



Sen. Terry Link

Filed: 5/16/2012

09700HB5440sam001

LRB097 17684 HLH 69622 a

1 AMENDMENT TO HOUSE BILL 5440

2 AMENDMENT NO. _____. Amend House Bill 5440 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Cigarette Machine Operators' Occupation Tax Act.

6 Section 5. Definitions. As used in this Act:

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

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

15 "Cigarette machine" means any machine, equipment or device
16 used to make or fabricate cigarettes.

1 "Cigarette machine" shall not include a handheld manually
2 operated device used by consumers to make roll-your-own
3 cigarettes for personal consumption.

4 "Cigarette machine operator" means any person who is
5 engaged in the business of operating a cigarette machine in
6 this State and is licensed by the Department as a cigarette
7 machine operator under Section 15 of this Act.

8 "Contraband cigarettes" means:

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

11 (2) cigarettes that do not meet the requirements of
12 this Act;

13 (3) cigarettes that are made or fabricated by a person
14 holding a cigarette machine operator license under Section
15 of this Act and that are in the possession of
16 manufacturers, distributors, secondary distributors,
17 manufacturer representatives, or retailers, all as defined
18 by the Cigarette Tax Act, for the purpose of resale;

19 (4) cigarettes that are in the possession of a
20 cigarette machine operator and that are made or fabricated
21 with cigarette tubes that do not meet the requirements of
22 Section 30 of this Act;

23 (5) cigarettes that are in the possession of an
24 individual and that are made or fabricated with cigarette
25 tubes that do not meet the requirements of Section 30 of
26 this Act, unless the cigarettes were made or fabricated by

1 an individual for the individual's own use and consumption
2 without the aid or use of a cigarette machine in the
3 possession of a cigarette machine operator holding a
4 license under Section 15 of this Act; or

5 (6) cigarettes that (i) are made or fabricated by a
6 person holding a cigarette machine operator license under
7 Section 15 of this Act, (ii) are in the possession of a
8 person, and (iii) contain tobacco of a brand family and
9 manufacturer that are not identified on the State of
10 Illinois Directory of Participating Manufacturers or the
11 Illinois Directory of Compliant Non-Participating
12 Manufacturers maintained by the Office of the Attorney
13 General.

14 "Department" means the Department of Revenue.

15 "Operate or operating a cigarette machine" means to possess
16 a cigarette machine for the purpose of engaging in the business
17 of making the cigarette machine available to individuals who
18 use the cigarette machine to make or fabricate cigarettes for
19 their own use or consumption, and not for resale. For purposes
20 of this Act, the cigarette machine is operated by the person
21 possessing the cigarette machine. For purposes of this Act,
22 cigarettes made or fabricated by the use of a cigarette machine
23 in the possession of a cigarette machine operator holding a
24 license under Section 15 of this Act are considered to be made
25 or fabricated by the person holding the cigarette machine
26 operator license and not the individual.

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

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

10 "Place of business" means any place where cigarettes are
11 made or fabricated by a cigarette machine operator holding a
12 license under Section 15 of this Act.

13 "Possess or possessing a cigarette machine" means to own,
14 lease, rent or have on one's premises a cigarette machine for
15 the purpose of engaging in the business of making the cigarette
16 machine available to individuals who use the cigarette machine
17 to make or fabricate cigarettes for their own use or
18 consumption, and not for resale.

19 "Prior continuous compliance taxpayer" means any person
20 who is licensed under this Act and who, having been a licensee
21 for a continuous period of 5 years, is determined by the
22 Department not to have been either delinquent or deficient in
23 the payment of tax liability during that period or otherwise in
24 violation of this Act. "Prior continuous compliance taxpayer"
25 also means any taxpayer who has, as verified by the Department,
26 continuously complied with the condition of his bond or other

1 security under provisions of this Act for a period of 5
2 consecutive years.

3 "Retailer" means any person who engages in the making of
4 transfers of the ownership of, or title to, tobacco or
5 cigarettes to a purchaser for use or consumption and not for
6 resale in any form, for a valuable consideration.

7 "Sale" means any transfer, exchange, or barter in any
8 manner or by any means whatsoever for a consideration, and
9 includes and means all sales made by any person.

10 Section 10. Tax imposed.

11 (a) A tax is imposed upon all persons engaged in the
12 business of operating a cigarette machine. The tax is imposed
13 at the rate of 49 mills per cigarette made or fabricated by a
14 cigarette machine possessed by a cigarette machine operator.

15 (b) If, on or after the effective date of this amendatory
16 Act of the 97th General Assembly, the General Assembly
17 increases the rate of tax imposed under Section 2 of the
18 Cigarette Tax Act, then the tax imposed under subsection (a) of
19 this Section shall be increased by the same amount beginning on
20 the effective date of the Cigarette Tax increase.

21 (c) The tax herein imposed shall be in addition to all
22 other occupation or privilege taxes imposed by the State of
23 Illinois or by any municipal corporation or political
24 subdivision thereof.

25 (d) Persons subject to the tax imposed by this Act may

1 reimburse themselves for their tax liability under this Act by
2 separately stating such tax, less any credit the machine
3 operator claims under subsection (b) of Section 40 of this Act
4 on tobacco sold to and used by users of a cigarette machine to
5 make or fabricate cigarettes, as an additional charge to users
6 of cigarette machines.

7 (e) If any cigarette machine operator collects an amount
8 (however designated) which purports to reimburse such operator
9 for his or her cigarette machine operators' occupation tax
10 liability under this Act with respect to cigarettes that are
11 not subject to cigarette machine operators' occupation tax
12 under this Act, or if any cigarette machine operator, in
13 collecting an amount (however designated) which purports to
14 reimburse such operator for his or her cigarette machine
15 operators' occupation tax liability measured by cigarettes
16 made or fabricated by a cigarette machine that are subject to
17 tax under this Act, collects more from the customer than the
18 cigarette machine operators' cigarette machine operators'
19 occupation tax liability in the transaction, the customer shall
20 have a legal right to claim a refund of that amount from the
21 cigarette machine operator. However, if such amount is not
22 refunded to the customer for any reason, the cigarette machine
23 operator is liable to pay such amount to the Department.

24 Section 15. Cigarette machine operator license. No person
25 may engage in the business of operating a cigarette machine in

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

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

9 (2) the address of the location at which the applicant
10 proposes to engage in the business of operating a cigarette
11 machine in this State; and

12 (3) any other additional information the Department
13 may reasonably require.

