



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB2016

Introduced 2/10/2011, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Cigarette Delivery Sales Reporting Act. Imposes reporting requirements on persons who sell cigarettes for delivery by mail or a delivery service. Includes civil penalties for noncompliance. Amends the Cigarette Tax Act and the Tobacco Products Tax Act of 1995. Requires a retailer of cigarettes or tobacco products to obtain a retailer's license from the Department of Revenue; specifies qualifications, fees, and penalties for noncompliance; provides for mandatory suspension or revocation of a retailer's license for repeated violations of the Sale of Tobacco to Minors Act. Also makes changes in definitions, reporting requirements, and civil and criminal penalties. Amends the Department of Revenue Law of the Civil Administrative Code of Illinois, the Cigarette Tax Act, the Cigarette Use Tax Act, the Tobacco Products Tax Act of 1995, and the Sale of Tobacco to Minors Act to make corresponding changes.

LRB097 10252 CEL 50454 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning regulation.

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

4 Section 1. Short title. This Act may be cited as the  
5 Cigarette Delivery Sales Reporting Act.

6 Section 5. Legislative findings and intent. The General  
7 Assembly finds that consumers are using the Internet to  
8 purchase cigarettes to avoid the taxes imposed by the State of  
9 Illinois on sale and use of cigarettes. The General Assembly  
10 further finds that because online sales have sharply risen over  
11 the years there is a large and increasing loss of revenue to  
12 the State caused by the evasion of sales and use taxes on  
13 cigarettes shipped in interstate commerce to Illinois  
14 customers. The General Assembly finds that to help identify  
15 purchasers of cigarettes from out-of-state sellers, the  
16 Department of Revenue uses information required to be provided  
17 by the federal Jenkins Act (15 U.S.C. §§375-377) in order to  
18 bill consumers for the taxes due. The General Assembly further  
19 finds that many cigarette sellers do not comply with the  
20 provisions of the Jenkins Act and that many other states, in  
21 order to address this problem, have enacted their own reporting  
22 laws intended to prevent further tax avoidance. Therefore, it  
23 is intent of the General Assembly in enacting this Act to

1 facilitate the collection of all applicable State sales and use  
2 taxes on cigarettes sold to residents of this State over the  
3 Internet or by mail order by establishing a reporting  
4 requirement for out-of-state cigarette sellers and penalties  
5 for those persons who violate this Act.

6 Section 10. Definitions. As used in this Act, unless the  
7 context otherwise requires:

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

14 "Consumer" means an individual who is not a licensed  
15 cigarette distributor or a licensed cigarette retailer.

16 "Delivery sale" means a sale of cigarettes to a consumer in  
17 this State in which:

18 (1) the purchaser submits the order for the sale by  
19 means of a telephone or other method of voice transmission,  
20 a delivery service, or the Internet or other online  
21 service; or

22 (2) the cigarettes are delivered by a delivery service.

23 "Delivery service" means any person that is engaged in the  
24 commercial delivery of letters, packages, or other containers.

25 "Department" means the Department of Revenue.

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

6 "Person accepting a purchase order for a delivery sale"  
7 means a person who fills a cigarette order given by a consumer  
8 and processes the order for mail, shipping or other delivery,  
9 or who contracts with another party to provide delivery service  
10 to the purchaser.

11 "Purchase order" means a written or electronic document  
12 authorizing a seller to provide cigarettes.

13 "Retail value" means the market price of the cigarettes  
14 plus all applicable taxes at the location where the cigarettes  
15 were mailed, shipped, or delivered.

16 Section 15. Delivery sales reporting requirements.

17 (a) Not later than the 15th day of each calendar month,  
18 each person that has made a delivery sale of delivered, mailed,  
19 or shipped cigarettes during the previous calendar month, or  
20 contracted with another party for delivery service in  
21 connection with a delivery sale made during the previous  
22 calendar month, shall file a report with the Department. The  
23 report shall contain the following information:

24 (1) the name, trade name, and address of the principal  
25 place of business of the seller and any other place of

1 business of the seller;

2 (2) the name and address of the consumer to whom the  
3 delivery sale was made;

4 (3) the brand or brands of cigarettes that were sold in  
5 the delivery sale;

6 (4) the quantity of cigarettes that were sold in the  
7 delivery sale; and

8 (5) such other information as the Department may  
9 require by rule.

10 (b) A person that satisfies the requirements of 15 U.S.C.  
11 376 is deemed to have met the requirements of this Section.

12 (c) The Department may adopt rules to authorize the  
13 electronic filing of the report required under this Section.

14 Section 20. Penalties; seizure and forfeiture; hearings.

15 (a) The Department shall impose the following penalties for  
16 each unreported sale of cigarettes:

17 (1) The first time a person violates Section 15 of  
18 this Act, the person shall be subject to a civil penalty of  
19 \$1,000 or five times the retail value of the cigarettes  
20 involved in the violation, whichever is greater.

21 (2) In the case of a second or subsequent violation of  
22 Section 15 of this Act, the person shall be subject to a  
23 civil penalty of \$5,000 or five times the retail value of  
24 the cigarettes involved in the violation, whichever is  
25 greater.

