as
21 provided in this Section.

22 (b) Returns. Every employer shall, in the form and manner
23 required by the Department, make returns with respect to taxes
24 withheld or required to be withheld under this Article 7 for

1 each quarter beginning on or after January 1, 2008, on or
2 before the last day of the first month following the close of
3 that quarter.

4 (c) Payments. With respect to amounts withheld or required
5 to be withheld on or after January 1, 2008:

6 (1) Semi-weekly payments. For each calendar year, each
7 employer who withheld or was required to withhold more than
8 \$12,000 during the one-year period ending on June 30 of the
9 immediately preceding calendar year, payment must be made:

10 (A) on or before each Friday of the calendar year,
11 for taxes withheld or required to be withheld on the
12 immediately preceding Saturday, Sunday, Monday, or
13 Tuesday;

14 (B) on or before each Wednesday of the calendar
15 year, for taxes withheld or required to be withheld on
16 the immediately preceding Wednesday, Thursday, or
17 Friday.

18 Beginning with calendar year 2011, payment made under
19 this paragraph (1) of subsection (c) must be made by
20 electronic funds transfer.

21 (2) Semi-weekly payments. Any employer who withholds
22 or is required to withhold more than \$12,000 in any quarter
23 of a calendar year is required to make payments on the
24 dates set forth under item (1) of this subsection (c) for
25 each remaining quarter of that calendar year and for the
26 subsequent calendar year.

1 (3) Monthly payments. Each employer, other than an
2 employer described in items (1) or (2) of this subsection,
3 shall pay to the Department, on or before the 15th day of
4 each month the taxes withheld or required to be withheld
5 during the immediately preceding month.

6 (4) Payments with returns. Each employer shall pay to
7 the Department, on or before the due date for each return
8 required to be filed under this Section, any tax withheld
9 or required to be withheld during the period for which the
10 return is due and not previously paid to the Department.

11 (d) Regulatory authority. The Department may, by rule:

12 (1) Permit ~~If the aggregate amounts required to be~~
13 ~~withheld under this Article 7 do not exceed \$1,000 for the~~
14 ~~calendar year, permit~~ employers, in lieu of the
15 requirements of subsections (b) and (c), to file annual
16 returns due on or before January 31 of the ~~following~~ year
17 for taxes withheld or required to be withheld during the
18 previous ~~that~~ calendar year and, if the aggregate amounts
19 required to be withheld by the employer under this Article
20 7 (other than amounts required to be withheld under Section
21 709.5) do not exceed \$1,000 for the previous calendar year,
22 to pay the taxes required to be shown on each such return
23 no later than the due date for such return.

24 (2) Provide that any payment required to be made under
25 subsection (c)(1) or (c)(2) is deemed to be timely to the
26 extent paid by electronic funds transfer on or before the

1 due date for deposit of federal income taxes withheld from,
2 or federal employment taxes due with respect to, the wages
3 from which the Illinois taxes were withheld.

4 (3) Designate one or more depositories to which payment
5 of taxes required to be withheld under this Article 7 must
6 be paid by some or all employers.

7 (4) Increase the threshold dollar amounts at which
8 employers are required to make semi-weekly payments under
9 subsection (c) (1) or (c) (2).

10 (e) Annual return and payment. Every employer who deducts
11 and withholds or is required to deduct and withhold tax from a
12 person engaged in domestic service employment, as that term is
13 defined in Section 3510 of the Internal Revenue Code, may
14 comply with the requirements of this Section with respect to
15 such employees by filing an annual return and paying the taxes
16 required to be deducted and withheld on or before the 15th day
17 of the fourth month following the close of the employer's
18 taxable year. The Department may allow the employer's return to
19 be submitted with the employer's individual income tax return
20 or to be submitted with a return due from the employer under
21 Section 1400.2 of the Unemployment Insurance Act.

22 (f) Magnetic media and electronic filing. Any W-2 Form
23 that, under the Internal Revenue Code and regulations
24 promulgated thereunder, is required to be submitted to the
25 Internal Revenue Service on magnetic media or electronically
26 must also be submitted to the Department on magnetic media or

1 electronically for Illinois purposes, if required by the
2 Department.

3 (g) For amounts deducted or withheld after December 31,
4 2009, a taxpayer who makes an election under Section 5-15(f) of
5 the Economic Development for a Growing Economy Act for a
6 taxable year shall be allowed a credit against payments due
7 under this Section for amounts withheld during the first
8 calendar year beginning after the end of that taxable year
9 equal to the amount of the credit awarded to the taxpayer by
10 the Department of Commerce and Economic Opportunity under the
11 Economic Development for a Growing Economy Act for the taxable
12 year. The credit may not reduce the taxpayer's obligation for
13 any payment due under this Section to less than zero. If the
14 amount of the credit exceeds the total payments due under this
15 Section with respect to amounts withheld during the calendar
16 year, the excess may be carried forward and applied against the
17 taxpayer's liability under this Section in the 5 succeeding
18 calendar years. The credit shall be applied to the earliest
19 year for which there is a tax liability. If there are credits
20 from more than one taxable year that are available to offset a
21 liability, the earlier credit shall be applied first. This
22 Section is exempt from the provisions of Section 250 of this
23 Act.

24 (h) An employer may claim a credit against payments due
25 under this Section for amounts withheld during the first
26 calendar year ending after date on which a tax credit

1 certificate was issued under Section 35 of the Small Business
2 Job Creation Tax Credit Act. The credit shall be equal to the
3 amount shown on the certificate, but may not reduce the
4 taxpayer's obligation for any payment due under this Section to
5 less than zero. If the amount of the credit exceeds the total
6 payments due under this Section with respect to amounts
7 withheld during the calendar year, the excess may be carried
8 forward and applied against the taxpayer's liability under this
9 Section in the 5 succeeding calendar years. The credit shall be
10 applied to the earliest year for which there is a tax
11 liability. If there are credits from more than one calendar
12 year that are available to offset a liability, the earlier
13 credit shall be applied first. This Section is exempt from the
14 provisions of Section 250 of this Act.

15 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,
16 eff. 12-14-09; 96-888, eff. 4-13-10.)".

17 Section 15. The Cigarette Tax Act is amended by changing
18 Sections 1, 2, 3, 3-10, 4a, 4d, 6, 7, 8, 10, 10b, 12, 15, 23,
19 24, 25, and 26 and by adding Sections 4c, 4e, 9e, and 11a as
20 follows:

21 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

22 Sec. 1. For the purposes of this Act:

23 "Brand Style" means a variety of cigarettes distinguished
24 by the tobacco used, tar and nicotine content, flavoring used,

1 size of the cigarette, filtration on the cigarette or
2 packaging.

3 "Cigarette", means any roll for smoking made wholly or in
4 part of tobacco irrespective of size or shape and whether or
5 not such tobacco is flavored, adulterated or mixed with any
6 other ingredient, and the wrapper or cover of which is made of
7 paper or any other substance or material except tobacco.

8 "Contraband cigarettes" means:

9 (a) cigarettes that do not bear a required tax stamp
10 under this Act;

11 (b) cigarettes for which any required federal taxes
12 have not been paid;

13 (c) cigarettes that bear a counterfeit tax stamp;

14 (d) cigarettes that are manufactured, fabricated,
15 assembled, processed, packaged, or labeled by any person
16 other than (i) the owner of the trademark rights in the
17 cigarette brand or (ii) a person that is directly or
18 indirectly authorized by such owner;

19 (e) cigarettes imported into the United States, or
20 otherwise distributed, in violation of the federal
21 Imported Cigarette Compliance Act of 2000 (Title IV of
22 Public Law 106-476);

23 (f) cigarettes that have false manufacturing labels;

24 (g) cigarettes identified in Section 3-10(a)(1) of
25 this Act; or

26 (h) cigarettes that are improperly tax stamped,

1 including cigarettes that bear a tax stamp of another state
2 or taxing jurisdiction.

3 "Person" means any natural individual, firm, partnership,
4 association, joint stock company, joint adventure, public or
5 private corporation, however formed, limited liability
6 company, or a receiver, executor, administrator, trustee,
7 guardian or other representative appointed by order of any
8 court.

9 "Prior Continuous Compliance Taxpayer" means any person
10 who is licensed under this Act and who, having been a licensee
11 for a continuous period of 5 years, is determined by the
12 Department not to have been either delinquent or deficient in
13 the payment of tax liability during that period or otherwise in
14 violation of this Act. Also, any taxpayer who has, as verified
15 by the Department, continuously complied with the condition of
16 his bond or other security under provisions of this Act for a
17 period of 5 consecutive years shall be considered to be a
18 "Prior continuous compliance taxpayer". In calculating the
19 consecutive period of time described herein for qualification
20 as a "prior continuous compliance taxpayer", a consecutive
21 period of time of qualifying compliance immediately prior to
22 the effective date of this amendatory Act of 1987 shall be
23 credited to any licensee who became licensed on or before the
24 effective date of this amendatory Act of 1987.

25 "Department" means the Department of Revenue.

26 "Sale" means any transfer, exchange or barter in any manner

1 or by any means whatsoever for a consideration, and includes
2 and means all sales made by any person.

3 "Original Package" means the individual packet, box or
4 other container whatsoever used to contain and to convey
5 cigarettes to the consumer.

6 "Distributor" means any and each of the following:

7 (1) Any person engaged in the business of selling
8 cigarettes in this State who brings or causes to be brought
9 into this State from without this State any original packages
10 of cigarettes, on which original packages there is no
11 authorized evidence underneath a sealed transparent wrapper
12 showing that the tax liability imposed by this Act has been
13 paid or assumed by the out-of-State seller of such cigarettes,
14 for sale or other disposition in the course of such business.

15 (2) Any person who makes, manufactures or fabricates
16 cigarettes in this State for sale in this State, except a
17 person who makes, manufactures or fabricates cigarettes as a
18 part of a correctional industries program for sale to residents
19 incarcerated in penal institutions or resident patients of a
20 State-operated mental health facility.

21 (3) Any person who makes, manufactures or fabricates
22 cigarettes outside this State, which cigarettes are placed in
23 original packages contained in sealed transparent wrappers,
24 for delivery or shipment into this State, and who elects to
25 qualify and is accepted by the Department as a distributor
26 under Section 4b of this Act.

1 "Place of business" shall mean and include any place where
2 cigarettes are sold or where cigarettes are manufactured,
3 stored or kept for the purpose of sale or consumption,
4 including any vessel, vehicle, airplane, train or vending
5 machine.

6 "Business" means any trade, occupation, activity or
7 enterprise engaged in for the purpose of selling cigarettes in
8 this State.

9 "Retailer" means any person who engages in the making of
10 transfers of the ownership of, or title to, cigarettes to a
11 purchaser for use or consumption and not for resale in any
12 form, for a valuable consideration. "Retailer" does not include
13 a person:

14 (1) who transfers to residents incarcerated in penal
15 institutions or resident patients of a State-operated
16 mental health facility ownership of cigarettes made,
17 manufactured, or fabricated as part of a correctional
18 industries program; or

19 (2) who transfers cigarettes to a not-for-profit
20 research institution that conducts tests concerning the
21 health effects of tobacco products and who does not offer
22 the cigarettes for resale.

23 "Retailer" shall be construed to include any person who
24 engages in the making of transfers of the ownership of, or
25 title to, cigarettes to a purchaser, for use or consumption by
26 any other person to whom such purchaser may transfer the

1 cigarettes without a valuable consideration, except a person
2 who transfers to residents incarcerated in penal institutions
3 or resident patients of a State-operated mental health facility
4 ownership of cigarettes made, manufactured or fabricated as
5 part of a correctional industries program.

6 "Secondary distributor" means any person engaged in the
7 business of selling cigarettes who purchases stamped original
8 packages of cigarettes from a licensed distributor under this
9 Act or the Cigarette Use Tax Act, sells 75% or more of those
10 cigarettes to retailers for resale, and maintains an
11 established business where a substantial stock of cigarettes is
12 available to retailers for resale.

13 "Stamp" or "stamps" mean the indicia required to be affixed
14 on a pack of cigarettes that evidence payment of the tax on
15 cigarettes under Section 2 of this Act.

16 "Related party" means any person that is associated with
17 any other person because he or she:

18 (a) is an officer or director of a business; or

19 (b) is legally recognized as a partner in business.

20 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
21 96-782, eff. 1-1-10.)

22 (35 ILCS 130/2) (from Ch. 120, par. 453.2)

23 Sec. 2. Tax imposed; rate; collection, payment, and
24 distribution; discount.

25 (a) A tax is imposed upon any person engaged in business as

1 a retailer of cigarettes in this State at the rate of 5 1/2
2 mills per cigarette sold, or otherwise disposed of in the
3 course of such business in this State. In addition to any other
4 tax imposed by this Act, a tax is imposed upon any person
5 engaged in business as a retailer of cigarettes in this State
6 at a rate of 1/2 mill per cigarette sold or otherwise disposed
7 of in the course of such business in this State on and after
8 January 1, 1947, and shall be paid into the Metropolitan Fair
9 and Exposition Authority Reconstruction Fund or as otherwise
10 provided in Section 29. On and after December 1, 1985, in
11 addition to any other tax imposed by this Act, a tax is imposed
12 upon any person engaged in business as a retailer of cigarettes
13 in this State at a rate of 4 mills per cigarette sold or
14 otherwise disposed of in the course of such business in this
15 State. Of the additional tax imposed by this amendatory Act of
16 1985, \$9,000,000 of the moneys received by the Department of
17 Revenue pursuant to this Act shall be paid each month into the
18 Common School Fund. On and after the effective date of this
19 amendatory Act of 1989, in addition to any other tax imposed by
20 this Act, a tax is imposed upon any person engaged in business
21 as a retailer of cigarettes at the rate of 5 mills per
22 cigarette sold or otherwise disposed of in the course of such
23 business in this State. On and after the effective date of this
24 amendatory Act of 1993, in addition to any other tax imposed by
25 this Act, a tax is imposed upon any person engaged in business
26 as a retailer of cigarettes at the rate of 7 mills per

1 cigarette sold or otherwise disposed of in the course of such
2 business in this State. On and after December 15, 1997, in
3 addition to any other tax imposed by this Act, a tax is imposed
4 upon any person engaged in business as a retailer of cigarettes
5 at the rate of 7 mills per cigarette sold or otherwise disposed
6 of in the course of such business of this State. All of the
7 moneys received by the Department of Revenue pursuant to this
8 Act and the Cigarette Use Tax Act from the additional taxes
9 imposed by this amendatory Act of 1997, shall be paid each
10 month into the Common School Fund. On and after July 1, 2002,
11 in addition to any other tax imposed by this Act, a tax is
12 imposed upon any person engaged in business as a retailer of
13 cigarettes at the rate of 20.0 mills per cigarette sold or
14 otherwise disposed of in the course of such business in this
15 State. The payment of such taxes shall be evidenced by a stamp
16 affixed to each original package of cigarettes, or an
17 authorized substitute for such stamp imprinted on each original
18 package of such cigarettes underneath the sealed transparent
19 outside wrapper of such original package, as hereinafter
20 provided. However, such taxes are not imposed upon any activity
21 in such business in interstate commerce or otherwise, which
22 activity may not under the Constitution and statutes of the
23 United States be made the subject of taxation by this State.

24 Beginning on the effective date of this amendatory Act of
25 the 92nd General Assembly and through June 30, 2006, all of the
26 moneys received by the Department of Revenue pursuant to this

1 Act and the Cigarette Use Tax Act, other than the moneys that
2 are dedicated to the Common School Fund, shall be distributed
3 each month as follows: first, there shall be paid into the
4 General Revenue Fund an amount which, when added to the amount
5 paid into the Common School Fund for that month, equals
6 \$33,300,000, except that in the month of August of 2004, this
7 amount shall equal \$83,300,000; then, from the moneys
8 remaining, if any amounts required to be paid into the General
9 Revenue Fund in previous months remain unpaid, those amounts
10 shall be paid into the General Revenue Fund; then, beginning on
11 April 1, 2003, from the moneys remaining, \$5,000,000 per month
12 shall be paid into the School Infrastructure Fund; then, if any
13 amounts required to be paid into the School Infrastructure Fund
14 in previous months remain unpaid, those amounts shall be paid
15 into the School Infrastructure Fund; then the moneys remaining,
16 if any, shall be paid into the Long-Term Care Provider Fund. To
17 the extent that more than \$25,000,000 has been paid into the
18 General Revenue Fund and Common School Fund per month for the
19 period of July 1, 1993 through the effective date of this
20 amendatory Act of 1994 from combined receipts of the Cigarette
21 Tax Act and the Cigarette Use Tax Act, notwithstanding the
22 distribution provided in this Section, the Department of
23 Revenue is hereby directed to adjust the distribution provided
24 in this Section to increase the next monthly payments to the
25 Long Term Care Provider Fund by the amount paid to the General
26 Revenue Fund and Common School Fund in excess of \$25,000,000

1 per month and to decrease the next monthly payments to the
2 General Revenue Fund and Common School Fund by that same excess
3 amount.