14 The annual license fee payable to the Department for each
15 cigarette machine operator license is \$250. Each applicant for
16 a license shall pay that fee to the Department at the time of
17 submitting an application for license to the Department.

18 Every applicant who is required to procure a cigarette
19 machine operator license shall file with his or her application
20 a joint and several bond. Such bond shall be executed to the
21 Department of Revenue, with good and sufficient surety or
22 sureties residing or licensed to do business within the State
23 of Illinois, in the amount of \$2,500, conditioned upon the true
24 and faithful compliance by the licensee with all of the
25 provisions of this Act. Such bond, or a reissue thereof, or a
26 substitute therefore, shall be kept in effect during the entire

1 period covered by the license. A separate application for
2 license shall be made, a separate annual license fee paid, and
3 a separate bond filed, for each place of business at which a
4 person who is required to procure a cigarette machine operator
5 license under this Section proposes to engage in business as a
6 cigarette machine operator in Illinois under this Act.

7 The following are ineligible to receive a cigarette machine
8 operator license under this Act:

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

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

16 (3) a corporation, if any officer, manager, or director
17 thereof, or any stockholder or stockholders owning in the
18 aggregate more than 5% of the stock of such corporation,
19 would not be eligible to receive a license under this Act
20 for any reason; or

21 (4) a person, or any person who owns more than 15% of
22 the ownership interests in an entity or a related party,
23 who:

24 (A) owes, at the time of application, any
25 delinquent cigarette taxes or tobacco taxes that have
26 been determined by law to be due and unpaid, unless the

1 license applicant has entered into an agreement
2 approved by the Department to pay the amount due;

3 (B) has had a license under this Act, the Cigarette
4 Tax Act, the Cigarette Use Tax Act, or the Tobacco
5 Products Tax Act of 1995 revoked within the past 2
6 years by the Department for misconduct relating to
7 stolen or contraband cigarettes or has been convicted
8 of a State or federal crime, punishable by imprisonment
9 of one year or more, relating to stolen or contraband
10 cigarettes;

11 (C) has been found by the Department, after notice
12 and a hearing, to have imported or caused to be
13 imported into the United States for sale or
14 distribution any cigarette in violation of 19 U.S.C.
15 1681a;

16 (D) has been found by the Department, after notice
17 and a hearing, to have imported or caused to be
18 imported into the United States for sale or
19 distribution, or manufactured for sale or distribution
20 in the United States, any cigarette that does not fully
21 comply with the Federal Cigarette Labeling and
22 Advertising Act (15 U.S.C. 1331, et seq.); or

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

1 The Department, upon receipt of an application, license
2 fee, and bond in proper form from a person who is eligible to
3 receive a cigarette machine operator license under this Act,
4 shall issue to such applicant a license in a form as prescribed
5 by the Department. That license shall permit the applicant to
6 whom it is issued to engage in business as a cigarette machine
7 operator at the place shown in his or her application. All
8 licenses issued by the Department under this Section shall be
9 valid for a period not to exceed one year after issuance unless
10 sooner revoked, canceled, or suspended as provided in this Act.
11 No license issued under this Section is transferable or
12 assignable. Such license shall be conspicuously displayed in
13 the place of business conducted by the licensee in Illinois
14 under such license. No cigarette machine operator acquires any
15 vested interest or compensable property right in a license
16 issued under this Act.

17 A cigarette machine operator shall notify the Department of
18 any change in the information contained on the application
19 form, including any change in ownership, and shall do so within
20 30 days after that change.

21 Every prior continuous compliance taxpayer shall be exempt
22 from all requirements under this Section concerning the
23 furnishing of bond as a condition precedent to his being
24 authorized to engage in the business licensed under this Act.
25 This exemption shall continue for each prior continuous
26 compliance taxpayer until such time as he may be determined by

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

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

25 (1) that taxpayer becomes a prior continuous
26 compliance taxpayer; or

1 (2) that taxpayer has ceased to collect receipts on
2 which he is required to remit tax to the Department, has
3 filed a final tax return, and has paid to the Department an
4 amount sufficient to discharge his remaining tax liability
5 as determined by the Department under this Act. The
6 Department shall make a final determination of the
7 taxpayer's outstanding tax liability as expeditiously as
8 possible after his final tax return has been filed. If the
9 Department cannot make the final determination within 45
10 days after receiving the final tax return, it shall so
11 notify the taxpayer within that period, stating its reasons
12 therefore.

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

24 Section 20. Revocation, cancellation, or suspension of
25 license. The Department may, after notice and hearing as

1 provided for by this Act, revoke, cancel, or suspend the
2 license of any cigarette machine operator for the violation of
3 any provision of this Act, or for noncompliance with the
4 provisions of this Act, or for any noncompliance with any
5 lawful rule or regulation promulgated by the Department under
6 this Act, or because the licensee is determined to be
7 ineligible for a cigarette machine operator's license for any
8 one or more of the reasons provided for in Section 15 of this
9 Act.

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

24 No license so revoked shall be reissued to any cigarette
25 machine operator for a period of 6 months after the date of the
26 final determination of such revocation. No license shall be

1 reissued at all so long as the person who would receive the
2 license is ineligible to receive a cigarette machine operator's
3 license under this Act for any one or more of the reasons
4 provided for in Section 15 of this Act.

5 The Department, upon complaint filed in the circuit court,
6 may, by injunction, restrain any person who fails or refuses to
7 comply with any of the provisions of this Act from acting as a
8 cigarette machine operator in this State.

9 Section 25. Restriction on tobacco used in cigarette
10 machines.

11 (a) Only roll-your-own tobacco products of a brand family
12 and manufacturer identified on the State of Illinois Directory
13 of Participating Manufacturers or the Illinois Directory of
14 Compliant Non-Participating Manufacturers maintained by the
15 Office of the Attorney General may be sold by cigarette machine
16 operators to customers for use in cigarette machines possessed
17 by the cigarette machine operator.

18 (b) Only roll-your-own tobacco products meeting the
19 requirements of subsection (a) and purchased at the place of
20 business of the cigarette machine operator may be used in a
21 cigarette machine at that location.

22 Section 30. Cigarette tubes used in cigarette machines.

23 (a) All cigarette tubes used in cigarette machines in the
24 possession of cigarette machine operators licensed under

1 Section 15 of this Act shall be constructed of paper of a type
2 determined by the Attorney General, pursuant to rules
3 promulgated by the Attorney General under the provisions of the
4 Administrative Procedure Act, to reduce the likely ignition
5 propensity of cigarettes made by those tubes.

