



Rep. Karen A. Yarbrough

**Filed: 3/3/2011**

09700HB1731ham001

LRB097 10208 HLH 51916 a

1 AMENDMENT TO HOUSE BILL 1731

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1731 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Cigarette Tax Act is amended by changing  
5 Section 1 as follows:

6 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

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

1 "Cigarette" also includes little cigars.

2 "Little cigar" means any roll for smoking, made wholly or  
3 in part of tobacco, if such product uses an integrated  
4 cellulose acetate or other similar filter and is wrapped in any  
5 substance containing tobacco, other than natural leaf tobacco.

6 "Contraband cigarettes" means:

7 (a) cigarettes that do not bear a required tax stamp  
8 under this Act;

9 (b) cigarettes for which any required federal taxes  
10 have not been paid;

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

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

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

21 (f) cigarettes that have false manufacturing labels;

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

24 (h) cigarettes that are improperly tax stamped,  
25 including cigarettes that bear a tax stamp of another state  
26 or taxing jurisdiction.

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

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

23 "Department" means the Department of Revenue.

24 "Sale" means any transfer, exchange or barter in any manner  
25 or by any means whatsoever for a consideration, and includes  
26 and means all sales made by any person.

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

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

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

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

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

25 "Place of business" shall mean and include any place where  
26 cigarettes are sold or where cigarettes are manufactured,

1 stored or kept for the purpose of sale or consumption,  
2 including any vessel, vehicle, airplane, train or vending  
3 machine.

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

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

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

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

21 "Retailer" shall be construed to include any person who  
22 engages in the making of transfers of the ownership of, or  
23 title to, cigarettes to a purchaser, for use or consumption by  
24 any other person to whom such purchaser may transfer the  
25 cigarettes without a valuable consideration, except a person  
26 who transfers to residents incarcerated in penal institutions

1 or resident patients of a State-operated mental health facility  
2 ownership of cigarettes made, manufactured or fabricated as  
3 part of a correctional industries program.

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

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

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

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

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

18 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;  
19 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

20 Section 10. The Cigarette Use Tax Act is amended by  
21 changing Section 1 as follows:

22 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

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

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

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

19 "Cigarette" also includes little cigars.

20 "Little cigar" means any roll for smoking, made wholly or  
21 in part of tobacco, if such product uses an integrated  
22 cellulose acetate or other similar filter and is wrapped in any  
23 substance containing tobacco, other than natural leaf tobacco.

24 "Contraband cigarettes" means:

25 (a) cigarettes that do not bear a required tax stamp  
26 under this Act;

1 (b) cigarettes for which any required federal taxes  
2 have not been paid;

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

4 (d) cigarettes that are manufactured, fabricated,  
5 assembled, processed, packaged, or labeled by any person  
6 other than (i) the owner of the trademark rights in the  
7 cigarette brand or (ii) a person that is directly or  
8 indirectly authorized by such owner;

9 (e) cigarettes imported into the United States, or  
10 otherwise distributed, in violation of the federal  
11 Imported Cigarette Compliance Act of 2000 (Title IV of  
12 Public Law 106-476);

13 (f) cigarettes that have false manufacturing labels;

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

16 (h) cigarettes that are improperly tax stamped,  
17 including cigarettes that bear a tax stamp of another state  
18 or taxing jurisdiction.

19 "Person" means any natural individual, firm, partnership,  
20 association, joint stock company, joint adventure, public or  
21 private corporation, however formed, limited liability  
22 company, or a receiver, executor, administrator, trustee,  
23 guardian or other representative appointed by order of any  
24 court.

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 a. 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  
10 packages of cigarettes, on which original packages there is  
11 no authorized evidence underneath a sealed transparent  
12 wrapper showing that the tax liability imposed by this Act  
13 has been paid or assumed by the out-of-State seller of such  
14 cigarettes, for sale in the course of such business.

15 b. Any person who makes, manufactures or fabricates  
16 cigarettes in this State for sale, except a person who  
17 makes, manufactures or fabricates cigarettes for sale to  
18 residents incarcerated in penal institutions or resident  
19 patients or a State-operated mental health facility.

20 c. Any person who makes, manufactures or fabricates  
21 cigarettes outside this State, which cigarettes are placed  
22 in original packages contained in sealed transparent  
23 wrappers, for delivery or shipment into this State, and who  
24 elects to qualify and is accepted by the Department as a  
25 distributor under Section 7 of this Act.

26 "Distributor" does not include any person who transfers

1 cigarettes to a not-for-profit research institution that  
2 conducts tests concerning the health effects of tobacco  
3 products and who does not offer the cigarettes for resale.

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

14 "Business" means any trade, occupation, activity or  
15 enterprise engaged in or conducted in this State for the  
16 purpose of selling cigarettes.

17 "Prior Continuous Compliance Taxpayer" means any person  
18 who is licensed under this Act and who, having been a licensee  
19 for a continuous period of 5 years, is determined by the  
20 Department not to have been either delinquent or deficient in  
21 the payment of tax liability during that period or otherwise in  
22 violation of this Act. Also, any taxpayer who has, as verified  
23 by the Department, continuously complied with the condition of  
24 his bond or other security under provisions of this Act of a  
25 period of 5 consecutive years shall be considered to be a  
26 "prior continuous compliance taxpayer". In calculating the

1 consecutive period of time described herein for qualification  
2 as a "prior continuous compliance taxpayer", a consecutive  
3 period of time of qualifying compliance immediately prior to  
4 the effective date of this amendatory Act of 1987 shall be  
5 credited to any licensee who became licensed on or before the  
6 effective date of this amendatory Act of 1987.

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

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

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

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

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

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

5 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;  
6 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)".