4 Beginning on July 1, 2006, all of the moneys received by
5 the Department of Revenue pursuant to this Act and the
6 Cigarette Use Tax Act, other than the moneys that are dedicated
7 to the Common School Fund, shall be distributed each month as
8 follows: first, there shall be paid into the General Revenue
9 Fund an amount that, when added to the amount paid into the
10 Common School Fund for that month, equals \$29,200,000; then,
11 from the moneys remaining, if any amounts required to be paid
12 into the General Revenue Fund in previous months remain unpaid,
13 those amounts shall be paid into the General Revenue Fund; then
14 from the moneys remaining, \$5,000,000 per month shall be paid
15 into the School Infrastructure Fund; then, if any amounts
16 required to be paid into the School Infrastructure Fund in
17 previous months remain unpaid, those amounts shall be paid into
18 the School Infrastructure Fund; then the moneys remaining, if
19 any, shall be paid into the Long-Term Care Provider Fund.

20 When any tax imposed herein terminates or has terminated,
21 distributors who have bought stamps while such tax was in
22 effect and who therefore paid such tax, but who can show, to
23 the Department's satisfaction, that they sold the cigarettes to
24 which they affixed such stamps after such tax had terminated
25 and did not recover the tax or its equivalent from purchasers,
26 shall be allowed by the Department to take credit for such

1 absorbed tax against subsequent tax stamp purchases from the
2 Department by such distributor.

3 The impact of the tax levied by this Act is imposed upon
4 the retailer and shall be prepaid or pre-collected by the
5 distributor for the purpose of convenience and facility only,
6 and the amount of the tax shall be added to the price of the
7 cigarettes sold by such distributor. Collection of the tax
8 shall be evidenced by a stamp or stamps affixed to each
9 original package of cigarettes, as hereinafter provided.

10 Each distributor shall collect the tax from the retailer at
11 or before the time of the sale, shall affix the stamps as
12 hereinafter required, and shall remit the tax collected from
13 retailers to the Department, as hereinafter provided. Any
14 distributor who fails to properly collect and pay the tax
15 imposed by this Act shall be liable for the tax. Any
16 distributor having cigarettes to which stamps have been affixed
17 in his possession for sale on the effective date of this
18 amendatory Act of 1989 shall not be required to pay the
19 additional tax imposed by this amendatory Act of 1989 on such
20 stamped cigarettes. Any distributor having cigarettes to which
21 stamps have been affixed in his or her possession for sale at
22 12:01 a.m. on the effective date of this amendatory Act of
23 1993, is required to pay the additional tax imposed by this
24 amendatory Act of 1993 on such stamped cigarettes. This
25 payment, less the discount provided in subsection (b), shall be
26 due when the distributor first makes a purchase of cigarette

1 tax stamps after the effective date of this amendatory Act of
2 1993, or on the first due date of a return under this Act after
3 the effective date of this amendatory Act of 1993, whichever
4 occurs first. Any distributor having cigarettes to which stamps
5 have been affixed in his possession for sale on December 15,
6 1997 shall not be required to pay the additional tax imposed by
7 this amendatory Act of 1997 on such stamped cigarettes.

8 Any distributor having cigarettes to which stamps have been
9 affixed in his or her possession for sale on July 1, 2002 shall
10 not be required to pay the additional tax imposed by this
11 amendatory Act of the 92nd General Assembly on those stamped
12 cigarettes.

13 Distributors making sales of cigarettes to secondary
14 distributors shall add the amount of the tax to the price of
15 the cigarettes sold by the distributors. Secondary
16 distributors making sales of cigarettes to retailers shall
17 include the amount of the tax in the price of the cigarettes
18 sold to retailers. The amount of tax shall not be less than the
19 amount of taxes imposed by the State and all local
20 jurisdictions. The amount of local taxes shall be calculated
21 based on the location of the retailer's place of business shown
22 on the retailer's certificate of registration or
23 sub-registration issued to the retailer pursuant to Section 2a
24 of the Retailers' Occupation Tax Act. The original packages of
25 cigarettes sold to the retailer shall bear all the required
26 stamps, or other indicia, for the taxes included in the price

1 of cigarettes.

2 The amount of the Cigarette Tax imposed by this Act shall
3 be separately stated, apart from the price of the goods, by
4 ~~both~~ distributors, secondary distributors, and retailers, in
5 all ~~advertisements~~, bills and sales invoices.

6 (b) The distributor shall be required to collect the taxes
7 provided under paragraph (a) hereof, and, to cover the costs of
8 such collection, shall be allowed a discount during any year
9 commencing July 1st and ending the following June 30th in
10 accordance with the schedule set out hereinbelow, which
11 discount shall be allowed at the time of purchase of the stamps
12 when purchase is required by this Act, or at the time when the
13 tax is remitted to the Department without the purchase of
14 stamps from the Department when that method of paying the tax
15 is required or authorized by this Act. Prior to December 1,
16 1985, a discount equal to 1 2/3% of the amount of the tax up to
17 and including the first \$700,000 paid hereunder by such
18 distributor to the Department during any such year; 1 1/3% of
19 the next \$700,000 of tax or any part thereof, paid hereunder by
20 such distributor to the Department during any such year; 1% of
21 the next \$700,000 of tax, or any part thereof, paid hereunder
22 by such distributor to the Department during any such year, and
23 2/3 of 1% of the amount of any additional tax paid hereunder by
24 such distributor to the Department during any such year shall
25 apply. On and after December 1, 1985, a discount equal to 1.75%
26 of the amount of the tax payable under this Act up to and

1 including the first \$3,000,000 paid hereunder by such
2 distributor to the Department during any such year and 1.5% of
3 the amount of any additional tax paid hereunder by such
4 distributor to the Department during any such year shall apply.

5 Two or more distributors that use a common means of
6 affixing revenue tax stamps or that are owned or controlled by
7 the same interests shall be treated as a single distributor for
8 the purpose of computing the discount.

9 (c) The taxes herein imposed are in addition to all other
10 occupation or privilege taxes imposed by the State of Illinois,
11 or by any political subdivision thereof, or by any municipal
12 corporation.

13 (Source: P.A. 93-839, eff. 7-30-04; 94-91, eff. 7-1-05; 94-839,
14 eff. 6-6-06.)

15 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

16 Sec. 3. Affixing tax stamp; remitting tax to the
17 Department. Payment of the taxes imposed by Section 2 of this
18 Act shall (except as hereinafter provided) be evidenced by
19 revenue tax stamps affixed to each original package of
20 cigarettes. Each distributor of cigarettes, before delivering
21 or causing to be delivered any original package of cigarettes
22 in this State to a purchaser, shall firmly affix a proper stamp
23 or stamps to each such package, or (in case of manufacturers of
24 cigarettes in original packages which are contained inside a
25 sealed transparent wrapper) shall imprint the required

1 language on the original package of cigarettes beneath such
2 outside wrapper, as hereinafter provided.

3 No stamp or imprint may be affixed to, or made upon, any
4 package of cigarettes unless that package complies with all
5 requirements of the federal Cigarette Labeling and Advertising
6 Act, 15 U.S.C. 1331 and following, for the placement of labels,
7 warnings, or any other information upon a package of cigarettes
8 that is sold within the United States. Under the authority of
9 Section 6, the Department shall revoke the license of any
10 distributor that is determined to have violated this paragraph.
11 A person may not affix a stamp on a package of cigarettes,
12 cigarette papers, wrappers, or tubes if that individual package
13 has been marked for export outside the United States with a
14 label or notice in compliance with Section 290.185 of Title 27
15 of the Code of Federal Regulations. It is not a defense to a
16 proceeding for violation of this paragraph that the label or
17 notice has been removed, mutilated, obliterated, or altered in
18 any manner.

19 Only distributors licensed under this Act and
20 transporters, as defined in Section 9c of this Act, may possess
21 unstamped original packages of cigarettes. Prior to shipment to
22 a secondary distributor or an Illinois retailer, a stamp shall
23 be applied to each original package of cigarettes sold to the
24 secondary distributor or retailer. A distributor may apply tax
25 stamps only to original packages of cigarettes purchased or
26 obtained directly from an in-state maker, manufacturer, or

1 fabricator licensed as a distributor under Section 4 of this
2 Act or an out-of-state maker, manufacturer, or fabricator
3 holding a permit under Section 4b of this Act. A licensed
4 distributor may ship or otherwise cause to be delivered
5 unstamped original packages of cigarettes in, into, or from
6 this State. A licensed distributor may transport unstamped
7 original packages of cigarettes to a facility, wherever
8 located, owned or controlled by such distributor; however, a
9 distributor may not transport unstamped original packages of
10 cigarettes to a facility where retail sales of cigarettes take
11 place or to a facility where a secondary distributor makes
12 sales for resale. Any licensed distributor that ships or
13 otherwise causes to be delivered unstamped original packages of
14 cigarettes into, within, or from this State shall ensure that
15 the invoice or equivalent documentation and the bill of lading
16 or freight bill for the shipment identifies the true name and
17 address of the consignor or seller, the true name and address
18 of the consignee or purchaser, and the quantity by brand style
19 of the cigarettes so transported, provided that this Section
20 shall not be construed as to impose any requirement or
21 liability upon any common or contract carrier.

22 The Department, or any person authorized by the Department,
23 shall sell such stamps only to persons holding valid licenses
24 as distributors under this Act. On and after July 1, 2003,
25 payment for such stamps must be made by means of electronic
26 funds transfer. The Department may refuse to sell stamps to any

1 person who does not comply with the provisions of this Act.
2 Beginning on the effective date of this amendatory Act of the
3 92nd General Assembly and through June 30, 2002, persons
4 holding valid licenses as distributors may purchase cigarette
5 tax stamps up to an amount equal to 115% of the distributor's
6 average monthly cigarette tax stamp purchases over the 12
7 calendar months prior to the effective date of this amendatory
8 Act of the 92nd General Assembly.

9 Prior to December 1, 1985, the Department shall allow a
10 distributor 21 days in which to make final payment of the
11 amount to be paid for such stamps, by allowing the distributor
12 to make payment for the stamps at the time of purchasing them
13 with a draft which shall be in such form as the Department
14 prescribes, and which shall be payable within 21 days
15 thereafter: Provided that such distributor has filed with the
16 Department, and has received the Department's approval of, a
17 bond, which is in addition to the bond required under Section 4
18 of this Act, payable to the Department in an amount equal to
19 80% of such distributor's average monthly tax liability to the
20 Department under this Act during the preceding calendar year or
21 \$500,000, whichever is less. The Bond shall be joint and
22 several and shall be in the form of a surety company bond in
23 such form as the Department prescribes, or it may be in the
24 form of a bank certificate of deposit or bank letter of credit.
25 The bond shall be conditioned upon the distributor's payment of
26 amount of any 21-day draft which the Department accepts from

1 that distributor for the delivery of stamps to that distributor
2 under this Act. The distributor's failure to pay any such
3 draft, when due, shall also make such distributor automatically
4 liable to the Department for a penalty equal to 25% of the
5 amount of such draft.

6 On and after December 1, 1985 and until July 1, 2003, the
7 Department shall allow a distributor 30 days in which to make
8 final payment of the amount to be paid for such stamps, by
9 allowing the distributor to make payment for the stamps at the
10 time of purchasing them with a draft which shall be in such
11 form as the Department prescribes, and which shall be payable
12 within 30 days thereafter, and beginning on January 1, 2003 and
13 thereafter, the draft shall be payable by means of electronic
14 funds transfer: Provided that such distributor has filed with
15 the Department, and has received the Department's approval of,
16 a bond, which is in addition to the bond required under Section
17 4 of this Act, payable to the Department in an amount equal to
18 150% of such distributor's average monthly tax liability to the
19 Department under this Act during the preceding calendar year or
20 \$750,000, whichever is less, except that as to bonds filed on
21 or after January 1, 1987, such additional bond shall be in an
22 amount equal to 100% of such distributor's average monthly tax
23 liability under this Act during the preceding calendar year or
24 \$750,000, whichever is less. The bond shall be joint and
25 several and shall be in the form of a surety company bond in
26 such form as the Department prescribes, or it may be in the

1 form of a bank certificate of deposit or bank letter of credit.
2 The bond shall be conditioned upon the distributor's payment of
3 the amount of any 30-day draft which the Department accepts
4 from that distributor for the delivery of stamps to that
5 distributor under this Act. The distributor's failure to pay
6 any such draft, when due, shall also make such distributor
7 automatically liable to the Department for a penalty equal to
8 25% of the amount of such draft.

9 Every prior continuous compliance taxpayer shall be exempt
10 from all requirements under this Section concerning the
11 furnishing of such bond, as defined in this Section, as a
12 condition precedent to his being authorized to engage in the
13 business licensed under this Act. This exemption shall continue
14 for each such taxpayer until such time as he may be determined
15 by the Department to be delinquent in the filing of any
16 returns, or is determined by the Department (either through the
17 Department's issuance of a final assessment which has become
18 final under the Act, or by the taxpayer's filing of a return
19 which admits tax to be due that is not paid) to be delinquent
20 or deficient in the paying of any tax under this Act, at which
21 time that taxpayer shall become subject to the bond
22 requirements of this Section and, as a condition of being
23 allowed to continue to engage in the business licensed under
24 this Act, shall be required to furnish bond to the Department
25 in such form as provided in this Section. Such taxpayer shall
26 furnish such bond for a period of 2 years, after which, if the

1 taxpayer has not been delinquent in the filing of any returns,
2 or delinquent or deficient in the paying of any tax under this
3 Act, the Department may reinstate such person as a prior
4 continuance compliance taxpayer. Any taxpayer who fails to pay
5 an admitted or established liability under this Act may also be
6 required to post bond or other acceptable security with the
7 Department guaranteeing the payment of such admitted or
8 established liability.

9 Any person aggrieved by any decision of the Department
10 under this Section may, within the time allowed by law, protest
11 and request a hearing, whereupon the Department shall give
12 notice and shall hold a hearing in conformity with the
13 provisions of this Act and then issue its final administrative
14 decision in the matter to such person. In the absence of such a
15 protest filed within the time allowed by law, the Department's
16 decision shall become final without any further determination
17 being made or notice given.

18 The Department shall discharge any surety and shall release
19 and return any bond or security deposited, assigned, pledged,
20 or otherwise provided to it by a taxpayer under this Section
21 within 30 days after:

22 (1) Such taxpayer becomes a prior continuous compliance
23 taxpayer; or

24 (2) Such taxpayer has ceased to collect receipts on which
25 he is required to remit tax to the Department, has filed a
26 final tax return, and has paid to the Department an amount

1 sufficient to discharge his remaining tax liability as
2 determined by the Department under this Act. The Department
3 shall make a final determination of the taxpayer's outstanding
4 tax liability as expeditiously as possible after his final tax
5 return has been filed. If the Department cannot make such final
6 determination within 45 days after receiving the final tax
7 return, within such period it shall so notify the taxpayer,
8 stating its reasons therefor.

9 The Department may authorize distributors to affix revenue
10 tax stamps by imprinting tax meter stamps upon original
11 packages of cigarettes. The Department shall adopt rules and
12 regulations relating to the imprinting of such tax meter stamps
13 as will result in payment of the proper taxes as herein
14 imposed. No distributor may affix revenue tax stamps to
15 original packages of cigarettes by imprinting tax meter stamps
16 thereon unless such distributor has first obtained permission
17 from the Department to employ this method of affixation. The
18 Department shall regulate the use of tax meters and may, to
19 assure the proper collection of the taxes imposed by this Act,
20 revoke or suspend the privilege, theretofore granted by the
21 Department to any distributor, to imprint tax meter stamps upon
22 original packages of cigarettes.

23 Illinois cigarette manufacturers who place their
24 cigarettes in original packages which are contained inside a
25 sealed transparent wrapper, and similar out-of-State cigarette
26 manufacturers who elect to qualify and are accepted by the

1 Department as distributors under Section 4b(a) of this Act,
2 shall pay the taxes imposed by this Act by remitting the amount
3 thereof to the Department by the 5th day of each month covering
4 cigarettes shipped or otherwise delivered in Illinois to
5 purchasers during the preceding calendar month. Such
6 manufacturers of cigarettes in original packages which are
7 contained inside a sealed transparent wrapper, before
8 delivering such cigarettes or causing such cigarettes to be
9 delivered in this State to purchasers, shall evidence their
10 obligation to remit the taxes due with respect to such
11 cigarettes by imprinting language to be prescribed by the
12 Department on each original package of such cigarettes
13 underneath the sealed transparent outside wrapper of such
14 original package, in such place thereon and in such manner as
15 the Department may designate. Such imprinted language shall
16 acknowledge the manufacturer's payment of or liability for the
17 tax imposed by this Act with respect to the distribution of
18 such cigarettes.