6 (b) A cigarette machine operator is not required to comply
7 with subsection (a) of this Section until the Attorney General
8 has promulgated rules implementing subsection (a) and the rules
9 have become effective. The effective date for such rules shall
10 be no earlier than January 1, 2014.

11 Section 35. Cigarette machine operators; sale of
12 cigarettes.

13 (a) The cigarette machine operator is responsible for
14 complying with all State and federal laws and regulations
15 regarding packaging and labeling of original packages of
16 cigarettes.

17 (b) A person possessing a cigarette machine operator
18 license may not purchase unstamped cigarettes from an in-State
19 or out-of-State manufacturer or distributor of cigarettes.

20 (c) Cigarettes made or fabricated by a cigarette machine
21 may not be sold or distributed to, or possessed by,
22 manufacturers, distributors, secondary distributors,
23 manufacturer representatives, or retailers, except the
24 cigarette machine operator.

25 (d) A cigarette machine possessed by a cigarette machine

1 operator shall have a secure meter that counts the number of
2 cigarettes made or fabricated by the cigarette machine and that
3 cannot be accessed, altered, or reset by the machine operator,
4 except for the sole purpose of taking meter readings.

5 Section 40. Returns.

6 (a) Cigarette machine operators shall file a return and
7 remit the tax imposed by Section 10 by the 15th day of each
8 month covering the preceding calendar month. Each such return
9 shall show: the quantity of cigarettes made or fabricated
10 during the period covered by the return; the beginning and
11 ending meter reading for each cigarette machine for the period
12 covered by the return; the quantity of such cigarettes sold or
13 otherwise disposed of during the period covered by the return;
14 the brand family and manufacturer and quantity of tobacco
15 products used to make or fabricate cigarettes by use of a
16 cigarette machine; the license number of each distributor from
17 whom tobacco products are purchased; the type and quantity of
18 cigarette tubes purchased for use in a cigarette machine; the
19 type and quantity of cigarette tubes used in a cigarette
20 machine; and such other information as the Department may
21 require. Such returns shall be filed on forms prescribed and
22 furnished by the Department. The Department may promulgate
23 rules to require that the cigarette machine operator's return
24 be accompanied by appropriate computer-generated magnetic
25 media supporting schedule data in the format required by the

1 Department, unless, as provided by rule, the Department grants
2 an exception upon petition of a cigarette machine operator.

3 Cigarette machine operators shall send a copy of those
4 returns, together with supporting schedule data, to the
5 Attorney General's Office by the 15th day of each month for the
6 period covering the preceding calendar month.

7 (b) Cigarette machine operators may take a credit against
8 any tax due under Section 10 of this Act for taxes imposed and
9 paid under the Tobacco Products Tax Act of 1995 on tobacco
10 products sold to a customer and used in a rolling machine
11 located at the cigarette machine operator's place of business.
12 To be eligible for such credit, the tobacco product must meet
13 the requirements of Section 25(a) of this Act. This subsection
14 (c) is exempt from the provisions of Section 155 of this Act.

15 Section 45. Examination and correction of returns.

16 (a) As soon as practicable after any return is filed, the
17 Department shall examine that return and shall correct the
18 return according to its best judgment and information, which
19 return so corrected by the Department shall be prima facie
20 correct and shall be prima facie evidence of the correctness of
21 the amount of tax due, as shown on the corrected return.
22 Instead of requiring the cigarette machine operator to file an
23 amended return, the Department may simply notify the cigarette
24 machine operator of the correction or corrections it has made.
25 Proof of the correction by the Department may be made at any

1 hearing before the Department or in any legal proceeding by a
2 reproduced copy of the Department's record relating thereto in
3 the name of the Department under the certificate of the
4 Director of Revenue. Such reproduced copy shall, without
5 further proof, be admitted into evidence before the Department
6 or in any legal proceeding and shall be prima facie proof of
7 the correctness of the amount of tax due, as shown on the
8 reproduced copy. If the Department finds that any amount of tax
9 is due from the cigarette machine operator, the Department
10 shall issue the cigarette machine operator a notice of tax
11 liability for the amount of tax claimed by the Department to be
12 due, together with a penalty in an amount determined in
13 accordance with Sections 3-3, 3-5 and 3-6 of the Uniform
14 Penalty and Interest Act. If, in administering the provisions
15 of this Act, comparison of a return or returns of a cigarette
16 machine operator with the books, records, and inventories of
17 such cigarette machine operator discloses a deficiency that
18 cannot be allocated by the Department to a particular month or
19 months, the Department shall issue the cigarette machine
20 operator a notice of tax liability for the amount of tax
21 claimed by the Department to be due for a given period, but
22 without any obligation upon the Department to allocate that
23 deficiency to any particular month or months, together with a
24 penalty in an amount determined in accordance with Sections
25 3-3, 3-5, and 3-6 of the Uniform Penalty and Interest Act,
26 under which circumstances the aforesaid notice of tax liability

1 shall be prima facie correct and shall be prima facie evidence
2 of the correctness of the amount of tax due, as shown therein;
3 and proof of such correctness may be made in accordance with,
4 and the admissibility of a reproduced copy of such notice of
5 tax liability shall be governed by, all the provisions of this
6 Act applicable to corrected returns. If any cigarette machine
7 operator filing any return dies or becomes a person under legal
8 disability at any time before the Department issues its notice
9 of tax liability, such notice shall be issued to the
10 administrator, executor, or other legal representative of the
11 cigarette machine operator.

12 (b) If, within 60 days after such notice of tax liability,
13 the cigarette machine operator or his or her legal
14 representative files a written protest to such notice of tax
15 liability and requests a hearing thereon, the Department shall
16 give notice to such cigarette machine operator or legal
17 representative of the time and place fixed for such hearing,
18 and shall hold a hearing in conformity with the provisions of
19 this Act, and pursuant thereto shall issue a final assessment
20 to such cigarette machine operator or legal representative for
21 the amount found to be due as a result of such hearing. If a
22 written protest to the notice of tax liability and a request
23 for a hearing thereon is not filed within 60 days after such
24 notice of tax liability, such notice of tax liability shall
25 become final without the necessity of a final assessment being
26 issued and shall be deemed to be a final assessment.