19 A distributor shall not affix, or cause to be affixed, any
20 stamp or imprint to a package of cigarettes, as provided for in
21 this Section, if the tobacco product manufacturer, as defined
22 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,
23 that made or sold the cigarettes has failed to become a
24 participating manufacturer, as defined in subdivision (a)(1)
25 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,
26 or has failed to create a qualified escrow fund for any

1 cigarettes manufactured by the tobacco product manufacturer
2 and sold in this State or otherwise failed to bring itself into
3 compliance with subdivision (a) (2) of Section 15 of the Tobacco
4 Product Manufacturers' Escrow Act.

5 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

6 (35 ILCS 130/3-10)

7 Sec. 3-10. Cigarette enforcement.

8 (a) Prohibitions. It is unlawful for any person:

9 (1) to sell or distribute in this State; to acquire,
10 hold, own, possess, or transport, for sale or distribution
11 in this State; or to import, or cause to be imported into
12 this State for sale or distribution in this State:

13 (A) any cigarettes the package of which:

14 (i) bears any statement, label, stamp,
15 sticker, or notice indicating that the
16 manufacturer did not intend the cigarettes to be
17 sold, distributed, or used in the United States,
18 including but not limited to labels stating "For
19 Export Only", "U.S. Tax Exempt", "For Use Outside
20 U.S.", or similar wording; or

21 (ii) does not comply with:

22 (aa) all requirements imposed by or
23 pursuant to federal law regarding warnings and
24 other information on packages of cigarettes
25 manufactured, packaged, or imported for sale,

1 distribution, or use in the United States,
2 including but not limited to the precise
3 warning labels specified in the federal
4 Cigarette Labeling and Advertising Act, 15
5 U.S.C. 1333; and

6 (bb) all federal trademark and copyright
7 laws;

8 (B) any cigarettes imported into the United States
9 in violation of 26 U.S.C. 5754 or any other federal
10 law, or implementing federal regulations;

11 (C) any cigarettes that such person otherwise
12 knows or has reason to know the manufacturer did not
13 intend to be sold, distributed, or used in the United
14 States; or

15 (D) any cigarettes for which there has not been
16 submitted to the Secretary of the U.S. Department of
17 Health and Human Services the list or lists of the
18 ingredients added to tobacco in the manufacture of the
19 cigarettes required by the federal Cigarette Labeling
20 and Advertising Act, 15 U.S.C. 1335a;

21 (2) to alter the package of any cigarettes, prior to
22 sale or distribution to the ultimate consumer, so as to
23 remove, conceal, or obscure:

24 (A) any statement, label, stamp, sticker, or
25 notice described in subdivision (a)(1)(A)(i) of this
26 Section;

1 (B) any health warning that is not specified in, or
2 does not conform with the requirements of, the federal
3 Cigarette Labeling and Advertising Act, 15 U.S.C.
4 1333; or

5 (3) to affix any stamp required pursuant to this Act to
6 the package of any cigarettes described in subdivision
7 (a)(1) of this Section or altered in violation of
8 subdivision (a)(2).

9 (b) Documentation. On the first business day of each month,
10 each person licensed to affix the State tax stamp to cigarettes
11 shall file with the Department, for all cigarettes imported
12 into the United States to which the person has affixed the tax
13 stamp in the preceding month:

14 (1) a copy of:

15 (A) the permit issued pursuant to the Internal
16 Revenue Code, 26 U.S.C. 5713, to the person importing
17 the cigarettes into the United States allowing the
18 person to import the cigarettes; and

19 (B) the customs form containing, with respect to
20 the cigarettes, the internal revenue tax information
21 required by the U.S. Bureau of Alcohol, Tobacco and
22 Firearms;

23 (2) a statement, signed by the person under penalty of
24 perjury, which shall be treated as confidential by the
25 Department and exempt from disclosure under the Freedom of
26 Information Act, identifying the brand and brand styles of

1 all such cigarettes, the quantity of each brand style of
2 such cigarettes, the supplier of such cigarettes, and the
3 person or persons, if any, to whom such cigarettes have
4 been conveyed for resale; and a separate statement, signed
5 by the individual under penalty of perjury, which shall not
6 be treated as confidential or exempt from disclosure,
7 separately identifying the brands and brand styles of such
8 cigarettes; and

9 (3) a statement, signed by an officer of the
10 manufacturer or importer under penalty of perjury,
11 certifying that the manufacturer or importer has complied
12 with:

13 (A) the package health warning and ingredient
14 reporting requirements of the federal Cigarette
15 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,
16 with respect to such cigarettes; and

17 (B) the provisions of Exhibit T of the Master
18 Settlement Agreement entered in the case of People of
19 the State of Illinois v. Philip Morris, et al. (Circuit
20 Court of Cook County, No. 96-L13146), including a
21 statement indicating whether the manufacturer is, or
22 is not, a participating tobacco manufacturer within
23 the meaning of Exhibit T.

24 (c) Administrative sanctions.

25 (1) Upon finding that a distributor, secondary
26 distributor, or person has committed any of the acts

1 prohibited by subsection (a), knowing or having reason to
2 know that he or she has done so, or upon finding that a
3 distributor or person has failed to comply with any
4 requirement of subsection (b), the Department may revoke or
5 suspend the license or licenses of any distributor or
6 secondary distributor pursuant to the procedures set forth
7 in Section 6 and impose, on the distributor, secondary
8 distributor, or ~~on the~~ person, a civil penalty in an amount
9 not to exceed the greater of 500% of the retail value of
10 the cigarettes involved or \$5,000.

11 (2) Cigarettes that are acquired, held, owned,
12 possessed, transported in, imported into, or sold or
13 distributed in this State in violation of this Section
14 shall be deemed contraband under this Act and are subject
15 to seizure and forfeiture as provided in this Act, and all
16 such cigarettes seized and forfeited shall be destroyed or
17 maintained and used in an undercover capacity. Such
18 cigarettes shall be deemed contraband whether the
19 violation of this Section is knowing or otherwise.

20 (d) Unfair trade practices. In addition to any other
21 penalties provided for in this Act, a violation of subsection
22 (a) or subsection (b) of this Section shall constitute an
23 unlawful practice as provided in the Consumer Fraud and
24 Deceptive Business Practices Act.

25 (d-1) Retailers and secondary distributors shall not be
26 liable under subsections (c)(1) and (d) of this Section for

1 unknowingly possessing, selling, or distributing to consumers
2 or users cigarettes identified in subsection (a)(1) of this
3 Section if the cigarettes possessed, sold, or distributed by
4 the retailer or secondary distributor were obtained from a
5 distributor licensed under this Act.

6 (e) Unfair cigarette sales. For purposes of the Trademark
7 Registration and Protection Act and the Counterfeit Trademark
8 Act, cigarettes imported or reimported into the United States
9 for sale or distribution under any trade name, trade dress, or
10 trademark that is the same as, or is confusingly similar to,
11 any trade name, trade dress, or trademark used for cigarettes
12 manufactured in the United States for sale or distribution in
13 the United States shall be presumed to have been purchased
14 outside of the ordinary channels of trade.

15 (f) General provisions.

16 (1) This Section shall be enforced by the Department;
17 provided that, at the request of the Director of Revenue or
18 the Director's duly authorized agent, the State police and
19 all local police authorities shall enforce the provisions
20 of this Section. The Attorney General has concurrent power
21 with the State's Attorney of any county to enforce this
22 Section.

23 (2) For the purpose of enforcing this Section, the
24 Director of Revenue and any agency to which the Director
25 has delegated enforcement responsibility pursuant to
26 subdivision (f)(1) may request information from any State

1 or local agency and may share information with and request
2 information from any federal agency and any agency of any
3 other state or any local agency of any other state.

4 (3) In addition to any other remedy provided by law,
5 including enforcement as provided in subdivision (a)(1),
6 any person may bring an action for appropriate injunctive
7 or other equitable relief for a violation of this Section;
8 actual damages, if any, sustained by reason of the
9 violation; and, as determined by the court, interest on the
10 damages from the date of the complaint, taxable costs, and
11 reasonable attorney's fees. If the trier of fact finds that
12 the violation is flagrant, it may increase recovery to an
13 amount not in excess of 3 times the actual damages
14 sustained by reason of the violation.

15 (g) Definitions. As used in this Section:

16 "Importer" means that term as defined in 26 U.S.C. 5702(1).

17 "Package" means that term as defined in 15 U.S.C. 1332(4).

18 (h) Applicability.

19 (1) This Section does not apply to:

20 (A) cigarettes allowed to be imported or brought
21 into the United States for personal use; and

22 (B) cigarettes sold or intended to be sold as
23 duty-free merchandise by a duty-free sales enterprise
24 in accordance with the provisions of 19 U.S.C. 1555(b)
25 and any implementing regulations; except that this
26 Section shall apply to any such cigarettes that are

1 brought back into the customs territory for resale
2 within the customs territory.

3 (2) The penalties provided in this Section are in
4 addition to any other penalties imposed under other
5 provision of law.

6 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

7 (35 ILCS 130/4a) (from Ch. 120, par. 453.4a)

8 Sec. 4a. If a distributor licensee shall be convicted of
9 the violation of any of the provisions of this Act, or if his
10 or her license shall be revoked and no review is had of the
11 order or revocation, or if on review thereof the decision is
12 adverse to the distributor licensee, or if a distributor
13 licensee fails to pay an assessment as to which no judicial
14 review is sought and which has become final, or pursuant to
15 which, upon review thereof, the circuit court has entered a
16 judgment that is in favor of the Department and that has become
17 final, the bond filed pursuant to this Act shall thereupon be
18 forfeited, and the Department may institute a suit upon such
19 bond in its own name for the entire amount of such bond and
20 costs. Such suit upon the bond shall be in addition to any
21 other remedy provided for herein.

22 (Source: P.A. 79-1366.)

23 (35 ILCS 130/4c new)

24 Sec. 4c. Secondary distributor's license. No person may

1 engage in business as a secondary distributor of cigarettes in
2 this State without first having obtained a license therefor
3 from the Department. Application for license shall be made to
4 the Department on a form as furnished and prescribed by the
5 Department. Each applicant for a license under this Section
6 shall furnish the following information to the Department on a
7 form signed and verified by the applicant under penalty of
8 perjury:

9 (1) the name and address of the applicant;

10 (2) the address of the location at which the applicant
11 proposes to engage in business as a secondary distributor
12 of cigarettes in this State; and

13 (3) such other additional information as the
14 Department may reasonably require.

15 The annual license fee payable to the Department for each
16 secondary distributor's license shall be \$250. Each applicant
17 for a license shall pay such fee to the Department at the time
18 of submitting an application for license to the Department.

19 A separate application for license shall be made and
20 separate annual license fee paid for each place of business at
21 which a person who is required to procure a secondary
22 distributor's license under this Section proposes to engage in
23 business as a secondary distributor in Illinois under this Act.

24 The following are ineligible to receive a secondary
25 distributor's license under this Act:

26 (1) a person who is not of good character and

1 reputation in the community in which he resides;

2 (2) a person who has been convicted of a felony under
3 any federal or State law, if the Department, after
4 investigation and a hearing, if requested by the applicant,
5 determines that such person has not been sufficiently
6 rehabilitated to warrant the public trust;

7 (3) a corporation, if any officer, manager, or director
8 thereof, or any stockholder or stockholders owning in the
9 aggregate more than 5% of the stock of such corporation,
10 would not be eligible to receive a license under this Act
11 for any reason;

12 (4) a person who manufactures cigarettes, whether in
13 this State or out of this State;

14 (5) a person, or any person who owns more than 15% of
15 the ownership interests in a person or a related party who:

16 (A) owes, at the time of application, any
17 delinquent cigarette taxes that have been determined
18 by law to be due and unpaid, unless the license
19 applicant has entered into an agreement approved by the
20 Department to pay the amount due;

21 (B) had a license under this Act revoked within the
22 past two years by the Department or has been convicted
23 of a State or federal crime, punishable by imprisonment
24 of one year or more, relating to stolen or contraband
25 cigarettes;

26 (C) has been found by the Department, after notice

1 and a hearing, to have imported or caused to be
2 imported into the United States for sale or
3 distribution any cigarette in violation of 19 U.S.C.
4 1681a;

5 (D) has been found by the Department, after notice
6 and a hearing, to have imported or caused to be
7 imported into the United States for sale or
8 distribution or manufactured for sale or distribution
9 in the United States any cigarette that does not fully
10 comply with the Federal Cigarette Labeling and
11 Advertising Act (15 U.S.C. 1331, et seq.); or

12 (E) has been found by the Department, after notice
13 and a hearing, to have made a material false statement
14 in the application or has failed to produce records
15 required to be maintained by this Act.

16 The Department, upon receipt of an application and license
17 fee from a person who is eligible to receive a secondary
18 distributor's license under this Act, shall issue to such
19 applicant a license in such form as prescribed by the
20 Department. The license shall permit the applicant to which it
21 is issued to engage in business as a secondary distributor at
22 the place shown in his application. All licenses issued by the
23 Department under this Act shall be valid for a period not to
24 exceed one year after issuance unless sooner revoked, canceled,
25 or suspended as provided in this Act. No license issued under
26 this Act is transferable or assignable. Such license shall be

1 conspicuously displayed in the place of business conducted by
2 the licensee in Illinois under such license. No secondary
3 distributor licensee acquires any vested interest or
4 compensable property right in a license issued under this Act.

5 A licensed secondary distributor shall notify the
6 Department of any change in the information contained on the
7 application form, including any change in ownership, and shall
8 do so within 30 days after any such change.

9 Any person aggrieved by any decision of the Department
10 under this Section may, within 20 days after notice of the
11 decision, protest and request a hearing. Upon receiving a
12 request for a hearing, the Department shall give notice to the
13 person requesting the hearing of the time and place fixed for
14 the hearing and shall hold a hearing in conformity with the
15 provisions of this Act and then issue its final administrative
16 decision in the matter to that person. In the absence of a
17 protest and request for a hearing within 20 days, the
18 Department's decision shall become final without any further
19 determination being made or notice given.

20 (35 ILCS 130/4d)

21 Sec. 4d. Sales of cigarettes to and by retailers. In-state
22 makers, manufacturers, and fabricators licensed as
23 distributors under Section 4 of this Act and out-of-state
24 makers, manufacturers, and fabricators holding permits under
25 Section 4b of this Act may not sell original packages of

1 cigarettes to retailers. A retailer may sell only original
2 packages of cigarettes obtained from licensed secondary
3 distributors or licensed distributors other than in-state
4 makers, manufacturers, or fabricators licensed as distributors
5 under Section 4 of this Act and out-of-state makers,
6 manufacturers, or fabricators holding permits under Section 4b
7 of this Act.

8 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

9 (35 ILCS 130/4e new)

10 Sec. 4e. Sales of cigarettes to and by secondary
11 distributors. In-state makers, manufacturers, and fabricators
12 licensed as distributors under Section 4 of this Act and
13 out-of-state makers, manufacturers, and fabricators holding
14 permits under Section 4b of this Act may not sell original
15 packages of cigarettes to secondary distributors. A secondary
16 distributor may sell only original packages of cigarettes
17 obtained from licensed distributors other than in-state
18 makers, manufacturers, or fabricators licensed as distributors
19 under Section 4 of this Act and out-of-state makers,
20 manufacturers, or fabricators holding permits under Section 4b
21 of this Act. Secondary distributors may sell cigarettes to
22 Illinois retailers for resale, and are also authorized to make
23 retail sales of cigarettes at the location on the secondary
24 distributor's license as long as the secondary distributor
25 sells 75% or more of the cigarettes sold at such location to

1 retailers for resale. All sales by secondary distributors to
2 retailers must be made at the location on the secondary
3 distributor's license. Retailers must take possession of all
4 cigarettes sold by the secondary distributor at the secondary
5 distributor's licensed address. Secondary distributors may not
6 make deliveries of cigarettes to retailers.

7 Secondary distributors may not file a claim for credit or
8 refund with the State under Section 9d of this Act.

9 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

10 Sec. 6. Revocation, cancellation, or suspension of
11 license. The Department may, after notice and hearing as
12 provided for by this Act, revoke, cancel or suspend the license
13 of any distributor or secondary distributor for the violation
14 of any provision of this Act, or for noncompliance with any
15 provision herein contained, or for any noncompliance with any
16 lawful rule or regulation promulgated by the Department under
17 Section 8 of this Act, or because the licensee is determined to
18 be ineligible for a distributor's license for any one or more
19 of the reasons provided for in Section 4 of this Act, or
20 because the licensee is determined to be ineligible for a
21 secondary distributor's license for any one or more of the
22 reasons provided for in Section 4c of this Act. However, no
23 such license shall be revoked, cancelled or suspended, except
24 after a hearing by the Department with notice to the
25 distributor or secondary distributor, as aforesaid, and

1 affording such distributor or secondary distributor a
2 reasonable opportunity to appear and defend, and any
3 distributor or secondary distributor aggrieved by any decision
4 of the Department with respect thereto may have the
5 determination of the Department judicially reviewed, as herein
6 provided.

7 The Department may revoke, cancel, or suspend the license
8 of any distributor for a violation of the Tobacco Product
9 Manufacturers' Escrow Enforcement Act as provided in Section 30
10 ~~20~~ of that Act. The Department may revoke, cancel, or suspend
11 the license of any secondary distributor for a violation of
12 subsection (e) of Section 15 of the Tobacco Product
13 Manufacturers' Escrow Enforcement Act.

14 Any distributor or secondary distributor aggrieved by any
15 decision of the Department under this Section may, within 20
16 days after notice of the decision, protest and request a
17 hearing. Upon receiving a request for a hearing, the Department
18 shall give notice in writing to the distributor or secondary
19 distributor requesting the hearing that contains a statement of
20 the charges preferred against the distributor or secondary
21 distributor and that states the time and place fixed for the
22 hearing. The Department shall hold the hearing in conformity
23 with the provisions of this Act and then issue its final
24 administrative decision in the matter to the distributor or
25 secondary distributor. In the absence of a protest and request
26 for a hearing within 20 days, the Department's decision shall

1 become final without any further determination being made or
2 notice given.

3 No license so revoked, as aforesaid, shall be reissued to
4 any such distributor or secondary distributor within a period
5 of 6 months after the date of the final determination of such
6 revocation. No such license shall be reissued at all so long as
7 the person who would receive the license is ineligible to
8 receive a distributor's license under this Act for any one or
9 more of the reasons provided for in Section 4 of this Act or is
10 ineligible to receive a secondary distributor's license under
11 this Act for any one or more of the reasons provided for in
12 Section 4c of this Act.

13 The Department upon complaint filed in the circuit court
14 may by injunction restrain any person who fails, or refuses, to
15 comply with any of the provisions of this Act from acting as a
16 distributor or secondary distributor of cigarettes in this
17 State.

18 (Source: P.A. 91-901, eff. 1-1-01; 92-737, eff. 7-25-02.)

19 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

20 Sec. 7. The Department or any officer or employee of the
21 Department designated, in writing, by the Director thereof,
22 shall at its or his or her own instance, or on the written
23 request of any distributor, secondary distributor, or other
24 interested party to the proceeding, issue subpoenas requiring
25 the attendance of and the giving of testimony by witnesses, and

1 subpoenas duces tecum requiring the production of books,
2 papers, records or memoranda. All subpoenas and subpoenas duces
3 tecum issued under the terms of this Act may be served by any
4 person of full age. The fees of witnesses for attendance and
5 travel shall be the same as the fees of witnesses before the
6 circuit court of this State; such fees to be paid when the
7 witness is excused from further attendance. When the witness is
8 subpoenaed at the instance of the Department or any officer or
9 employee thereof, such fees shall be paid in the same manner as
10 other expenses of the Department, and when the witness is
11 subpoenaed at the instance of any other party to any such
12 proceeding, the cost of service of the subpoena or subpoena
13 duces tecum and the fee of the witness shall be borne by the
14 party at whose instance the witness is summoned. In such case
15 the Department, in its discretion, may require a deposit to
16 cover the cost of such service and witness fees. A subpoena or
17 subpoena duces tecum so issued shall be served in the same
18 manner as a subpoena or subpoena duces tecum issued out of a
19 court.

20 Any circuit court of this State, upon the application of
21 the Department or any officer or employee thereof, or upon the
22 application of any other party to the proceeding, may, in its
23 discretion, compel the attendance of witnesses, the production
24 of books, papers, records or memoranda and the giving of
25 testimony before the Department or any officer or employee
26 thereof conducting an investigation or holding a hearing

1 authorized by this Act, by an attachment for contempt, or
2 otherwise, in the same manner as production of evidence may be
3 compelled before the court.

4 The Department or any officer or employee thereof, or any
5 other party in an investigation or hearing before the
6 Department, may cause the depositions of witnesses within the
7 State to be taken in the manner prescribed by law for like
8 depositions, or depositions for discovery in civil actions in
9 courts of this State, and to that end compel the attendance of
10 witnesses and the production of books, papers, records or
11 memoranda, in the same manner hereinbefore provided.

12 (Source: P.A. 83-334.)

13 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

14 Sec. 8. The Department may make, promulgate and enforce
15 such reasonable rules and regulations relating to the
16 administration and enforcement of this Act as may be deemed
17 expedient.

18 Whenever notice is required by this Act, such notice may be
19 given by United States certified or registered mail, addressed
20 to the person concerned at his last known address, and proof of
21 such mailing shall be sufficient for the purposes of this Act.
22 Notice of any hearing provided for by this Act shall be so
23 given not less than 7 days prior to the day fixed for the
24 hearing.

25 Hearings provided for in this Act shall be held:

1 (1) In Cook County, if the taxpayer's or licensee's
2 principal place of business is in that county;

3 (2) At the Department's office nearest the taxpayer's or
4 licensee's principal place of business, if the taxpayer's or
5 licensee's principal place of business is in Illinois but
6 outside Cook County;

7 (3) In Sangamon County, if the taxpayer's or licensee's
8 principal place of business is outside Illinois.

9 The Circuit Court of the County wherein the hearing is held
10 has power to review all final administrative decisions of the
11 Department in administering this Act. The provisions of the
12 Administrative Review Law, and all amendments and
13 modifications thereof, and the rules adopted pursuant thereto,
14 shall apply to and govern all proceedings for the judicial
15 review of final administrative decisions of the Department
16 under this Act. The term "administrative decision" is defined
17 as in Section 3-101 of the Code of Civil Procedure.

18 Service upon the Director of Revenue or Assistant Director
19 of Revenue of summons issued in any action to review a final
20 administrative decision shall be service upon the Department.
21 The Department shall certify the record of its proceedings if
22 the distributor or secondary distributor pays to it the sum of
23 75¢ per page of testimony taken before the Department and 25¢
24 per page of all other matters contained in such record, except
25 that these charges may be waived where the Department is
26 satisfied that the aggrieved party is a poor person who cannot

1 afford to pay such charges. Before the delivery of such record
2 to the person applying for it, payment of these charges must be
3 made, and if the record is not paid for within 30 days after
4 notice that such record is available, the complaint may be
5 dismissed by the court upon motion of the Department.

6 No stay order shall be entered by the Circuit Court unless
7 the distributor or secondary distributor files with the court a
8 bond in an amount fixed and approved by the court, to indemnify
9 the State against all loss and injury which may be sustained by
10 it on account of the review proceedings and to secure all costs
11 which may be occasioned by such proceedings.

12 Whenever any proceeding provided by this Act is begun
13 before the Department, either by the Department or by a person
14 subject to this Act, and such person thereafter dies or becomes
15 a person under legal disability before such proceeding is
16 concluded, the legal representative of the deceased person or
17 of the person under legal disability shall notify the
18 Department of such death or legal disability. Such legal
19 representative, as such, shall then be substituted by the
20 Department for such person. If the legal representative fails
21 to notify the Department of his or her appointment as such
22 legal representative, the Department may, upon its own motion,
23 substitute such legal representative in the proceeding pending
24 before the Department for the person who died or became a
25 person under legal disability.

26 (Source: P.A. 83-706.)

1 (35 ILCS 130/9e new)

2 Sec. 9e. Secondary distributors; reports. Every secondary
3 distributor who is required to procure a license under this Act
4 shall, on or before the 15th day of each calendar month, file a
5 report with the Department, showing the quantity of cigarettes
6 purchased during the preceding calendar month either within or
7 outside this State, and the quantity of cigarettes sold to
8 retailers or otherwise disposed of during the preceding
9 calendar month. Such reports shall be filed electronically in
10 such form prescribed by the Department and shall contain such
11 other information as the Department may reasonably require. The
12 secondary distributor's report shall be accompanied by
13 appropriate computer generated magnetic media supporting
14 schedule data in the format required by the Department, unless,
15 as provided by rule, the Department grants an exception upon
16 petition of a secondary distributor.

17 A certification by the Director of the Department that a
18 report has not been filed, or that information has not been
19 supplied pursuant to the provisions of this Act, shall be prima
20 facie evidence thereof.

21 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

22 Sec. 10. The Department, or any officer or employee
23 designated in writing by the Director thereof, for the purpose
24 of administering and enforcing the provisions of this Act, may

1 hold investigations and hearings concerning any matters
2 covered by this Act, and may examine books, papers, records or
3 memoranda bearing upon the sale or other disposition of
4 cigarettes by a ~~such~~ distributor or secondary distributor, and
5 may issue subpoenas requiring the attendance of a ~~such~~
6 distributor or secondary distributor, or any officer or
7 employee of a ~~such~~ distributor or secondary distributor, or any
8 person having knowledge of the facts, and may take testimony
9 and require proof, and may issue subpoenas duces tecum to
10 compel the production of relevant books, papers, records and
11 memoranda, for the information of the Department.

12 In the conduct of any investigation or hearing provided for
13 by this Act, neither the Department, nor any officer or
14 employee thereof, shall be bound by the technical rules of
15 evidence, and no informality in the proceedings nor in the
16 manner of taking testimony shall invalidate any rule, order,
17 decision or regulation made, approved or confirmed by the
18 Department.

19 The Director of Revenue, or any duly authorized officer or
20 employee of the Department, shall have the power to administer
21 oaths to such persons required by this Act to give testimony
22 before the said Department.

23 The books, papers, records and memoranda of the Department,
24 or parts thereof, may be proved in any hearing, investigation
25 or legal proceeding by a reproduced copy thereof under the
26 certificate of the Director of Revenue. Such reproduced copy

1 shall, without further proof, be admitted into evidence before
2 the Department or in any legal proceeding.

3 (Source: Laws 1965, p. 192.)

4 (35 ILCS 130/10b) (from Ch. 120, par. 453.10b)

5 Sec. 10b. All information received by the Department from
6 returns or reports filed under this Act, or from any
7 investigation conducted under this Act, shall be confidential,
8 except for official purposes, and any person who divulges any
9 such information in any manner, except in accordance with a
10 proper judicial order or as otherwise provided by law, shall be
11 guilty of a Class A misdemeanor.

12 Nothing in this Act prevents the Director of Revenue from
13 publishing or making available to the public the names and
14 addresses of persons filing returns or reports under this Act,
15 or reasonable statistics concerning the operation of the tax by
16 grouping the contents of returns or reports so that the
17 information in any individual return or report is not
18 disclosed.

19 Nothing in this Act prevents the Director of Revenue from
20 divulging to the United States Government or the government of
21 any other state, or any officer or agency thereof, for
22 exclusively official purposes, information received by the
23 Department in administering this Act, provided that such other
24 governmental agency agrees to divulge requested tax
25 information to the Department.

1 The furnishing upon request of the Auditor General, or his
2 authorized agents, for official use, of returns or reports
3 filed and information related thereto under this Act is deemed
4 to be an official purpose within the meaning of this Section.

5 The furnishing of financial information to a home rule unit
6 with a population in excess of 2,000,000 that has imposed a tax
7 similar to that imposed by this Act under its home rule powers,
8 upon request of the Chief Executive of the home rule unit, is
9 an official purpose within the meaning of this Section,
10 provided the home rule unit agrees in writing to the
11 requirements of this Section. Information so provided is
12 subject to all confidentiality provisions of this Section. The
13 written agreement shall provide for reciprocity, limitations
14 on access, disclosure, and procedures for requesting
15 information.

16 The Director may make available to any State agency,
17 including the Illinois Supreme Court, which licenses persons to
18 engage in any occupation, information that a person licensed by
19 such agency has failed to file returns under this Act or pay
20 the tax, penalty and interest shown therein, or has failed to
21 pay any final assessment of tax, penalty or interest due under
22 this Act or has failed to file reports under this Act. An
23 assessment is final when all proceedings in court for review of
24 such assessment have terminated or the time for the taking
25 thereof has expired without such proceedings being instituted.

26 The Director shall make available for public inspection in

1 the Department's principal office and for publication, at cost,
2 administrative decisions issued on or after January 1, 1995.
3 These decisions are to be made available in a manner so that
4 the following taxpayer or licensee information is not
5 disclosed:

6 (1) The names, addresses, and identification numbers
7 of the taxpayer or licensee, related entities, and
8 employees.

9 (2) At the sole discretion of the Director, trade
10 secrets or other confidential information identified as
11 such by the taxpayer or licensee, no later than 30 days
12 after receipt of an administrative decision, by such means
13 as the Department shall provide by rule.

14 The Director shall determine the appropriate extent of the
15 deletions allowed in paragraph (2). In the event the taxpayer
16 or licensee does not submit deletions, the Director shall make
17 only the deletions specified in paragraph (1).

18 The Director shall make available for public inspection and
19 publication an administrative decision within 180 days after
20 the issuance of the administrative decision. The term
21 "administrative decision" has the same meaning as defined in
22 Section 3-101 of Article III of the Code of Civil Procedure.
23 Costs collected under this Section shall be paid into the Tax
24 Compliance and Administration Fund.

25 Nothing contained in this Act shall prevent the Director
26 from divulging information to any person pursuant to a request

1 or authorization made by the taxpayer or licensee or by an
2 authorized representative of the taxpayer or licensee.

3 (Source: P.A. 94-1074, eff. 12-26-06.)

4 (35 ILCS 130/11a new)

5 Sec. 11a. Secondary distributors; records. Every secondary
6 distributor of cigarettes, who is required to procure a license
7 under this Act, shall keep within Illinois, at his licensed
8 address, complete and accurate records of cigarettes held,
9 purchased, brought in from without the State, and sold, or
10 otherwise disposed of, and shall preserve and keep within
11 Illinois at his licensed address all invoices, bills of lading,
12 sales records, copies of bills of sale, inventory at the close
13 of each period for which a report is required of all cigarettes
14 on hand, and other pertinent papers and documents relating to
15 the purchase, sale, or disposition of cigarettes. All books and
16 records and other papers and documents that are required by
17 this Act to be kept shall be kept in the English language, and
18 shall, at all times during the usual business hours of the day,
19 be subject to inspection by the Department or its duly
20 authorized agents and employees. The Department may adopt rules
21 that establish requirements, including record forms and
22 formats, for records required to be kept and maintained by
23 secondary distributors. For purposes of this Section,
24 "records" means all data maintained by the secondary
25 distributors, including data on paper, microfilm, microfiche

1 or any type of machine sensible data compilation. Those books,
2 records, papers, and documents shall be preserved for a period
3 of at least 3 years after the date of the documents, or the
4 date of the entries appearing in the records, unless the
5 Department, in writing, authorizes their destruction or
6 disposal at an earlier date. At all times during the usual
7 business hours of the day any duly authorized agent or employee
8 of the Department may enter any place of business of the
9 secondary distributor without a search warrant and may inspect
10 the premises and the stock or packages of cigarettes therein
11 contained to determine whether any of the provisions of this
12 Act are being violated. If such agent or employee is denied
13 free access or is hindered or interfered with in making such
14 examination as herein provided, the license of the secondary
15 distributor at such premises shall be subject to revocation by
16 the Department.

17 (35 ILCS 130/12) (from Ch. 120, par. 453.12)

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

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

1 (35 ILCS 130/15) (from Ch. 120, par. 453.15)

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

8 (Source: P.A. 88-88.)

9 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

10 Sec. 23. Every distributor, secondary distributor, or
11 other person who shall knowingly and wilfully sell or offer for
12 sale any original package, as defined in this Act, having
13 affixed thereto any fraudulent, spurious, imitation or
14 counterfeit stamp, or stamp which has been previously affixed,
15 or affixes a stamp which has previously been affixed to an
16 original package, or who shall knowingly and wilfully sell or
17 offer for sale any original package, as defined in this Act,
18 having imprinted thereon underneath the sealed transparent
19 wrapper thereof any fraudulent, spurious, imitation or
20 counterfeit tax imprint, shall be deemed guilty of a Class 2
21 felony.

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

23 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

1 Sec. 24. Punishment for sale or possession of packages of
2 contraband cigarettes.

3 (a) Possession or sale of 100 or less packages of
4 contraband cigarettes. With the exception of licensed
5 distributors, licensed secondary distributors, or licensed
6 transporters, as defined in Section 9c of this Act, any person
7 who has in his or her possession or sells 100 or less original
8 packages of contraband cigarettes is guilty of a Class A
9 misdemeanor.

10 (b) Possession or sale of more than 100 but less than 251
11 packages of contraband cigarettes. With the exception of
12 licensed distributors, licensed secondary distributors, or
13 licensed transporters, as defined in Section 9c of this Act,
14 any person who has in his or her possession or sells more than
15 100 but less than 251 original packages of contraband
16 cigarettes is guilty of a Class A misdemeanor for a first
17 offense and a Class 4 felony for each subsequent offense.