1 (c) In case of failure to pay the tax, or any portion
2 thereof, or any penalty provided for in this Act, when due, the
3 Department may bring suit to recover the amount of such tax, or
4 portion thereof, or penalty; or, if the taxpayer dies or
5 becomes incompetent, by filing claim therefore against his or
6 her estate; provided that no such action with respect to any
7 tax, or portion thereof, or penalty, shall be instituted more
8 than 2 years after the cause of action accrues, except with the
9 consent of the person from whom such tax or penalty is due.

10 After the expiration of the period within which the person
11 assessed may file an action for judicial review under the
12 Administrative Review Law without such an action being filed, a
13 certified copy of the final assessment or revised final
14 assessment of the Department may be filed with the circuit
15 court of the county in which the taxpayer has his or her
16 principal place of business, or of Sangamon County in those
17 cases in which the taxpayer does not have his or her principal
18 place of business in this State. The certified copy of the
19 final assessment or revised final assessment shall be
20 accompanied by a certification which recites facts that are
21 sufficient to show that the Department complied with the
22 jurisdictional requirements of the law in arriving at its final
23 assessment or its revised final assessment and that the
24 taxpayer had his or her opportunity for an administrative
25 hearing and for judicial review, whether he or she availed
26 himself or herself of either or both of these opportunities or

1 not. If the court is satisfied that the Department complied
2 with the jurisdictional requirements of the law in arriving at
3 its final assessment or its revised final assessment and that
4 the taxpayer had his or her opportunity for an administrative
5 hearing and for judicial review, whether he or she availed
6 himself or herself of either or both of these opportunities or
7 not, the court shall enter judgment in favor of the Department
8 and against the taxpayer for the amount shown to be due by the
9 final assessment or the revised final assessment, and such
10 judgment shall be filed of record in the court. Such judgment
11 shall bear the rate of interest set in the Uniform Penalty and
12 Interest Act, but otherwise shall have the same effect as other
13 judgments. The judgment may be enforced, and all laws
14 applicable to sales for the enforcement of a judgment shall be
15 applicable to sales made under such judgments. The Department
16 shall file the certified copy of its assessment, as herein
17 provided, with the circuit court within 2 years after such
18 assessment becomes final except when the taxpayer consents in
19 writing to an extension of such filing period.

20 If, when the cause of action for a proceeding in court
21 accrues against a person, he or she is out of the State, the
22 action may be commenced within the times herein limited, after
23 his or her coming into or returning to the State; and if, after
24 the cause of action accrues, he or she departs from and remains
25 out of the State, the time of his or her absence is no part of
26 the time limited for the commencement of the action; but the

1 foregoing provisions concerning absence from the State shall
2 not apply to any case in which, at the time the cause of action
3 accrues, the party against whom the cause of action accrues is
4 not a resident of this State. The time within which a court
5 action is to be commenced by the Department hereunder shall not
6 run while the taxpayer is a debtor in any proceeding under the
7 federal Bankruptcy Code nor thereafter until 90 days after the
8 Department is notified by such debtor of being discharged in
9 bankruptcy.

10 No claim shall be filed against the estate of any deceased
11 person or a person under legal disability for any tax or
12 penalty or part of either except in the manner prescribed and
13 within the time limited by the Probate Act of 1975, as amended.

14 The remedies provided for herein shall not be exclusive,
15 but all remedies available to creditors for the collection of
16 debts shall be available for the collection of any tax or
17 penalty due hereunder.

18 The collection of tax or penalty by any means provided for
19 herein shall not be a bar to any prosecution under this Act.

20 The certificate of the Director of the Department to the
21 effect that a tax or amount required to be paid by this Act has
22 not been paid, that a return has not been filed, or that
23 information has not been supplied pursuant to the provisions of
24 this Act, shall be prima facie evidence thereof.

25 All of the provisions of Sections 5a, 5b, 5c, 5d, 5e, 5f,
26 5g, 5i and 5j of the Retailers' Occupation Tax Act, which are

1 not inconsistent with this Act, shall apply, as far as
2 practicable, to the subject matter of this Act to the same
3 extent as if such provisions were included herein. References
4 in such incorporated Sections of the Retailers' Occupation Tax
5 Act to retailers, to sellers, or to persons engaged in the
6 business of selling tangible personal property shall mean
7 cigarette machine operator when used in this Act.

8 Section 50. Failure to file return or pay tax; penalty;
9 protest.

10 In case any person who is required to file a return under
11 this Act fails to file a return, or files a return and fails to
12 remit the correct amount of tax, the Department shall determine
13 the amount of tax due from him according to its best judgment
14 and information, which amount so fixed by the Department shall
15 be prima facie correct and shall be prima facie evidence of the
16 correctness of the amount of tax due, as shown in such
17 determination. Proof of such determination by the Department
18 may be made at any hearing before the Department or in any
19 legal proceeding by a reproduced copy of the Department's
20 record relating thereto in the name of the Department under the
21 certificate of the Director of Revenue. Such reproduced copy
22 shall, without further proof, be admitted into evidence before
23 the Department or in any legal proceeding and shall be prima
24 facie proof of the correctness of the amount of tax due, as
25 shown therein. The Department shall issue such person a notice

1 of tax liability for the amount of tax claimed by the
2 Department to be due, together with a penalty in an amount
3 determined in accordance with Sections 3-3, 3-5 and 3-6 of the
4 Uniform Penalty and Interest Act. If such person or the legal
5 representative of such person, within 60 days after such
6 notice, files a written protest to such notice of tax liability
7 and requests a hearing thereon, the Department shall give
8 notice to such person or the legal representative of such
9 person of the time and place fixed for such hearing and shall
10 hold a hearing in conformity with the provisions of this Act,
11 and pursuant thereto shall issue a final assessment to such
12 person or to the legal representative of such person for the
13 amount found to be due as a result of such hearing. If a
14 written protest to the notice of tax liability and a request
15 for a hearing thereon is not filed within 60 days after such
16 notice of tax liability, such notice of tax liability shall
17 become final without the necessity of a final assessment being
18 issued and shall be deemed to be a final assessment.

19 Section 55. Claims; credit memorandum or refunds. If it
20 appears, after claim is filed with the Department, that an
21 amount of tax or penalty has been paid which was not due under
22 this Act, whether as the result of a mistake of fact or an
23 error of law, except as hereinafter provided, then the
24 Department shall issue a credit memorandum or refund to the
25 person who made the erroneous payment or, if that person has

1 died or become a person under legal disability, to his or her
2 legal representative.