18 (c) Possession or sale of more than 250 but less than 1,001
19 packages of contraband cigarettes. With the exception of
20 licensed distributors, licensed secondary distributors, or
21 licensed transporters, as defined in Section 9c of this Act,
22 any person who has in his or her possession or sells more than
23 250 but less than 1,001 original packages of contraband
24 cigarettes is guilty of a Class 4 felony.

25 (d) Possession or sale of more than 1,000 packages of
26 contraband cigarettes. With the exception of licensed

1 distributors, licensed secondary distributors, or licensed
2 transporters, as defined in Section 9c of this Act, any person
3 who has in his or her possession or sells more than 1,000
4 original packages of contraband cigarettes is guilty of a Class
5 3 felony.

6 (e) Any person licensed as a distributor, secondary
7 distributor, or transporter, as defined in Section 9c of this
8 Act, who has in his or her possession or sells 100 or less
9 original packages of contraband cigarettes is guilty of a Class
10 A misdemeanor.

11 (f) Any person licensed as a distributor, secondary
12 distributor, or transporter, as defined in Section 9c of this
13 Act, who has in his or her possession or sells more than 100
14 original packages of contraband cigarettes is guilty of a Class
15 4 felony.

16 (g) Notwithstanding subsections (e) through (f), licensed
17 distributors and transporters, as defined in Section 9c of this
18 Act, may possess unstamped packages of cigarettes.
19 Notwithstanding subsections (e) through (f), licensed
20 distributors may possess cigarettes that bear a tax stamp of
21 another state or taxing jurisdiction. Notwithstanding
22 subsections (e) through (f), a licensed distributor or licensed
23 secondary distributor may possess contraband cigarettes
24 returned to the distributor or licensed secondary distributor
25 by a retailer if the distributor or licensed secondary
26 distributor immediately conducts an inventory of the

1 cigarettes being returned, the distributor or licensed
2 secondary distributor and the retailer returning the
3 contraband cigarettes sign the inventory, the distributor or
4 licensed secondary distributor provides a copy of the signed
5 inventory to the retailer, and the distributor retains the
6 inventory in its books and records and promptly notifies the
7 Department of Revenue.

8 (h) Notwithstanding subsections (a) through (d) of this
9 Section, a retailer unknowingly possessing contraband
10 cigarettes obtained from a licensed distributor or licensed
11 secondary distributor or knowingly possessing contraband
12 cigarettes obtained from a licensed distributor is not subject
13 to penalties under this Section if the retailer, within 48
14 hours after discovering that the cigarettes are contraband
15 cigarettes, excluding Saturdays, Sundays, and holidays: (i)
16 notifies the Department and the licensed distributor or
17 licensed secondary distributor from whom the cigarettes were
18 obtained, orally and in writing, that he or she possesses
19 contraband cigarettes obtained from a licensed distributor or
20 licensed secondary distributor; (ii) places the contraband
21 cigarettes in one or more containers and seals those
22 containers; and (iii) places on the containers the following or
23 similar language: "Contraband Cigarettes. Not For Sale." All
24 contraband cigarettes in the possession of a retailer remain
25 subject to forfeiture under the provisions of this Act.

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

1 (35 ILCS 130/25) (from Ch. 120, par. 453.25)

2 Sec. 25. Any person, or any officer, agent or employee of
3 any person, required by this Act to make, file, render, sign or
4 verify any report or return, who makes any false or fraudulent
5 report or return or files any false or fraudulent report or
6 return, or who shall fail to make such report or return or file
7 such report or return when due, shall be guilty of a Class 4
8 felony.

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

10 (35 ILCS 130/26) (from Ch. 120, par. 453.26)

11 Sec. 26. Whoever acts as a distributor or secondary
12 distributor of original packages without having a license, as
13 required by this Act, shall be guilty of a Class 4 felony.

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

15 Section 20. The Cigarette Use Tax Act is amended by
16 changing Sections 1, 3, 3-10, 4d, 5, 6, 9, 12, 16, 17, 20, 21,
17 23, 29, 30, and 31 and by adding Sections 4b, 4e, 7a, 11a, and
18 15a as follows:

19 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

20 Sec. 1. For the purpose of this Act, unless otherwise
21 required by the context:

22 "Use" means the exercise by any person of any right or

1 power over cigarettes incident to the ownership or possession
2 thereof, other than the making of a sale thereof in the course
3 of engaging in a business of selling cigarettes and shall
4 include the keeping or retention of cigarettes for use, except
5 that "use" does not include the use of cigarettes by a
6 not-for-profit research institution conducting tests
7 concerning the health effects of tobacco products, provided the
8 cigarettes are not offered for resale.

9 "Brand Style" means a variety of cigarettes distinguished
10 by the tobacco used, tar and nicotine content, flavoring used,
11 size of the cigarette, filtration on the cigarette or
12 packaging.

13 "Cigarette" means any roll for smoking made wholly or in
14 part of tobacco irrespective of size or shape and whether or
15 not such tobacco is flavored, adulterated or mixed with any
16 other ingredient, and the wrapper or cover of which is made of
17 paper or any other substance or material except tobacco.

18 "Contraband cigarettes" means:

19 (a) cigarettes that do not bear a required tax stamp
20 under this Act;

21 (b) cigarettes for which any required federal taxes
22 have not been paid;

23 (c) cigarettes that bear a counterfeit tax stamp;

24 (d) cigarettes that are manufactured, fabricated,
25 assembled, processed, packaged, or labeled by any person
26 other than (i) the owner of the trademark rights in the

1 cigarette brand or (ii) a person that is directly or
2 indirectly authorized by such owner;

3 (e) cigarettes imported into the United States, or
4 otherwise distributed, in violation of the federal
5 Imported Cigarette Compliance Act of 2000 (Title IV of
6 Public Law 106-476);

7 (f) cigarettes that have false manufacturing labels;

8 (g) cigarettes identified in Section 3-10(a)(1) of
9 this Act; or

10 (h) cigarettes that are improperly tax stamped,
11 including cigarettes that bear a tax stamp of another state
12 or taxing jurisdiction.

13 "Person" means any natural individual, firm, partnership,
14 association, joint stock company, joint adventure, public or
15 private corporation, however formed, limited liability
16 company, or a receiver, executor, administrator, trustee,
17 guardian or other representative appointed by order of any
18 court.

19 "Department" means the Department of Revenue.

20 "Sale" means any transfer, exchange or barter in any manner
21 or by any means whatsoever for a consideration, and includes
22 and means all sales made by any person.

23 "Original Package" means the individual packet, box or
24 other container whatsoever used to contain and to convey
25 cigarettes to the consumer.

26 "Distributor" means any and each of the following:

1 a. Any person engaged in the business of selling
2 cigarettes in this State who brings or causes to be brought
3 into this State from without this State any original
4 packages of cigarettes, on which original packages there is
5 no authorized evidence underneath a sealed transparent
6 wrapper showing that the tax liability imposed by this Act
7 has been paid or assumed by the out-of-State seller of such
8 cigarettes, for sale in the course of such business.

9 b. Any person who makes, manufactures or fabricates
10 cigarettes in this State for sale, except a person who
11 makes, manufactures or fabricates cigarettes for sale to
12 residents incarcerated in penal institutions or resident
13 patients or a State-operated mental health facility.

14 c. Any person who makes, manufactures or fabricates
15 cigarettes outside this State, which cigarettes are placed
16 in original packages contained in sealed transparent
17 wrappers, for delivery or shipment into this State, and who
18 elects to qualify and is accepted by the Department as a
19 distributor under Section 7 of this Act.

20 "Distributor" does not include any person who transfers
21 cigarettes to a not-for-profit research institution that
22 conducts tests concerning the health effects of tobacco
23 products and who does not offer the cigarettes for resale.

24 "Distributor maintaining a place of business in this
25 State", or any like term, means any distributor having or
26 maintaining within this State, directly or by a subsidiary, an

1 office, distribution house, sales house, warehouse or other
2 place of business, or any agent operating within this State
3 under the authority of the distributor or its subsidiary,
4 irrespective of whether such place of business or agent is
5 located here permanently or temporarily, or whether such
6 distributor or subsidiary is licensed to transact business
7 within this State.

8 "Business" means any trade, occupation, activity or
9 enterprise engaged in or conducted in this State for the
10 purpose of selling cigarettes.

11 "Prior Continuous Compliance Taxpayer" means any person
12 who is licensed under this Act and who, having been a licensee
13 for a continuous period of 5 years, is determined by the
14 Department not to have been either delinquent or deficient in
15 the payment of tax liability during that period or otherwise in
16 violation of this Act. Also, any taxpayer who has, as verified
17 by the Department, continuously complied with the condition of
18 his bond or other security under provisions of this Act of a
19 period of 5 consecutive years shall be considered to be a
20 "prior continuous compliance taxpayer". In calculating the
21 consecutive period of time described herein for qualification
22 as a "prior continuous compliance taxpayer", a consecutive
23 period of time of qualifying compliance immediately prior to
24 the effective date of this amendatory Act of 1987 shall be
25 credited to any licensee who became licensed on or before the
26 effective date of this amendatory Act of 1987.

1 "Secondary distributor" means any person engaged in the
2 business of selling cigarettes who purchases stamped original
3 packages of cigarettes from a licensed distributor under this
4 Act or the Cigarette Tax Act, sells 75% or more of those
5 cigarettes to retailers for resale, and maintains an
6 established business where a substantial stock of cigarettes is
7 available to retailers for resale.

8 "Secondary distributor maintaining a place of business in
9 this State", or any like term, means any secondary distributor
10 having or maintaining within this State, directly or by a
11 subsidiary, an office, distribution house, sales house,
12 warehouse, or other place of business, or any agent operating
13 within this State under the authority of the secondary
14 distributor or its subsidiary, irrespective of whether such
15 place of business or agent is located here permanently or
16 temporarily, or whether such secondary distributor or
17 subsidiary is licensed to transact business within this State.

18 "Stamp" or "stamps" mean the indicia required to be affixed
19 on a pack of cigarettes that evidence payment of the tax on
20 cigarettes under Section 2 of this Act.

21 "Related party" means any person that is associated with
22 any other person because he or she:

23 (a) is an officer or director of a business; or

24 (b) is legally recognized as a partner in business.

25 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
26 96-782, eff. 1-1-10.)

1 (35 ILCS 135/3) (from Ch. 120, par. 453.33)

2 Sec. 3. Stamp payment. The tax hereby imposed shall be
3 collected by a distributor maintaining a place of business in
4 this State or a distributor authorized by the Department
5 pursuant to Section 7 hereof to collect the tax, and the amount
6 of the tax shall be added to the price of the cigarettes sold
7 by such distributor. Collection of the tax shall be evidenced
8 by a stamp or stamps affixed to each original package of
9 cigarettes or by an authorized substitute for such stamp
10 imprinted on each original package of such cigarettes
11 underneath the sealed transparent outside wrapper of such
12 original package, except as hereinafter provided. Each
13 distributor who is required or authorized to collect the tax
14 herein imposed, before delivering or causing to be delivered
15 any original packages of cigarettes in this State to any
16 purchaser, shall firmly affix a proper stamp or stamps to each
17 such package, or (in the case of manufacturers of cigarettes in
18 original packages which are contained inside a sealed
19 transparent wrapper) shall imprint the required language on the
20 original package of cigarettes beneath such outside wrapper as
21 hereinafter provided. Such stamp or stamps need not be affixed
22 to the original package of any cigarettes with respect to which
23 the distributor is required to affix a like stamp or stamps by
24 virtue of the Cigarette Tax Act, however, and no tax imprint
25 need be placed underneath the sealed transparent wrapper of an

1 original package of cigarettes with respect to which the
2 distributor is required or authorized to employ a like tax
3 imprint by virtue of the Cigarette Tax Act.

4 No stamp or imprint may be affixed to, or made upon, any
5 package of cigarettes unless that package complies with all
6 requirements of the federal Cigarette Labeling and Advertising
7 Act, 15 U.S.C. 1331 and following, for the placement of labels,
8 warnings, or any other information upon a package of cigarettes
9 that is sold within the United States. Under the authority of
10 Section 6, the Department shall revoke the license of any
11 distributor that is determined to have violated this paragraph.
12 A person may not affix a stamp on a package of cigarettes,
13 cigarette papers, wrappers, or tubes if that individual package
14 has been marked for export outside the United States with a
15 label or notice in compliance with Section 290.185 of Title 27
16 of the Code of Federal Regulations. It is not a defense to a
17 proceeding for violation of this paragraph that the label or
18 notice has been removed, mutilated, obliterated, or altered in
19 any manner.

20 Only distributors licensed under this Act and
21 transporters, as defined in Section 9c of the Cigarette Tax
22 Act, may possess unstamped original packages of cigarettes.
23 Prior to shipment to an Illinois retailer or secondary
24 distributor, a stamp shall be applied to each original package
25 of cigarettes sold to the retailer or secondary distributor. A
26 distributor may apply a tax stamp only to an original package

1 of cigarettes purchased or obtained directly from an in-state
2 maker, manufacturer, or fabricator licensed as a distributor
3 under Section 4 of this Act or an out-of-state maker,
4 manufacturer, or fabricator holding a permit under Section 7 of
5 this Act. A licensed distributor may ship or otherwise cause to
6 be delivered unstamped original packages of cigarettes in,
7 into, or from this State. A licensed distributor may transport
8 unstamped original packages of cigarettes to a facility,
9 wherever located, owned or controlled by such distributor;
10 however, a distributor may not transport unstamped original
11 packages of cigarettes to a facility where retail sales of
12 cigarettes take place or to a facility where a secondary
13 distributor makes sales for resale. Any licensed distributor
14 that ships or otherwise causes to be delivered unstamped
15 original packages of cigarettes into, within, or from this
16 State shall ensure that the invoice or equivalent documentation
17 and the bill of lading or freight bill for the shipment
18 identifies the true name and address of the consignor or
19 seller, the true name and address of the consignee or
20 purchaser, and the quantity by brand style of the cigarettes so
21 transported, provided that this Section shall not be construed
22 as to impose any requirement or liability upon any common or
23 contract carrier.

24 Distributors making sales of cigarettes to secondary
25 distributors shall add the amount of the tax to the price of
26 the cigarettes sold by the distributors. Secondary

1 distributors making sales of cigarettes to retailers shall
2 include the amount of the tax in the price of the cigarettes
3 sold to retailers. The amount of tax shall not be less than the
4 amount of taxes imposed by the State and all local
5 jurisdictions. The amount of local taxes shall be calculated
6 based on the location of the retailer's place of business shown
7 on the retailer's certificate of registration or
8 sub-registration issued to the retailer pursuant to Section 2a
9 of the Retailers' Occupation Tax Act. The original packages of
10 cigarettes sold by the retailer shall bear all the required
11 stamps, or other indicia, for the taxes included in the price
12 of cigarettes.

13 Stamps, when required hereunder, shall be purchased from
14 the Department, or any person authorized by the Department, by
15 distributors. On and after July 1, 2003, payment for such
16 stamps must be made by means of electronic funds transfer. The
17 Department may refuse to sell stamps to any person who does not
18 comply with the provisions of this Act. Beginning on June 6,
19 2002 and through June 30, 2002, persons holding valid licenses
20 as distributors may purchase cigarette tax stamps up to an
21 amount equal to 115% of the distributor's average monthly
22 cigarette tax stamp purchases over the 12 calendar months prior
23 to June 6, 2002.

24 Prior to December 1, 1985, the Department shall allow a
25 distributor 21 days in which to make final payment of the
26 amount to be paid for such stamps, by allowing the distributor

1 to make payment for the stamps at the time of purchasing them
2 with a draft which shall be in such form as the Department
3 prescribes, and which shall be payable within 21 days
4 thereafter: Provided that such distributor has filed with the
5 Department, and has received the Department's approval of, a
6 bond, which is in addition to the bond required under Section 4
7 of this Act, payable to the Department in an amount equal to
8 80% of such distributor's average monthly tax liability to the
9 Department under this Act during the preceding calendar year or
10 \$500,000, whichever is less. The bond shall be joint and
11 several and shall be in the form of a surety company bond in
12 such form as the Department prescribes, or it may be in the
13 form of a bank certificate of deposit or bank letter of credit.
14 The bond shall be conditioned upon the distributor's payment of
15 the amount of any 21-day draft which the Department accepts
16 from that distributor for the delivery of stamps to that
17 distributor under this Act. The distributor's failure to pay
18 any such draft, when due, shall also make such distributor
19 automatically liable to the Department for a penalty equal to
20 25% of the amount of such draft.