3 If it is determined that the Department should issue a
4 credit or refund under this Act, the Department may first apply
5 the amount thereof against any amount of tax or penalty due
6 under this Act, the Cigarette Tax Act, the Cigarette Use Tax
7 Act, or the Tobacco Products Act of 1995 from the person
8 entitled to that credit or refund. For this purpose, if
9 proceedings are pending to determine whether or not any tax or
10 penalty is due under this Act or under the Cigarette Tax Act,
11 Cigarette Use Tax Act, or the Tobacco Products Act of 1995 from
12 the person, the Department may withhold issuance of the credit
13 or refund pending the final disposition of such proceedings and
14 may apply such credit or refund against any amount found to be
15 due to the Department under this Act, the Cigarette Tax Act,
16 the Cigarette Use Tax Act, or the Tobacco Products Act of 1995
17 as a result of such proceedings. The balance, if any, of the
18 credit or refund shall be issued to the person entitled
19 thereto.

20 If no tax or penalty is due and no proceeding is pending to
21 determine whether such taxpayer is indebted to the Department
22 for the payment of a tax or penalty, the credit memorandum or
23 refund shall be issued to the claimant; or (in the case of a
24 credit memorandum) the credit memorandum may be assigned and
25 set over by the lawful holder thereof, subject to reasonable
26 rules of the Department, to any other person who is subject to

1 this Act, the Cigarette Tax Act, the Cigarette Use Tax Act, or
2 the Tobacco Products Act of 1995, and the amount thereof shall
3 be applied by the Department against any tax or penalty due or
4 to become due under this Act, the Cigarette Tax Act, the
5 Cigarette Use Tax Act, or the Tobacco Products Act of 1995 from
6 such assignee.

7 As to any claim filed hereunder with the Department on and
8 after each January 1 and July 1, no amount of tax or penalty
9 erroneously paid (either in total or partial liquidation of a
10 tax or penalty under this Act) more than 3 years prior to such
11 January 1 and July 1, respectively, shall be credited or
12 refunded, except that, if both the Department and the taxpayer
13 have agreed to an extension of time to issue a notice of tax
14 liability under this Act, the claim may be filed at any time
15 prior to the expiration of the period agreed upon.

16 Any credit or refund that is allowed under this Act shall
17 bear interest at the rate and in the manner set forth in the
18 Uniform Penalty and Interest Act.

19 In case the Department determines that the claimant is
20 entitled to a refund, such refund shall be made only from
21 appropriations available for that purpose. If it appears
22 unlikely that the amount appropriated would permit everyone
23 having a claim allowed during the period covered by such
24 appropriation to elect to receive a cash refund, the
25 Department, by rule or regulation, shall provide for the
26 payment of refunds in hardship cases and shall define what

1 types of cases qualify as hardship cases.

2 The provisions of Sections 6a, 6b, and 6c of the Retailers'
3 Occupation Tax Act which are not inconsistent with this Act
4 shall apply, as far as practicable, to the subject matter of
5 this Act to the same extent as if such provisions were included
6 herein.

7 Section 60. Investigations and hearings. The Department,
8 or any officer or employee designated in writing by the
9 Director thereof, for the purpose of administering and
10 enforcing the provisions of this Act, may hold investigations
11 and hearings concerning any matters covered by this Act, and
12 may examine books, papers, records, or memoranda bearing upon
13 the sale or other disposition of cigarettes or tobacco products
14 by a cigarette machine operator, and may issue subpoenas
15 requiring the attendance of a cigarette machine operator, or
16 any officer or employee of a cigarette machine operator, or any
17 person having knowledge of the facts, and may take testimony
18 and require proof, and may issue subpoenas duces tecum to
19 compel the production of relevant books, papers, records, and
20 memoranda, for the information of the Department.

21 In the conduct of any investigation or hearing provided for
22 by this Act, neither the Department, nor any officer or
23 employee thereof, shall be bound by the technical rules of
24 evidence, and no informality in the proceedings nor in the
25 manner of taking testimony shall invalidate any rule, order,

1 decision, or regulation made, approved, or confirmed by the
2 Department.

3 The Director of Revenue, or any duly authorized officer or
4 employee of the Department, shall have the power to administer
5 oaths to such persons required by this Act to give testimony
6 before the Department.

7 The books, papers, records, and memoranda of the
8 Department, or parts thereof, may be proved in any hearing,
9 investigation or legal proceeding by a reproduced copy thereof
10 under the certificate of the Director of Revenue. Such
11 reproduced copy shall, without further proof, be admitted into
12 evidence before the Department or in any legal proceeding.

13 Section 65. Testimony and production of documents;
14 immunity. No person shall be excused from testifying or from
15 producing any books, papers, records, or memoranda in any
16 investigation or upon any hearing, when ordered to do so by the
17 Department or any officer or employee thereof, upon the ground
18 that the testimony or evidence, documentary or otherwise, may
19 tend to incriminate him or subject him to a criminal penalty,
20 but no person shall be prosecuted or subjected to any criminal
21 penalty for or on account of the subject matter of his or her
22 testimony or the evidence produced before the Department or an
23 officer or employee of the Department; provided that such
24 immunity shall extend only to a natural person who, in
25 obedience to a subpoena, gives testimony under oath or produces

1 evidence under oath. No person so testifying shall be exempt
2 from prosecution and punishment for perjury committed in so
3 testifying.

4 Section 70. Confidentiality; official purposes. All
5 information received by the Department from returns or reports
6 filed under this Act, or from any investigation conducted under
7 this Act, shall be confidential, except for official purposes,
8 and any person who divulges any such information in any manner,
9 except in accordance with a proper judicial order or as
10 otherwise provided by law, shall be guilty of a Class A
11 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, that 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, 2013.
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 each 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 Section 75. Records. Every cigarette machine operator who
4 is required to procure a license under this Act shall keep
5 within Illinois, at his licensed address: complete and accurate
6 records of the quantity of such cigarettes made or fabricated;
7 meter readings for each cigarette machine; the quantity of such
8 cigarettes sold or otherwise disposed of; the brand family and
9 manufacturer and quantity of tobacco products purchased and the
10 brand family and manufacturer and quantity of tobacco products
11 used to make or fabricate cigarettes by use of a cigarette
12 machine; the name, address, and license number of each
13 distributor from whom the cigarette machine operator purchases
14 tobacco products; the type and quantity of cigarette tubes
15 purchased for use in a cigarette machine; the type and quantity
16 of cigarette tubes used in a cigarette machine; and such other
17 information as the Department may require, and shall preserve
18 and keep within Illinois at his licensed address all invoices,
19 bills of lading, sales records, copies of bills of sale,
20 inventory at the close of each period for which a return is
21 required of all cigarettes, tobacco products and cigarette
22 tubes on hand, and other pertinent papers and documents
23 relating to the manufacture, purchase, sale, or disposition of
24 cigarettes and tobacco products. All books and records and
25 other papers and documents that are required by this Act to be

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

1 Section 80. Subpoenas and witnesses; depositions. The
2 Department, or any officer or employee of the Department
3 designated in writing by the Director, shall, at its, his, or
4 her own instance, or on the written request of any cigarette
5 machine operator or other interested party to the proceeding,
6 issue subpoenas requiring the attendance of and the giving of
7 testimony by witnesses, and subpoenas duces tecum requiring the
8 production of books, papers, records or memoranda. All
9 subpoenas and subpoenas duces tecum issued under the terms of
10 this Act may be served by any person of full age. The fees of
11 witnesses for attendance and travel shall be the same as the
12 fees of witnesses before the circuit court of this State; such
13 fees to be paid when the witness is excused from further
14 attendance. When the witness is subpoenaed at the instance of
15 the Department or any officer or employee thereof, such fees
16 shall be paid in the same manner as other expenses of the
17 Department, and when the witness is subpoenaed at the instance
18 of any other party to any such proceeding, the cost of service
19 of the subpoena or subpoena duces tecum and the fee of the
20 witness shall be borne by the party at whose instance the
21 witness is summoned. In such case, the Department, in its
22 discretion, may require a deposit to cover the cost of such
23 service and witness fees. A subpoena or subpoena duces tecum so
24 issued shall be served in the same manner as a subpoena or
25 subpoena duces tecum issued out of a court.

26 Any circuit court of this State, upon the application of

1 the Department or any officer or employee thereof, or upon the
2 application of any other party to the proceeding, may, in its
3 discretion, compel the attendance of witnesses, the production
4 of books, papers, records or memoranda and the giving of
5 testimony before the Department or any officer or employee
6 thereof conducting an investigation or holding a hearing
7 authorized by this Act, by an attachment for contempt, or
8 otherwise, in the same manner as production of evidence may be
9 compelled before the court.

10 The Department or any officer or employee thereof, or any
11 other party in an investigation or hearing before the
12 Department, may cause the depositions of witnesses within the
13 State to be taken in the manner prescribed by law for like
14 depositions, or depositions for discovery in civil actions in
15 courts of this State, and to that end compel the attendance of
16 witnesses and the production of books, papers, records or
17 memoranda, in the same manner provided herein.

18 Section 85. Regulations and rules; notice; hearings. The
19 Department may adopt and enforce such reasonable rules and
20 regulations relating to the administration and enforcement of
21 this Act as may be deemed expedient.

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

1 Notice of any hearing provided for by this Act shall be so
2 given not less than 7 days prior to the day fixed for the
3 hearing.

4 Hearings provided for in this Act shall be held:

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

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

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

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

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

1 page of testimony taken before the Department and 25¢ per page
2 of all other matters contained in such record, except that
3 these charges may be waived where the Department is satisfied
4 that the aggrieved party is an indigent person who cannot
5 afford to pay such charges. Before the delivery of such record
6 to 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 cigarette machine operator files with the court a bond, in
12 an amount fixed and approved by the court, to indemnify the
13 State against all loss and injury which may be sustained by it
14 on account of the review proceedings and to secure all costs
15 which may be occasioned by such proceedings.

16 Whenever any proceeding provided by this Act is begun
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 person or
21 of the person under legal disability shall notify the
22 Department of such death or legal disability. Such legal
23 representative, as such, shall then be substituted by the
24 Department for such person. If the legal representative fails
25 to notify the Department of his or her appointment as such
26 legal representative, the Department may, upon its own motion,

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

4 Section 90. The Illinois Administrative Procedure Act. The
5 Illinois Administrative Procedure Act is hereby expressly
6 adopted and shall apply to all administrative rules and
7 procedures of the Department of Revenue under this Act, except
8 that: (1) paragraph (b) of Section 5-10 of the Illinois
9 Administrative Procedure Act does not apply to final orders,
10 decisions and opinions of the Department; (2) subparagraph
11 (a)(ii) of Section 5-10 of the Illinois Administrative
12 Procedure Act does not apply to forms established by the
13 Department for use under this Act; and (3) the provisions of
14 Section 10-45 of the Illinois Administrative Procedure Act
15 regarding proposals for decision are excluded and not
16 applicable to the Department under this Act.

17 Section 95. Legal proceedings. All legal proceedings under
18 this Act, whether civil or criminal, shall be instituted and
19 prosecuted by the Attorney General or by the State's Attorney
20 for the county in which an offense under this Act is committed,
21 and all civil actions may be brought in the name of the
22 Department of Revenue.

23 Section 100. Arrest and seizure. Any duly authorized

1 employee of the Department may: arrest without warrant any
2 person committing in his presence a violation of any of the
3 provisions of this Act; may without a search warrant inspect
4 all cigarettes and cigarette machines located in any place of
5 business; and may seize any contraband cigarettes and any
6 cigarette machines in which such contraband cigarettes may be
7 found or may be made, and such packages or cigarette machines
8 so seized shall be subject to confiscation and forfeiture as
9 provided in Section 105 of this Act.

10 Section 105. Hearings regarding seized cigarettes and
11 cigarette machines. After seizing any cigarettes or cigarette
12 machines, as provided in Section 100 of this Act, the
13 Department shall hold a hearing and shall determine whether
14 such cigarettes, at the time of their seizure by the
15 Department, were contraband cigarettes, or whether such
16 cigarette machines, at the time of their seizure by the
17 Department, contained or made contraband cigarettes. The
18 Department shall give not less than 7 days' notice of the time
19 and place of such hearing to the owner of such property, if he
20 is known, and also to the person in whose possession the
21 property so taken was found, if such person is known and if
22 such person in possession is not the owner of said property. In
23 case neither the owner nor the person in possession of such
24 property is known, the Department shall cause publication of
25 the time and place of such hearing to be made at least once in

1 each week for 3 weeks successively in a newspaper of general
2 circulation in the county where such hearing is to be held.