21 On and after December 1, 1985 and until July 1, 2003, the
22 Department shall allow a distributor 30 days in which to make
23 final payment of the amount to be paid for such stamps, by
24 allowing the distributor to make payment for the stamps at the
25 time of purchasing them with a draft which shall be in such
26 form as the Department prescribes, and which shall be payable

1 within 30 days thereafter, and beginning on January 1, 2003 and
2 thereafter, the draft shall be payable by means of electronic
3 funds transfer: Provided that such distributor has filed with
4 the Department, and has received the Department's approval of,
5 a bond, which is in addition to the bond required under Section
6 4 of this Act, payable to the Department in an amount equal to
7 150% of such distributor's average monthly tax liability to the
8 Department under this Act during the preceding calendar year or
9 \$750,000, whichever is less, except that as to bonds filed on
10 or after January 1, 1987, such additional bond shall be in an
11 amount equal to 100% of such distributor's average monthly tax
12 liability under this Act during the preceding calendar year or
13 \$750,000, whichever is less. The bond shall be joint and
14 several and shall be in the form of a surety company bond in
15 such form as the Department prescribes, or it may be in the
16 form of a bank certificate of deposit or bank letter of credit.
17 The bond shall be conditioned upon the distributor's payment of
18 the amount of any 30-day draft which the Department accepts
19 from that distributor for the delivery of stamps to that
20 distributor under this Act. The distributor's failure to pay
21 any such draft, when due, shall also make such distributor
22 automatically liable to the Department for a penalty equal to
23 25% of the amount of such draft.

24 Every prior continuous compliance taxpayer shall be exempt
25 from all requirements under this Section concerning the
26 furnishing of such bond, as defined in this Section, as a

1 condition precedent to his being authorized to engage in the
2 business licensed under this Act. This exemption shall continue
3 for each such taxpayer until such time as he may be determined
4 by the Department to be delinquent in the filing of any
5 returns, or is determined by the Department (either through the
6 Department's issuance of a final assessment which has become
7 final under the Act, or by the taxpayer's filing of a return
8 which admits tax to be due that is not paid) to be delinquent
9 or deficient in the paying of any tax under this Act, at which
10 time that taxpayer shall become subject to the bond
11 requirements of this Section and, as a condition of being
12 allowed to continue to engage in the business licensed under
13 this Act, shall be required to furnish bond to the Department
14 in such form as provided in this Section. Such taxpayer shall
15 furnish such bond for a period of 2 years, after which, if the
16 taxpayer has not been delinquent in the filing of any returns,
17 or delinquent or deficient in the paying of any tax under this
18 Act, the Department may reinstate such person as a prior
19 continuance compliance taxpayer. Any taxpayer who fails to pay
20 an admitted or established liability under this Act may also be
21 required to post bond or other acceptable security with the
22 Department guaranteeing the payment of such admitted or
23 established liability.

24 Any person aggrieved by any decision of the Department
25 under this Section may, within the time allowed by law, protest
26 and request a hearing, whereupon the Department shall give

1 notice and shall hold a hearing in conformity with the
2 provisions of this Act and then issue its final administrative
3 decision in the matter to such person. In the absence of such a
4 protest filed within the time allowed by law, the Department's
5 decision shall become final without any further determination
6 being made or notice given.

7 The Department shall discharge any surety and shall release
8 and return any bond or security deposited, assigned, pledged,
9 or otherwise provided to it by a taxpayer under this Section
10 within 30 days after:

11 (1) such Taxpayer becomes a prior continuous
12 compliance taxpayer; or

13 (2) such taxpayer has ceased to collect receipts on
14 which he is required to remit tax to the Department, has
15 filed a final tax return, and has paid to the Department an
16 amount sufficient to discharge his remaining tax liability
17 as determined by the Department under this Act. The
18 Department shall make a final determination of the
19 taxpayer's outstanding tax liability as expeditiously as
20 possible after his final tax return has been filed. If the
21 Department cannot make such final determination within 45
22 days after receiving the final tax return, within such
23 period it shall so notify the taxpayer, stating its reasons
24 therefor.

25 At the time of purchasing such stamps from the Department
26 when purchase is required by this Act, or at the time when the

1 tax which he has collected is remitted by a distributor to the
2 Department without the purchase of stamps from the Department
3 when that method of remitting the tax that has been collected
4 is required or authorized by this Act, the distributor shall be
5 allowed a discount during any year commencing July 1 and ending
6 the following June 30 in accordance with the schedule set out
7 hereinbelow, from the amount to be paid by him to the
8 Department for such stamps, or to be paid by him to the
9 Department on the basis of monthly remittances (as the case may
10 be), to cover the cost, to such distributor, of collecting the
11 tax herein imposed by affixing such stamps to the original
12 packages of cigarettes sold by such distributor or by placing
13 tax imprints underneath the sealed transparent wrapper of
14 original packages of cigarettes sold by such distributor (as
15 the case may be): (1) Prior to December 1, 1985, a discount
16 equal to 1-2/3% of the amount of the tax up to and including
17 the first \$700,000 paid hereunder by such distributor to the
18 Department during any such year; 1-1/3% of the next \$700,000 of
19 tax or any part thereof, paid hereunder by such distributor to
20 the Department during any such year; 1% of the next \$700,000 of
21 tax, or any part thereof, paid hereunder by such distributor to
22 the Department during any such year; and 2/3 of 1% of the
23 amount of any additional tax paid hereunder by such distributor
24 to the Department during any such year or (2) On and after
25 December 1, 1985, a discount equal to 1.75% of the amount of
26 the tax payable under this Act up to and including the first

1 \$3,000,000 paid hereunder by such distributor to the Department
2 during any such year and 1.5% of the amount of any additional
3 tax paid hereunder by such distributor to the Department during
4 any such year.

5 Two or more distributors that use a common means of
6 affixing revenue tax stamps or that are owned or controlled by
7 the same interests shall be treated as a single distributor for
8 the purpose of computing the discount.

9 Cigarette manufacturers who are distributors under Section
10 7(a) of this Act, and who place their cigarettes in original
11 packages which are contained inside a sealed transparent
12 wrapper, shall be required to remit the tax which they are
13 required to collect under this Act to the Department by
14 remitting the amount thereof to the Department by the 5th day
15 of each month, covering cigarettes shipped or otherwise
16 delivered to points in Illinois to purchasers during the
17 preceding calendar month, but a distributor need not remit to
18 the Department the tax so collected by him from purchasers
19 under this Act to the extent to which such distributor is
20 required to remit the tax imposed by the Cigarette Tax Act to
21 the Department with respect to the same cigarettes. All taxes
22 upon cigarettes under this Act are a direct tax upon the retail
23 consumer and shall conclusively be presumed to be precollected
24 for the purpose of convenience and facility only. Cigarette
25 manufacturers that are distributors licensed under Section
26 7(a) of this Act and who place their cigarettes in original

1 packages which are contained inside a sealed transparent
2 wrapper, before delivering such cigarettes or causing such
3 cigarettes to be delivered in this State to purchasers, shall
4 evidence their obligation to collect and remit the tax due with
5 respect to such cigarettes by imprinting language to be
6 prescribed by the Department on each original package of such
7 cigarettes underneath the sealed transparent outside wrapper
8 of such original package, in such place thereon and in such
9 manner as the Department may prescribe; provided (as stated
10 hereinbefore) that this requirement does not apply when such
11 distributor is required or authorized by the Cigarette Tax Act
12 to place the tax imprint provided for in the last paragraph of
13 Section 3 of that Act underneath the sealed transparent wrapper
14 of such original package of cigarettes. Such imprinted language
15 shall acknowledge the manufacturer's collection and payment of
16 or liability for the tax imposed by this Act with respect to
17 such cigarettes.

18 The Department shall adopt the design or designs of the tax
19 stamps and shall procure the printing of such stamps in such
20 amounts and denominations as it deems necessary to provide for
21 the affixation of the proper amount of tax stamps to each
22 original package of cigarettes.

23 Where tax stamps are required, the Department may authorize
24 distributors to affix revenue tax stamps by imprinting tax
25 meter stamps upon original packages of cigarettes. The
26 Department shall adopt rules and regulations relating to the

1 imprinting of such tax meter stamps as will result in payment
2 of the proper taxes as herein imposed. No distributor may affix
3 revenue tax stamps to original packages of cigarettes by
4 imprinting meter stamps thereon unless such distributor has
5 first obtained permission from the Department to employ this
6 method of affixation. The Department shall regulate the use of
7 tax meters and may, to assure the proper collection of the
8 taxes imposed by this Act, revoke or suspend the privilege,
9 theretofore granted by the Department to any distributor, to
10 imprint tax meter stamps upon original packages of cigarettes.

11 The tax hereby imposed and not paid pursuant to this
12 Section shall be paid to the Department directly by any person
13 using such cigarettes within this State, pursuant to Section 12
14 hereof.

15 A distributor shall not affix, or cause to be affixed, any
16 stamp or imprint to a package of cigarettes, as provided for in
17 this Section, if the tobacco product manufacturer, as defined
18 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,
19 that made or sold the cigarettes has failed to become a
20 participating manufacturer, as defined in subdivision (a)(1)
21 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,
22 or has failed to create a qualified escrow fund for any
23 cigarettes manufactured by the tobacco product manufacturer
24 and sold in this State or otherwise failed to bring itself into
25 compliance with subdivision (a)(2) of Section 15 of the Tobacco
26 Product Manufacturers' Escrow Act.

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

2 (35 ILCS 135/3-10)

3 Sec. 3-10. Cigarette enforcement.

4 (a) Prohibitions. It is unlawful for any person:

5 (1) to sell or distribute in this State; to acquire,
6 hold, own, possess, or transport, for sale or distribution
7 in this State; or to import, or cause to be imported into
8 this State for sale or distribution in this State:

9 (A) any cigarettes the package of which:

10 (i) bears any statement, label, stamp,
11 sticker, or notice indicating that the
12 manufacturer did not intend the cigarettes to be
13 sold, distributed, or used in the United States,
14 including but not limited to labels stating "For
15 Export Only", "U.S. Tax Exempt", "For Use Outside
16 U.S.", or similar wording; or

17 (ii) does not comply with:

18 (aa) all requirements imposed by or
19 pursuant to federal law regarding warnings and
20 other information on packages of cigarettes
21 manufactured, packaged, or imported for sale,
22 distribution, or use in the United States,
23 including but not limited to the precise
24 warning labels specified in the federal
25 Cigarette Labeling and Advertising Act, 15

1 U.S.C. 1333; and

2 (bb) all federal trademark and copyright
3 laws;

4 (B) any cigarettes imported into the United States
5 in violation of 26 U.S.C. 5754 or any other federal
6 law, or implementing federal regulations;

7 (C) any cigarettes that such person otherwise
8 knows or has reason to know the manufacturer did not
9 intend to be sold, distributed, or used in the United
10 States; or

11 (D) any cigarettes for which there has not been
12 submitted to the Secretary of the U.S. Department of
13 Health and Human Services the list or lists of the
14 ingredients added to tobacco in the manufacture of the
15 cigarettes required by the federal Cigarette Labeling
16 and Advertising Act, 15 U.S.C. 1335a;

17 (2) to alter the package of any cigarettes, prior to
18 sale or distribution to the ultimate consumer, so as to
19 remove, conceal, or obscure:

20 (A) any statement, label, stamp, sticker, or
21 notice described in subdivision (a)(1)(A)(i) of this
22 Section;

23 (B) any health warning that is not specified in, or
24 does not conform with the requirements of, the federal
25 Cigarette Labeling and Advertising Act, 15 U.S.C.
26 1333; or

1 (3) to affix any stamp required pursuant to this Act to
2 the package of any cigarettes described in subdivision
3 (a)(1) of this Section or altered in violation of
4 subdivision (a)(2).

5 (b) Documentation. On the first business day of each month,
6 each person licensed to affix the State tax stamp to cigarettes
7 shall file with the Department, for all cigarettes imported
8 into the United States to which the person has affixed the tax
9 stamp in the preceding month:

10 (1) a copy of:

11 (A) the permit issued pursuant to the Internal
12 Revenue Code, 26 U.S.C. 5713, to the person importing
13 the cigarettes into the United States allowing the
14 person to import the cigarettes; and

15 (B) the customs form containing, with respect to
16 the cigarettes, the internal revenue tax information
17 required by the U.S. Bureau of Alcohol, Tobacco and
18 Firearms;

19 (2) a statement, signed by the person under penalty of
20 perjury, which shall be treated as confidential by the
21 Department and exempt from disclosure under the Freedom of
22 Information Act, identifying the brand and brand styles of
23 all such cigarettes, the quantity of each brand style of
24 such cigarettes, the supplier of such cigarettes, and the
25 person or persons, if any, to whom such cigarettes have
26 been conveyed for resale; and a separate statement, signed

1 by the individual under penalty of perjury, which shall not
2 be treated as confidential or exempt from disclosure,
3 separately identifying the brands and brand styles of such
4 cigarettes; and

5 (3) a statement, signed by an officer of the
6 manufacturer or importer under penalty of perjury,
7 certifying that the manufacturer or importer has complied
8 with:

9 (A) the package health warning and ingredient
10 reporting requirements of the federal Cigarette
11 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,
12 with respect to such cigarettes; and

13 (B) the provisions of Exhibit T of the Master
14 Settlement Agreement entered in the case of People of
15 the State of Illinois v. Philip Morris, et al. (Circuit
16 Court of Cook County, No. 96-L13146), including a
17 statement indicating whether the manufacturer is, or
18 is not, a participating tobacco manufacturer within
19 the meaning of Exhibit T.

20 (c) Administrative sanctions.

21 (1) Upon finding that a distributor, secondary
22 distributor, or a person has committed any of the acts
23 prohibited by subsection (a), knowing or having reason to
24 know that he or she has done so, or upon finding that a
25 distributor or person has failed to comply with any
26 requirement of subsection (b), the Department may revoke or

1 suspend the license or licenses of any distributor or
2 secondary distributor pursuant to the procedures set forth
3 in Section 6 and impose on the distributor, secondary
4 distributor, or ~~on the~~ person, a civil penalty in an amount
5 not to exceed the greater of 500% of the retail value of
6 the cigarettes involved or \$5,000.

7 (2) Cigarettes that are acquired, held, owned,
8 possessed, transported in, imported into, or sold or
9 distributed in this State in violation of this Section
10 shall be deemed contraband under this Act and are subject
11 to seizure and forfeiture as provided in this Act, and all
12 such cigarettes seized and forfeited shall be destroyed or
13 maintained and used in an undercover capacity. Such
14 cigarettes shall be deemed contraband whether the
15 violation of this Section is knowing or otherwise.

16 (d) Unfair trade practices. In addition to any other
17 penalties provided for in this Act, a violation of subsection
18 (a) or subsection (b) of this Section shall constitute an
19 unlawful practice as provided in the Consumer Fraud and
20 Deceptive Business Practices Act.

21 (d-1) Retailers and secondary distributors shall not be
22 liable under subsections (c)(1) and (d) of this Section for
23 unknowingly possessing, selling, or distributing to consumers
24 or users cigarettes identified in subsection (a)(1) of this
25 Section if the cigarettes possessed, sold, or distributed by
26 the retailer were obtained from a distributor or secondary

1 distributor licensed under this Act or the Cigarette Tax Act.

2 (e) Unfair cigarette sales. For purposes of the Trademark
3 Registration and Protection Act and the Counterfeit Trademark
4 Act, cigarettes imported or reimported into the United States
5 for sale or distribution under any trade name, trade dress, or
6 trademark that is the same as, or is confusingly similar to,
7 any trade name, trade dress, or trademark used for cigarettes
8 manufactured in the United States for sale or distribution in
9 the United States shall be presumed to have been purchased
10 outside of the ordinary channels of trade.

11 (f) General provisions.

12 (1) This Section shall be enforced by the Department;
13 provided that, at the request of the Director of Revenue or
14 the Director's duly authorized agent, the State police and
15 all local police authorities shall enforce the provisions
16 of this Section. The Attorney General has concurrent power
17 with the State's Attorney of any county to enforce this
18 Section.

19 (2) For the purpose of enforcing this Section, the
20 Director of Revenue and any agency to which the Director
21 has delegated enforcement responsibility pursuant to
22 subdivision (f)(1) may request information from any State
23 or local agency and may share information with and request
24 information from any federal agency and any agency of any
25 other state or any local agency of any other state.

26 (3) In addition to any other remedy provided by law,

1 including enforcement as provided in subdivision (a)(1),
2 any person may bring an action for appropriate injunctive
3 or other equitable relief for a violation of this Section;
4 actual damages, if any, sustained by reason of the
5 violation; and, as determined by the court, interest on the
6 damages from the date of the complaint, taxable costs, and
7 reasonable attorney's fees. If the trier of fact finds that
8 the violation is flagrant, it may increase recovery to an
9 amount not in excess of 3 times the actual damages
10 sustained by reason of the violation.

11 (g) Definitions. As used in this Section:

12 "Importer" means that term as defined in 26 U.S.C. 5702(1).

13 "Package" means that term as defined in 15 U.S.C. 1332(4).

14 (h) Applicability.

15 (1) This Section does not apply to:

16 (A) cigarettes allowed to be imported or brought
17 into the United States for personal use; and

18 (B) cigarettes sold or intended to be sold as
19 duty-free merchandise by a duty-free sales enterprise
20 in accordance with the provisions of 19 U.S.C. 1555(b)
21 and any implementing regulations; except that this
22 Section shall apply to any such cigarettes that are
23 brought back into the customs territory for resale
24 within the customs territory.