3 If, as the result of such hearing, the Department
4 determines that the cigarettes seized were, at the time of
5 seizure, contraband cigarettes, or that any cigarette machine
6 at the time of its seizure contained or made contraband
7 cigarettes, the Department shall enter an order declaring such
8 cigarettes or such cigarette machine confiscated and forfeited
9 to the State, and to be held by the Department for disposal as
10 provided in this Section. The Department shall give notice of
11 such order to the owner of such property if he is known, and
12 also to the person in whose possession the property so taken
13 was found, if such person is known, and if such person in
14 possession is not the owner of the property. In case neither
15 the owner nor the person in possession of such property is
16 known, the Department shall cause publication of such order to
17 be made at least once in each week for 3 weeks successively in
18 a newspaper of general circulation in the county where such
19 hearing was held.

20 When any cigarettes or any cigarette machine shall have
21 been declared forfeited to the State by the Department, as
22 provided hereunder, and when all proceedings for the judicial
23 review of the Department's decision have terminated, the
24 Department shall, to the extent that its decision is sustained
25 on review, destroy or maintain and use such property in an
26 undercover capacity.

1 Section 110. Filing of a complaint.

2 Whenever any peace officer of the State or any duly
3 authorized officer or employee of the Department shall have
4 reason to believe that any violation of this Act has occurred
5 and that the person so violating the Act has in that person's
6 possession contraband cigarettes, or any cigarette machine
7 containing or making contraband cigarettes, he or she may file
8 or cause to be filed his complaint in writing, verified by
9 affidavit, with any court within whose jurisdiction the
10 premises to be searched are situated, stating the facts upon
11 which such belief is founded, the premises to be searched, and
12 the property to be seized, and procure a search warrant and
13 execute the same. Upon the execution of such search warrant,
14 the peace officer, or officer or employee of the Department,
15 executing such search warrant shall make due return thereof to
16 the court issuing the same, together with an inventory of the
17 property taken thereunder. The court shall thereupon issue
18 process against the owner of such property if he is known;
19 otherwise, such process shall be issued against the person in
20 whose possession the property so taken is found, if such person
21 is known. In case of inability to serve such process upon the
22 owner or the person in possession of the property at the time
23 of its seizure, notice of the proceedings before the court
24 shall be given as required by the statutes of the State
25 governing cases of attachment. Upon the return of the process

1 duly served or upon the posting or publishing of notice made,
2 as herein provided, the court or jury, if a jury shall be
3 demanded, shall proceed to determine whether or not such
4 property so seized was held or possessed in violation of this
5 Act, or whether, if a cigarette machine has been so seized, it
6 contained or was making at the time of its seizure contraband
7 cigarettes. In case of a finding that any cigarette machine so
8 seized contained or was making at the time of its seizure
9 contraband cigarettes, judgment shall be entered confiscating
10 and forfeiting the property to the State and ordering its
11 delivery to the Department, and, in addition thereto, the court
12 shall have power to tax and assess the costs of the
13 proceedings.

14 When any cigarettes or any cigarette machine is declared
15 forfeited to the State by any court, and when such confiscated
16 and forfeited property is delivered to the Department as
17 provided in this Act, the Department shall destroy or maintain
18 and use such property in an undercover capacity.

19 Section 115. False or fraudulent reports. Any person
20 required by this Act to make, file, render, sign, or verify any
21 report or return, or any officer, agent, or employee of that
22 person, who makes any false or fraudulent report or return or
23 files any false or fraudulent report or return, or who fails to
24 make such report or return or file such report or return when
25 due, is guilty of a Class 4 felony.

1 Section 120. Possession of more than 200 contraband
2 cigarettes; penalty. Any person possessing more than 200
3 contraband cigarettes is liable to pay, to the Department, for
4 deposit into the Tax Compliance and Administration Fund, a
5 penalty of \$1 for each such cigarette in excess of 200, unless
6 reasonable cause can be established by the person upon whom the
7 penalty is imposed. This penalty is in addition to the taxes
8 imposed by this Act. Reasonable cause shall be determined in
9 each situation in accordance with rules adopted by the
10 Department. The provisions of the Uniform Penalty and Interest
11 Act do not apply to this Section.

12 Section 125. Possession of not less than 20 and not more
13 than 200 contraband cigarettes; penalty. Any person possessing
14 not less than 20 and not more than 200 contraband cigarettes is
15 liable to pay to the Department, for deposit into the Tax
16 Compliance and Administration Fund, a penalty of \$0.50 for each
17 such cigarette, unless reasonable cause can be established by
18 the person upon whom the penalty is imposed. Reasonable cause
19 shall be determined in each situation in accordance with rules
20 adopted by the Department. The provisions of the Uniform
21 Penalty and Interest Act do not apply to this Section.

22 Section 130. Punishment for sale or possession of
23 contraband cigarettes.

1 (a) Possession or sale of 200 or less contraband
2 cigarettes. Any person who has in his or her possession or
3 sells 200 or less contraband cigarettes is guilty of a Class A
4 misdemeanor.

5 (b) Possession or sale of more than 200 and not more 1000
6 contraband cigarettes. Any person who has in his or her
7 possession or sells more than 200 and not more than 1000
8 contraband cigarettes is guilty of a Class A misdemeanor for a
9 first offense and a Class 4 felony for each subsequent offense.

10 (c) Possession or sale of more than 1000 contraband
11 cigarettes. Any person who has in his or her possession or
12 sells more than 1000 contraband cigarettes is guilty of a Class
13 4 felony.

14 Section 135. Unlawful operation of cigarette machines.
15 Whoever operates a cigarette machine without a license is
16 guilty of a Class 4 felony. Notwithstanding this Section, and
17 any other provisions of this Act, an individual may own a
18 cigarette machine for that individual's own use, and not for
19 the purpose of resale of cigarettes.

20 Section 140. Failure to keep records; penalty. Any person
21 required by this Act to keep records of any kind, who fails to
22 keep the required records or falsifies those records, is guilty
23 of a Class 4 felony.

1 Section 145. Failure to preserve records; penalty. Any
2 person who fails to safely preserve the records required by
3 Section 75 of this Act for the period of 3 years, as required
4 by that Section, in such manner as to insure permanency and
5 accessibility for inspection by the Department, shall be guilty
6 of a business offense and may be fined up to \$5,000.

7 Section 150. Forfeit of bond. If a cigarette machine
8 operator is convicted of the violation of any of the provisions
9 of this Act, or if his or her license is revoked and no review
10 is had of the order or revocation, or if on review thereof the
11 decision is adverse to the cigarette machine operator, or if a
12 cigarette machine operator fails to pay an assessment as to
13 which no judicial review is sought and which has become final,
14 or pursuant to which, upon review thereof, the circuit court
15 has entered a judgment that is in favor of the Department and
16 that has become final, the bond filed pursuant to this Act
17 shall thereupon be forfeited, and the Department may institute
18 a suit upon such bond in its own name for the entire amount of
19 such bond and costs. Such suit upon the bond shall be in
20 addition to any other remedy provided for herein.

21 Section 155. Sunset of exemptions, credits, and
22 deductions. The application of every exemption, credit, and
23 deduction against tax imposed by this Act that becomes law
24 after the effective date of this Act shall be limited by a

1 reasonable and appropriate sunset date. A taxpayer is not
2 entitled to take the exemption, credit, or deduction beginning
3 on the sunset date and thereafter. If a reasonable and
4 appropriate sunset date is not specified in the Public Act that
5 creates the exemption, credit, or deduction, a taxpayer shall
6 not be entitled to take the exemption, credit, or deduction
7 beginning 5 years after the effective date of the Public Act
8 creating the exemption, credit, or deduction and thereafter.

9 Section 160. Distribution of receipts by the Department.
10 All moneys received by the Department under this Act shall be
11 distributed as provided in subsection (a) of Section 2 of the
12 Cigarette Tax Act.

13 Section 165. Exemption. Persons who are not operating
14 cigarette machines as defined in this Act and are engaged in
15 the business of renting, leasing or selling cigarette machines
16 to persons are exempt from the provisions of this Act.

17 Section 170. Notice. Any person who distributes or offers
18 for sale or rent a cigarette machine in this State shall
19 provide notice to any potential purchaser, lessee, or lessor of
20 that cigarette machine or any retail space containing a
21 cigarette machine. The notice shall contain information about
22 this Act, including: (i) licensure requirements for cigarette
23 machine operators; (ii) tax collection and remittance duties of

1 cigarette machine operators; (iii) any product limitations
2 imposed on cigarette machines by this Act; and (iv) packaging
3 and labeling requirements.

4 Section 180. The Cigarette Tax Act is amended by changing
5 Sections 1 and 2 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.

17 "Contraband cigarettes" means:

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

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

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

23 (d) cigarettes that are manufactured, fabricated,
24 assembled, processed, packaged, or labeled by any person

1 other than (i) the owner of the trademark rights in the
2 cigarette brand or (ii) a person that is directly or
3 indirectly authorized by such owner;

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

8 (f) cigarettes that have false manufacturing labels;

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

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

14 (i) cigarettes made or fabricated by a person holding a
15 cigarette machine operator license under Section 20 of the
16 Cigarette Machine Operators' Occupation Tax Act in the
17 possession of manufacturers, distributors, secondary
18 distributors, manufacturer representatives or other
19 retailers for the purpose of resale, regardless of whether
20 the tax has been paid on such cigarettes.

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

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

17 "Department" means the Department of Revenue.

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

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

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

25 (1) Any person engaged in the business of selling
26 cigarettes in this State who brings or causes to be brought

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

8 (2) Any person who makes, manufactures or fabricates
9 cigarettes in this State for sale in this State, except a
10 person who makes, manufactures or fabricates cigarettes as
11 a part of a correctional industries program for sale to
12 residents incarcerated in penal institutions or resident
13 patients of a State-operated mental health facility.

14 (3) 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 4b of this Act.

20 "Place of business" shall mean and include any place where
21 cigarettes are sold or where cigarettes are manufactured,
22 stored or kept for the purpose of sale or consumption,
23 including any vessel, vehicle, airplane, train or vending
24 machine.

25 "Manufacturer representative" means a director, officer,
26 or employee of a manufacturer who has obtained authority from

1 the Department under Section 4f to maintain representatives in
2 Illinois that provide or sell original packages of cigarettes
3 made, manufactured, or fabricated by the manufacturer to
4 retailers in compliance with Section 4f of this Act to promote
5 cigarettes made, manufactured, or fabricated by the
6 manufacturer.

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

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

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

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

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

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

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

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

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

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

21 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
22 97-587, eff. 8-26-11.)

23 (35 ILCS 130/2) (from Ch. 120, par. 453.2)

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

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

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

25 Beginning on the effective date of this amendatory Act of
26 the 92nd General Assembly and through June 30, 2006, all of the

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

1 Revenue Fund and Common School Fund in excess of \$25,000,000
2 per month and to decrease the next monthly payments to the
3 General Revenue Fund and Common School Fund by that same excess
4 amount.

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

22 When any tax imposed herein terminates or has terminated,
23 distributors who have bought stamps while such tax was in
24 effect and who therefore paid such tax, but who can show, to
25 the Department's satisfaction, that they sold the cigarettes to
26 which they affixed such stamps after such tax had terminated

1 and did not recover the tax or its equivalent from purchasers,
2 shall be allowed by the Department to take credit for such
3 absorbed tax against subsequent tax stamp purchases from the
4 Department by such distributor.

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

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

1 payment, less the discount provided in subsection (b), shall be
2 due when the distributor first makes a purchase of cigarette
3 tax stamps after the effective date of this amendatory Act of
4 1993, or on the first due date of a return under this Act after
5 the effective date of this amendatory Act of 1993, whichever
6 occurs first. Any distributor having cigarettes to which stamps
7 have been affixed in his possession for sale on December 15,
8 1997 shall not be required to pay the additional tax imposed by
9 this amendatory Act of 1997 on such stamped cigarettes.

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

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

1 cigarettes sold to the retailer shall bear all the required
2 stamps, or other indicia, for the taxes included in the price
3 of cigarettes.

4 The amount of the Cigarette Tax imposed by this Act shall
5 be separately stated, apart from the price of the goods, by
6 distributors, manufacturer representatives, secondary
7 distributors, and retailers, in all bills and sales invoices.

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

1 apply. On and after December 1, 1985, a discount equal to 1.75%
2 of the amount of the tax payable under this Act up to and
3 including the first \$3,000,000 paid hereunder by such
4 distributor to the Department during any such year and 1.5% of
5 the amount of any additional tax paid hereunder by such
6 distributor to the Department during any such year shall apply.

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

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

15 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

16 Section 185. The Cigarette Fire Safety Standard Act is
17 amended by adding Section 65 as follows:

18 (425 ILCS 8/65 new)

19 Sec. 65. Cigarette Machine Operators. Cigarettes made or
20 fabricated by cigarette machine operators possessing valid
21 licenses under Section 20 of the Cigarette Machine Operators'
22 Occupation Tax Act are exempt from the provisions of this Act.

23 Section 999. Effective date. This Act takes effect July 1,

1 2012.".