25 (2) The penalties provided in this Section are in
26 addition to any other penalties imposed under other

1 provision of law.

2 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

3 (35 ILCS 135/4b new)

4 Sec. 4b. Secondary distributor's license. No person may
5 engage in business as a secondary distributor of cigarettes in
6 this State without first having obtained a license therefor
7 from the Department. A secondary distributor maintaining a
8 place of business within this State, if required to procure a
9 license as a secondary distributor under the Cigarette Tax Act,
10 need not obtain an additional license or permit under this Act,
11 but shall be deemed to be sufficiently licensed or registered
12 by virtue of his being licensed or registered under the
13 Cigarette Tax Act.

14 Every secondary distributor maintaining a place of
15 business in this State, if not required to procure a license
16 under the Cigarette Tax Act, shall make application for a
17 license on a form as furnished and prescribed by the
18 Department. Such applicant shall furnish the following
19 information to the Department on a form signed and verified by
20 the applicant under penalty of perjury:

21 (1) the name and address of the applicant;

22 (2) the address of the location at which the applicant
23 proposes to engage in business as a secondary distributor
24 of cigarettes in this State; and

25 (3) such other additional information as the

1 Department may reasonably require.

2 The annual license fee payable to the Department for each
3 secondary distributor's license shall be \$250. The applicant
4 for license shall pay such fee to the Department at the time of
5 submitting the application for license to the Department.

6 A separate application for license shall be made and a
7 separate annual license fee paid, for each place of business at
8 or from which the applicant proposes to act as a secondary
9 distributor under this Act and for which the applicant is not
10 required to procure a license as a secondary distributor under
11 the Cigarette Tax Act.

12 The following are ineligible to receive a secondary
13 distributor's license under this Act:

14 (1) a person who is not of good character and
15 reputation in the community in which he resides;

16 (2) a person who has been convicted of a felony under
17 any Federal or State law, if the Department, after
18 investigation and a hearing, if requested by the applicant,
19 determines that such person has not been sufficiently
20 rehabilitated to warrant the public trust;

21 (3) a corporation, if any officer, manager or director
22 thereof, or any stockholder or stockholders owning in the
23 aggregate more than 5% of the stock of such corporation,
24 would not be eligible to receive a license hereunder for
25 any reason;

26 (4) a person who manufactures cigarettes, whether in

1 this State or out of this State;

2 (5) a person, or any person who owns more than 15
3 percent of the ownership interests in a person or a related
4 party who:

5 (A) owes, at the time of application, any
6 delinquent cigarette taxes that have been determined
7 by law to be due and unpaid, unless the license
8 applicant has entered into an agreement approved by the
9 Department to pay the amount due;

10 (B) had a license under this Act or the Cigarette
11 Tax Act revoked within the past 2 years by the
12 Department for misconduct relating to stolen or
13 contraband cigarettes or has been convicted of a State
14 or federal crime, punishable by imprisonment of one
15 year or more, relating to stolen or contraband
16 cigarettes;

17 (C) has been found by the Department, after notice
18 and a hearing, to have imported or caused to be
19 imported into the United States for sale or
20 distribution any cigarette in violation of 19 U.S.C.
21 1681a;

22 (D) has been found by the Department, after notice
23 and a hearing, to have imported or caused to be
24 imported into the United States for sale or
25 distribution or manufactured for sale or distribution
26 in the United States any cigarette that does not fully

1 comply with the Federal Cigarette Labeling and
2 Advertising Act (15 U.S.C. 1331, et seq.); or

3 (E) has been found by the Department, after notice
4 and a hearing, to have made a material false statement
5 in the application or has failed to produce records
6 required to be maintained by this Act.

7 Upon approval of such application and payment of the
8 required annual license fee, the Department shall issue a
9 license to the applicant. Such license shall permit the
10 applicant to engage in business as a secondary distributor at
11 or from the place shown in his application. All licenses issued
12 by the Department under this Act shall be valid for not to
13 exceed one year after issuance unless sooner revoked, canceled
14 or suspended as in this Act provided. No license issued under
15 this Act is transferable or assignable. Such license shall be
16 conspicuously displayed at the place of business for which it
17 is issued.

18 No secondary distributor licensee acquires any vested
19 interest or compensable property right in a license issued
20 under this Act.

21 A licensed secondary distributor shall notify the
22 Department of any change in the information contained on the
23 application form, including any change in ownership, and shall
24 do so within 30 days after any such change.

25 Any person aggrieved by any decision of the Department
26 under this Section may, within 20 days after notice of the

1 decision, protest and request a hearing. Upon receiving a
2 request for a hearing, the Department shall give notice to the
3 person requesting the hearing of the time and place fixed for
4 the hearing and shall hold a hearing in conformity with the
5 provisions of this Act and then issue its final administrative
6 decision in the matter to that person. In the absence of a
7 protest and request for a hearing within 20 days, the
8 Department's decision shall become final without any further
9 determination being made or notice given.

10 (35 ILCS 135/4d)

11 Sec. 4d. Sales of cigarettes to and by retailers. In-state
12 makers, manufacturers, or fabricators licensed as distributors
13 under Section 4 of this Act and out-of-state makers,
14 manufacturers, or fabricators holding permits under Section 7
15 of this Act may not sell original packages of cigarettes to
16 retailers. A retailer may sell only original packages of
17 cigarettes obtained from licensed secondary distributors or
18 licensed distributors other than in-state makers,
19 manufacturers, or fabricators licensed as distributors under
20 Section 4 of this Act and out-of-state makers, manufacturers,
21 or fabricators holding permits under Section 7 of this Act.

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

23 (35 ILCS 135/4e new)

24 Sec. 4e. Sales of cigarettes to and by secondary

1 distributors. In-state makers, manufacturers, and fabricators
2 licensed as distributors under Section 4 of this Act and
3 out-of-state makers, manufacturers, and fabricators holding
4 permits under Section 7 of this Act may not sell original
5 packages of cigarettes to secondary distributors. A secondary
6 distributor may sell only original packages of cigarettes
7 obtained from licensed distributors other than in-state
8 makers, manufacturers, or fabricators licensed as distributors
9 under Section 4 of this Act and out-of-state makers,
10 manufacturers, or fabricators holding permits under Section 7
11 of this Act. Secondary distributors may sell cigarettes to
12 Illinois retailers for resale, and are also authorized to make
13 retail sales of cigarettes at the location on the secondary
14 distributor's license as long as the secondary distributor
15 sells 75% or more of the cigarettes sold at such location to
16 retailers for resale.

17 All sales by secondary distributors to Illinois retailers
18 must be made at the location on the secondary distributor's
19 license. Retailers must take possession of all cigarettes sold
20 by the secondary distributor at the secondary distributor's
21 licensed address. Secondary distributors may not make
22 deliveries of cigarettes to Illinois retailers.

23 Secondary distributors may not file a claim for credit or
24 refund with the State under Section 14a of this Act.

1 Sec. 5. If a distributor ~~licensee~~ shall be convicted of the
2 violation of this Act, or if his or her license shall be
3 revoked and no review is had of the order of revocation, or if
4 on review thereof the decision is adverse to the distributor
5 ~~licensee~~, or if a distributor ~~licensee~~ fails to pay an
6 assessment as to which no judicial review is sought and which
7 has become final, or pursuant to which, upon review thereof,
8 the circuit court has entered a judgment that is in favor of
9 the Department and that has become final, the bond filed
10 pursuant to this Act shall thereupon be forfeited, and the
11 Department may institute a suit upon such bond in its own name
12 for the entire amount of such bond and costs. Such suit upon
13 the bond shall be in addition to any other remedy provided for
14 herein.

15 (Source: P.A. 79-1366.)

16 (35 ILCS 135/6) (from Ch. 120, par. 453.36)

17 Sec. 6. Revocation, cancellation, or suspension of
18 license. The Department may, after notice and hearing as
19 provided for by this Act, revoke, cancel or suspend the license
20 of any distributor or secondary distributor for the violation
21 of any provision of this Act, or for non-compliance with any
22 provision herein contained, or for any non-compliance with any
23 lawful rule or regulation promulgated by the Department under
24 Section 21 of this Act, or because the licensee is determined
25 to be ineligible for a distributor's license for any one or

1 more of the reasons provided for in Section 4 of this Act, or
2 because the licensee is determined to be ineligible for a
3 secondary distributor's license for any one or more of the
4 reasons provided for in Section 4b or Section 7a of this Act.

5 However, no such license shall be revoked, canceled or
6 suspended, except after a hearing by the Department with notice
7 to the distributor or secondary distributor, as aforesaid, and
8 affording such distributor or secondary distributor a
9 reasonable opportunity to appear and defend, and any
10 distributor or secondary distributor aggrieved by any decision
11 of the Department with respect thereto may have the
12 determination of the Department judicially reviewed, as herein
13 provided.

14 The Department may revoke, cancel, or suspend the license
15 of any distributor for a violation of the Tobacco Product
16 Manufacturers' Escrow Enforcement Act as provided in Section 30
17 ~~20~~ of that Act. The Department may revoke, cancel, or suspend
18 the license of any secondary distributor for a violation of
19 subsection (e) of Section 15 of the Tobacco Product
20 Manufacturers' Escrow Enforcement Act.

21 Any distributor or secondary distributor aggrieved by any
22 decision of the Department under this Section may, within 20
23 days after notice of the decision, protest and request a
24 hearing. Upon receiving a request for a hearing, the Department
25 shall give notice in writing to the distributor or secondary
26 distributor requesting the hearing that contains a statement of

1 the charges preferred against the distributor or secondary
2 distributor and that states the time and place fixed for the
3 hearing. The Department shall hold the hearing in conformity
4 with the provisions of this Act and then issue its final
5 administrative decision in the matter to the distributor or
6 secondary distributor. In the absence of a protest and request
7 for a hearing within 20 days, the Department's decision shall
8 become final without any further determination being made or
9 notice given.

10 No license so revoked, shall be reissued to any such
11 distributor or secondary distributor within a period of 6
12 months after the date of the final determination of such
13 revocation. No such license shall be reissued at all so long as
14 the person who would receive the license is ineligible to
15 receive a distributor's license under this Act for any one or
16 more of the reasons provided for in Section 4 of this Act or is
17 ineligible to receive a secondary distributor's license under
18 this Act for any one or more of the reasons provided for in
19 Section 4b and Section 7a of this Act.

20 The Department upon complaint filed in the circuit court
21 may by injunction restrain any person who fails, or refuses, to
22 comply with this Act from acting as a distributor or secondary
23 distributor of cigarettes in this State.

24 (Source: P.A. 91-901, eff. 1-1-01; 92-737, eff. 7-25-02.)

1 Sec. 7a. Discretionary secondary distributor's license.
2 The Department may, in its discretion, upon application, issue
3 a secondary distributor's license to persons who are not
4 required to be licensed as secondary distributors of cigarettes
5 in this State, but who elect to qualify under this Act as
6 secondary distributors of cigarettes. Such secondary
7 distributor shall be issued, without charge, a license to make
8 sales for resale to Illinois retailers, subject to such
9 reasonable requirements as the Department shall prescribe.
10 Each applicant for a license under this Section shall furnish
11 the following information to the Department on a form signed
12 and verified by the applicant under penalty of perjury:

13 (a) the name and address of the applicant;

14 (b) the address of the location at which the applicant
15 proposes to engage in business as a secondary distributor of
16 cigarettes; and

17 (c) such other additional information as the Department may
18 reasonably require.

19 A separate application for license shall be made for each
20 place of business at or from which the applicant proposes to
21 act as a secondary distributor under this Act and for which the
22 applicant is not required to procure a license as a secondary
23 distributor under the Cigarette Tax Act or Cigarette Use Tax
24 Act.

25 The following are ineligible to receive a secondary
26 distributor's license under this Act:

1 (1) a person who is not of good character and
2 reputation in the community in which he resides;

3 (2) a person who has been convicted of a felony under
4 any Federal or State law, if the Department, after
5 investigation and a hearing, if requested by the applicant,
6 determines that such person has not been sufficiently
7 rehabilitated to warrant the public trust;

8 (3) a corporation, if any officer, manager or director
9 thereof, or any stockholder or stockholders owning in the
10 aggregate more than 5% of the stock of such corporation,
11 would not be eligible to receive a license hereunder for
12 any reason;

13 (4) a person who manufactures cigarettes, whether in
14 this State or out of this State;

15 (5) a person, or any person who owns more than 15
16 percent of the ownership interests in a person or a related
17 party who:

18 (A) owes, at the time of application, any
19 delinquent cigarette taxes that have been determined
20 by law to be due and unpaid, unless the license
21 applicant has entered into an agreement approved by the
22 Department to pay the amount due;

23 (B) had a license under this Act or the Cigarette
24 Tax Act revoked within the past 2 years by the
25 Department for misconduct relating to stolen or
26 contraband cigarettes or has been convicted of a State

1 or federal crime, punishable by imprisonment of one
2 year or more, relating to stolen or contraband
3 cigarettes;

4 (C) has been found by the Department, after notice
5 and a hearing, to have imported or caused to be
6 imported into the United States for sale or
7 distribution any cigarette in violation of 19 U.S.C.
8 1681a;

9 (D) has been found by the Department, after notice
10 and a hearing, to have imported or caused to be
11 imported into the United States for sale or
12 distribution or manufactured for sale or distribution
13 in the United States any cigarette that does not fully
14 comply with the Federal Cigarette Labeling and
15 Advertising Act (15 U.S.C. 1331, et seq.); or

16 (E) has been found by the Department, after notice
17 and a hearing, to have made a material false statement
18 in the application or has failed to produce records
19 required to be maintained by this Act.

20 Upon approval of such application, the Department shall
21 issue a license to the applicant. Such license shall permit the
22 applicant to engage in business as a secondary distributor at
23 or from the place shown in his application. All licenses issued
24 by the Department under this Act shall be valid for not to
25 exceed one year after issuance unless sooner revoked, canceled
26 or suspended as in this Act provided. No license issued under

1 this Act is transferable or assignable. Such license shall be
2 conspicuously displayed at the place of business for which it
3 is issued.

4 No secondary distributor licensee acquires any vested
5 interest or compensable property right in a license issued
6 under this Act.

7 A licensed secondary distributor shall notify the
8 Department of any change in the information contained on the
9 application form, including any change in ownership, and shall
10 do so within 30 days after any such change.

11 Any person aggrieved by any decision of the Department
12 under this Section may, within 20 days after notice of the
13 decision, protest and request a hearing. Upon receiving a
14 request for a hearing, the Department shall give notice to the
15 person requesting the hearing of the time and place fixed for
16 the hearing and shall hold a hearing in conformity with the
17 provisions of this Act and then issue its final administrative
18 decision in the matter to that person. In the absence of a
19 protest and request for a hearing within 20 days, the
20 Department's decision shall become final without any further
21 determination being made or notice given.

22 Such authority and license may be suspended, canceled or
23 revoked whenever the licensee violates any provision of this
24 Act or any lawful rule or regulation issued by the Department
25 pursuant to this Act or is determined to be ineligible for a
26 secondary distributor's permit under this Act as provided in

1 this Section, or whenever the licensee shall notify the
2 Department in writing of his desire to have the license
3 anceled. The Department shall have the power, in its
4 discretion, to issue a new license after such suspension,
5 cancellation or revocation, except when the person who would
6 receive the license is ineligible to receive a secondary
7 distributor's license under this Act.

8 (35 ILCS 135/9) (from Ch. 120, par. 453.39)

9 Sec. 9. It shall be unlawful for any distributor or
10 secondary distributor to advertise or hold out or state to the
11 public or to any purchaser, consumer or user, directly or
12 indirectly, that the tax or any part thereof imposed by this
13 Act will be assumed or absorbed by the distributor or secondary
14 distributor or that it will not be added to the selling price
15 of the cigarettes sold, or if added that it or any part thereof
16 will be refunded. Any person violating any of the provisions of
17 this Section within this State shall be guilty of a Class B
18 misdemeanor.

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

20 (35 ILCS 135/11a new)

21 Sec. 11a. Secondary distributors; reports. Every secondary
22 distributor who is required to procure, or is authorized to
23 procure, a license under this Act shall, on or before the 15th
24 day of each calendar month, file a report with the Department,

1 showing the quantity of cigarettes purchased during the
2 preceding calendar month either within or outside this State,
3 and the quantity of cigarettes sold to Illinois retailers or
4 otherwise disposed of during the preceding calendar month. Such
5 reports shall be filed electronically in such form prescribed
6 by the Department and shall contain such other information as
7 the Department may reasonably require. The secondary
8 distributor's report shall be accompanied by appropriate
9 computer generated magnetic media supporting schedule data in
10 the format required by the Department, unless, as provided by
11 rule, the Department grants an exception upon petition of a
12 secondary distributor.

13 A certification by the Director of the Department that a
14 report has not been filed, or that information has not been
15 supplied pursuant to the provisions of this Act, shall be prima
16 facie evidence thereof.

17 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

18 Sec. 12. Declaration of possession of cigarettes on which
19 tax not paid.

20 (a) When cigarettes are acquired for use in this State by a
21 person (including a distributor as well as any other person),
22 who did not pay the tax herein imposed to a distributor, the
23 person, within 30 days after acquiring the cigarettes, shall
24 file with the Department a return declaring the possession of
25 the cigarettes and shall transmit with the return to the

1 Department the tax imposed by this Act.

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

7 (c) The return referred to in paragraph (a) shall contain
8 the name and address of the person possessing the cigarettes
9 involved, the location of the cigarettes and the quantity,
10 brand name, place, and date of the acquisition of the
11 cigarettes.

12 (d) Nothing in this Section shall permit a secondary
13 distributor to purchase unstamped original packages of
14 cigarettes or to purchase original packages of cigarettes from
15 a person other than a licensed distributor.

16 (Source: P.A. 92-322, eff. 1-1-02.)

17 (35 ILCS 135/15a new)

18 Sec. 15a. Secondary distributors; records. Every secondary
19 distributor of cigarettes who is required to procure, or is
20 allowed to procure, a license under this Act, shall keep at his
21 licensed address, complete and accurate records of cigarettes
22 held, purchased, brought in from without the State, and sold,
23 or otherwise disposed of, and shall preserve and keep within
24 Illinois at his licensed address all invoices, bills of lading,
25 sales records, copies of bills of sale, inventory at the close

1 of each period for which a report is required of all cigarettes
2 on hand, and other pertinent papers and documents relating to
3 the purchase, sale or disposition of cigarettes. All books and
4 records and other papers and documents that are required by
5 this Act to be kept shall be kept in the English language, and
6 shall, at all times during the usual business hours of the day,
7 be subject to inspection by the Department or its duly
8 authorized agents and employees. The Department may adopt rules
9 that establish requirements, including record forms and
10 formats, for records required to be kept and maintained by
11 secondary distributors. For purposes of this Section,
12 "records" means all data maintained by the secondary
13 distributors, including data on paper, microfilm, microfiche
14 or any type of machine sensible data compilation. Those books,
15 records, papers and documents shall be preserved for a period
16 of at least 3 years after the date of the documents, or the
17 date of the entries appearing in the records, unless the
18 Department, in writing, authorizes their destruction or
19 disposal at an earlier date. At all times during the usual
20 business hours of the day any duly authorized agent or employee
21 of the Department may enter any place of business of the
22 secondary distributor without a search warrant and may inspect
23 the premises and the stock or packages of cigarettes therein
24 contained to determine whether any of the provisions of this
25 Act are being violated. If such agent or employee is denied
26 free access or is hindered or interfered with in making such

1 examination as herein provided, the license of the secondary
2 distributor at such premises shall be subject to revocation by
3 the Department.

4 (35 ILCS 135/16) (from Ch. 120, par. 453.46)

5 Sec. 16. Every person who purchases cigarettes for shipment
6 into Illinois from a point outside this State, and who is
7 required to file a return or report with the Department with
8 respect to such cigarettes, shall procure invoices in duplicate
9 covering each such shipment and shall furnish one copy of each
10 such invoice to the Department at the time of filing the return
11 or report required by this Act.

12 (Source: Laws 1967, p. 242.)

13 (35 ILCS 135/17) (from Ch. 120, par. 453.47)

14 Sec. 17. For the purpose of administering and enforcing the
15 provisions of this Act, the Department, or any officer or
16 employee of the Department designated, in writing, by the
17 Director thereof, may hold investigations and hearings
18 concerning any matters covered by this Act and may examine any
19 books, papers, records, documents or memoranda of any
20 distributor, secondary distributor, or user bearing upon the
21 sales or purchases of cigarettes the use of which is taxed
22 hereunder and may require the attendance of such person or any
23 officer or employee of such person, or of any person having
24 knowledge of the facts, and may take testimony and require

1 proof for its information. In the conduct of any investigation
2 or hearing, neither the Department nor any officer or employee
3 thereof shall be bound by the technical rules of evidence and
4 no informality in any proceeding, or in the manner of taking
5 testimony, shall invalidate any order, decision, rule or
6 regulation made or approved or confirmed by the Department. The
7 Director of Revenue, or any officer or employee of the
8 Department authorized by the Director thereof, shall have power
9 to administer oaths to such persons. The books, papers,
10 records, documents and memoranda of the Department, or parts
11 thereof, may be proved in any hearing, investigation, or legal
12 proceeding by a reproduced copy thereof under the certificate
13 of the Director of Revenue. Such reproduced copy shall, without
14 further proof, be admitted into evidence before the Department
15 or in any legal proceeding.

16 (Source: Laws 1965, p. 195.)

17 (35 ILCS 135/20) (from Ch. 120, par. 453.50)

18 Sec. 20. All information received by the Department from
19 returns or reports filed under this Act, or from any
20 investigation conducted under this Act, shall be confidential,
21 except for official purposes, and any person who divulges any
22 such information in any manner, except in accordance with a
23 proper judicial order or as otherwise provided by law, shall be
24 guilty of a Class A misdemeanor.

25 Nothing in this Act prevents the Director of Revenue from

1 publishing or making available to the public the names and
2 addresses of persons filing returns or reports under this Act,
3 or reasonable statistics concerning the operation of the tax by
4 grouping the contents of returns or reports so that the
5 information in any individual return is not disclosed.

6 Nothing in this Act prevents the Director of Revenue from
7 divulging to the United States Government or the government of
8 any other state, or any officer or agency thereof, for
9 exclusively official purposes, information received by the
10 Department in administering this Act, provided that such other
11 governmental agency agrees to divulge requested tax
12 information to the Department.

13 The furnishing upon request of the Auditor General, or his
14 authorized agents, for official use, of returns or reports
15 filed and information related thereto under this Act is deemed
16 to be an official purpose within the meaning of this Section.

17 The furnishing of financial information to a home rule unit
18 with a population in excess of 2,000,000 that has imposed a tax
19 similar to that imposed by this Act under its home rule powers,
20 upon request of the Chief Executive of the home rule unit, is
21 an official purpose within the meaning of this Section,
22 provided the home rule unit agrees in writing to the
23 requirements of this Section. Information so provided is
24 subject to all confidentiality provisions of this Section. The
25 written agreement shall provide for reciprocity, limitations
26 on access, disclosure, and procedures for requesting

1 information.

2 The Director may make available to any State agency,
3 including the Illinois Supreme Court, which licenses persons to
4 engage in any occupation, information that a person licensed by
5 such agency has failed to file returns or reports under this
6 Act or pay the tax, penalty and interest shown therein, or has
7 failed to pay any final assessment of tax, penalty or interest
8 due under this Act. An assessment is final when all proceedings
9 in court for review of such assessment have terminated or the
10 time for the taking thereof has expired without such
11 proceedings being instituted.

12 The Director shall make available for public inspection in
13 the Department's principal office and for publication, at cost,
14 administrative decisions issued on or after January 1, 1995.
15 These decisions are to be made available in a manner so that
16 the following taxpayer or licensee information is not
17 disclosed:

18 (1) The names, addresses, and identification numbers
19 of the taxpayer or licensee, related entities, and
20 employees.

21 (2) At the sole discretion of the Director, trade
22 secrets or other confidential information identified as
23 such by the taxpayer or licensee, no later than 30 days
24 after receipt of an administrative decision, by such means
25 as the Department shall provide by rule.

26 The Director shall determine the appropriate extent of the

1 deletions allowed in paragraph (2). In the event the taxpayer
2 or licensee does not submit deletions, the Director shall make
3 only the deletions specified in paragraph (1).

4 The Director shall make available for public inspection and
5 publication an administrative decision within 180 days after
6 the issuance of the administrative decision. The term
7 "administrative decision" has the same meaning as defined in
8 Section 3-101 of Article III of the Code of Civil Procedure.
9 Costs collected under this Section shall be paid into the Tax
10 Compliance and Administration Fund.

11 Nothing contained in this Act shall prevent the Director
12 from divulging information to any person pursuant to a request
13 or authorization made by the taxpayer or licensee or by an
14 authorized representative of the taxpayer or licensee.

15 (Source: P.A. 94-1074, eff. 12-26-06.)

16 (35 ILCS 135/21) (from Ch. 120, par. 453.51)

17 Sec. 21. The Department may make, promulgate and enforce
18 such reasonable rules and regulations relating to the
19 administration and enforcement of this Act as may be deemed
20 expedient.

21 Whenever notice is required by this Act, such notice may be
22 given by United States certified or registered mail, addressed
23 to the person concerned at his or her last known address, and
24 proof of such mailing shall be sufficient for the purposes of
25 this Act. Notice of any hearing provided for by this Act shall

1 be so given not less than 7 days prior to the day fixed for the
2 hearing.

3 Hearings provided for in this Act shall be held:

4 (1) In Cook County, if the taxpayer's or licensee's
5 principal place of business is in that county;

6 (2) At the Department's office nearest the taxpayer's or
7 licensee's principal place of business, if the taxpayer's or
8 licensee's principal place of business is in Illinois but
9 outside Cook County;

10 (3) In Sangamon County, if the taxpayer's or licensee's
11 principal place of business is outside Illinois.

12 The Circuit Court of the County wherein the hearing is held
13 shall have power to review all final administrative decisions
14 of the Department in administering this Act. The provisions of
15 the Administrative Review Law, as amended, and the rules
16 adopted pursuant thereto, shall apply to and govern all
17 proceedings for the judicial review of final administrative
18 decisions of the Department under this Act. The term
19 "administrative decision" is defined as in Section 3-101 of the
20 Code of Civil Procedure.

21 Service upon the Director of Revenue or Assistant Director
22 of Revenue of the Department of Revenue of summons issued in
23 any action to review a final administrative decision shall be
24 service upon the Department. The Department shall certify the
25 record of its proceedings if the plaintiff in the action for
26 judicial review shall pay to it the sum of 75¢ per page of

1 testimony taken before the Department and 25¢ per page of all
2 other matters contained in such record, except that these
3 charges may be waived where the Department is satisfied that
4 the aggrieved party is a poor person who cannot afford to pay
5 such charges. However, before the delivery of such record to
6 the person applying for it payment of these charges must be
7 made, and if the record is not paid for within 30 days after
8 notice that such record is available, the complaint may be
9 dismissed by the court upon motion of the Department.

10 No stay order shall be entered by the Circuit Court unless
11 the plaintiff in the action for judicial review files with the
12 court a bond in an amount fixed and approved by the court, to
13 indemnify the State against all loss and injury which may be
14 sustained by it on account of the review proceedings and to
15 secure all costs which may be occasioned by such proceedings.

16 Whenever any proceeding provided by this Act is commenced
17 before the Department, either by the Department or by a person
18 subject to this Act, and such person thereafter dies or becomes
19 a person under legal disability before such proceeding is
20 concluded, the legal representative of the deceased or a person
21 under legal disability shall notify the Department of such
22 death or legal disability. Such legal representative, as such,
23 shall then be substituted by the Department for such person. If
24 the legal representative fails to notify the Department of his
25 or her appointment as such legal representative, the Department
26 may, upon its own motion, substitute such legal representative

1 in the proceeding pending before the Department for the person
2 who died or became a person under legal disability.

3 (Source: P.A. 83-345.)

4 (35 ILCS 135/23) (from Ch. 120, par. 453.53)

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

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

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

15 (35 ILCS 135/29) (from Ch. 120, par. 453.59)

16 Sec. 29. Every distributor, secondary distributor, or
17 other person who shall knowingly and wilfully sell or offer for
18 sale any original package, as defined in this Act, having
19 affixed thereto any fraudulent, spurious, imitation or
20 counterfeit stamp, or stamp which has been previously affixed,
21 or affixes a stamp which has previously been affixed to an
22 original package, or who shall knowingly and wilfully sell or
23 offer for sale any original package, as defined in this Act,
24 having imprinted thereon underneath the sealed transparent

1 wrapper thereof any fraudulent, spurious, imitation or
2 counterfeit tax imprint, shall be deemed guilty of a Class 2
3 felony.

4 This Section shall not apply if the violation in a
5 particular case also constitutes a criminal violation of the
6 Cigarette Tax Act.

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

8 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

9 Sec. 30. Punishment for sale or possession of unstamped
10 packages of cigarettes, other than by a licensed distributor or
11 transporter.

12 (a) Possession or sale of more than 9 but less than 101
13 unstamped packages of cigarettes. With the exception of
14 licensed distributors, licensed secondary distributors, or
15 licensed transporters, as defined in Section 9c of the
16 Cigarette Tax Act, any person who has in his or her possession
17 or sells more than 9 but less than 101 original packages of
18 contraband cigarettes is guilty of a Class A misdemeanor.

19 (b) Possession or sale of more than 100 but less than 251
20 unstamped packages of cigarettes. With the exception of
21 licensed distributors, licensed secondary distributors, or
22 licensed transporters, as defined in Section 9c of the
23 Cigarette Tax Act, any person who has in his or her possession
24 or sells more than 100 but less than 251 original packages of
25 contraband cigarettes is guilty of a Class A misdemeanor for

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

3 (c) Possession or sale of more than 250 but less than 1,001
4 unstamped packages of cigarettes. With the exception of
5 licensed distributors, licensed secondary distributors, or
6 licensed transporters, as defined in Section 9c of the
7 Cigarette Tax Act, any person who has in his or her possession
8 or sells more than 250 but less than 1,001 original packages of
9 contraband cigarettes is guilty of a Class 4 felony.

10 (d) Possession or sale of more than 1,000 contraband
11 packages of cigarettes. With the exception of licensed
12 distributors, licensed secondary distributors, or licensed
13 transporters, as defined in Section 9c of the Cigarette Tax
14 Act, any person who has in his or her possession or sells, more
15 than 1,000 original packages of contraband cigarettes is guilty
16 of a Class 3 felony.

17 (e) Any person licensed as a distributor, secondary
18 distributor, or transporter, as defined in Section 9c of the
19 Cigarette Tax Act, who has in his or her possession or sells
20 100 or less original packages of contraband cigarettes is
21 guilty of a Class A misdemeanor.

22 (f) Any person licensed as a distributor, secondary
23 distributor, or transporter, as defined in Section 9c of the
24 Cigarette Tax Act, who has in his or her possession or sells
25 more than 100 original packages of contraband cigarettes is
26 guilty of a Class 4 felony.

1 (g) Notwithstanding subsections (e) through (f), licensed
2 distributors and transporters, as defined in Section 9c of the
3 Cigarette Tax Act, may possess unstamped packages of
4 cigarettes. Notwithstanding subsections (e) through (f),
5 licensed distributors may possess cigarettes that bear a tax
6 stamp of another state or taxing jurisdiction. Notwithstanding
7 subsections (e) through (f), a licensed distributor or licensed
8 secondary distributor may possess contraband cigarettes
9 returned to the distributor or licensed secondary distributor
10 by a retailer if the distributor or licensed secondary
11 distributor immediately conducts an inventory of the
12 cigarettes being returned, the distributor or licensed
13 secondary distributor and the retailer returning the
14 contraband cigarettes sign the inventory, the distributor or
15 licensed secondary distributor provides a copy of the signed
16 inventory to the retailer, and the distributor or licensed
17 secondary distributor retains the inventory in its books and
18 records and promptly notifies the Department of Revenue.

19 (h) Notwithstanding subsections (a) through (d) of this
20 Section, a retailer unknowingly possessing contraband
21 cigarettes obtained from a licensed distributor or licensed
22 secondary distributor or knowingly possessing contraband
23 cigarettes obtained from a licensed distributor or licensed
24 secondary distributor is not subject to penalties under this
25 Section if the retailer, within 48 hours after discovering that
26 the cigarettes are contraband cigarettes, excluding Saturdays,

1 Sundays, and holidays: (i) notifies the Department and the
2 licensed distributor or licensed secondary distributor from
3 whom the cigarettes were obtained, orally and in writing, that
4 he or she possesses contraband cigarettes obtained from a
5 licensed distributor or licensed secondary distributor; (ii)
6 places the contraband cigarettes in one or more containers and
7 seals those containers; and (iii) places on the containers the
8 following or similar language: "Contraband Cigarettes. Not For
9 Sale." All contraband cigarettes in the possession of a
10 retailer remain subject to forfeiture under the provisions of
11 this Act.

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

13 (35 ILCS 135/31) (from Ch. 120, par. 453.61)

14 Sec. 31. Any person, or any officer, agent or employee of
15 any person, required by this Act to make, file, render, sign or
16 verify any report or return, who makes any false or fraudulent
17 return or report or files any false or fraudulent return or
18 report, shall be guilty of a misdemeanor and shall be guilty of
19 a Class 4 felony.

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."