1           (b) The penalties prescribed under this Section are in  
2 addition to and not in lieu of any other penalty applicable  
3 under the laws of this State.

4           (c) Any cigarettes sold or attempted to be sold in a  
5 delivery sale that violates this Act may be seized by the  
6 Department and are subject to forfeiture.

7           (d) Any person aggrieved by a Department decision may,  
8 within 30 days after notice of that decision, protest in  
9 writing and request a hearing. The Department shall give notice  
10 to the person of the time and place for the hearing and shall  
11 hold a hearing before it issues a final administrative  
12 decision. In the absence of a protest and request for a hearing  
13 within 30 days, the Department's decision shall become final  
14 without any further determination being made or notice given.

15           Section 25. Enforcement. All enforcement proceedings under  
16 this Act shall be instituted by the Attorney General at the  
17 request of the Department to require compliance with this Act,  
18 to recover civil penalties authorized under Section 20 of this  
19 Act, and to seek any other remedy as provided by law.

20           Section 30. Rules. The Department may adopt rules to  
21 implement, administer and enforce this Act.

22           Section 905. The Department of Revenue Law of the Civil  
23 Administrative Code of Illinois is amended by changing Section

1 2505-380 as follows:

2 (20 ILCS 2505/2505-380) (was 20 ILCS 2505/39b47)

3 Sec. 2505-380. Revocation of or refusal to issue a  
4 certificate of registration, permit, or license. The  
5 Department has the power to refuse to issue or reissue or,  
6 after notice and an opportunity for a hearing, to revoke a  
7 certificate of registration, permit, or license issued or  
8 authorized to be issued by the Department if the applicant for  
9 or holder of the certificate of registration, permit, or  
10 license fails to file a return, or to pay the tax, fee,  
11 penalty, or interest shown in a filed return, or to pay any  
12 final assessment of tax, fee, penalty, or interest, as required  
13 by the tax or fee Act under which the certificate of  
14 registration, permit, or license is required or any other tax  
15 or fee Act administered by the Department.

16 The procedure for notice and hearing prior to revocation  
17 shall be as provided under the Act pursuant to which the  
18 certificate of registration, permit, or license was issued.

19 (Source: P.A. 91-239, eff. 1-1-00.)

20 Section 910. The Cigarette Tax Act is amended by changing  
21 Sections 1, 3-10, 6, 7, 8, 10, 11, 18b, 23, and 24 and by adding  
22 Sections 4f, 4g, and 26a as follows:

23 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

2           "Brand Style" means a variety of cigarettes distinguished  
3 by the tobacco used, tar and nicotine content, flavoring used,  
4 size of the cigarette, filtration on the cigarette or  
5 packaging.

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

11          "Contraband cigarettes" means:

12           (a) cigarettes that do not bear a required tax stamp  
13 under this Act;

14           (b) cigarettes for which any required federal taxes  
15 have not been paid;

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

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

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

26           (f) cigarettes that have false manufacturing labels;



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

3 (h) cigarettes that are improperly tax stamped,  
4 including cigarettes that bear a tax stamp of another state  
5 or taxing jurisdiction.

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

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

1 effective date of this amendatory Act of 1987.

2 "Department" means the Department of Revenue.

3 "Sale" means any transfer, exchange or barter in any manner  
4 or by any means whatsoever for a consideration, and includes  
5 and means all sales made by any person.

6 "Original Package" means the individual ~~packet, box or~~  
7 ~~other~~ container ~~whatsoever~~ used to ~~contain and to~~ convey  
8 cigarettes to the consumer upon which a tax stamp or other  
9 indicia of tax payment is or should be affixed.

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

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

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

25 (3) Any person who makes, manufactures or fabricates  
26 cigarettes outside this State, which cigarettes are placed in

1 original packages contained in sealed transparent wrappers,  
2 for delivery or shipment into this State, and who elects to  
3 qualify and is accepted by the Department as a distributor  
4 under Section 4b of this Act.

5 "Distributor" does not include any person with respect to a  
6 sale of cigarettes to a purchaser for use or consumption, and  
7 not for resale.

8 "Place of business" shall mean and include any place where  
9 cigarettes are sold or where cigarettes are manufactured,  
10 stored or kept for the purpose of sale or consumption,  
11 including any vessel, vehicle, airplane, train or vending  
12 machine.

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

16 "Retailer" means any person who engages in the making of  
17 transfers of the ownership of, or title to, cigarettes to a  
18 purchaser for use or consumption and not for resale in any  
19 form, for a valuable consideration. "Retailer" does not include  
20 a person:

21 (1) who transfers to residents incarcerated in penal  
22 institutions or resident patients of a State-operated  
23 mental health facility ownership of cigarettes made,  
24 manufactured, or fabricated as part of a correctional  
25 industries program; or

26 (2) who transfers cigarettes to a not-for-profit

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

4 "Retailer" shall be construed to include any person who  
5 engages in the making of transfers of the ownership of, or  
6 title to, cigarettes to a purchaser, for use or consumption by  
7 any other person to whom such purchaser may transfer the  
8 cigarettes without a valuable consideration, except a person  
9 who transfers to residents incarcerated in penal institutions  
10 or resident patients of a State-operated mental health facility  
11 ownership of cigarettes made, manufactured or fabricated as  
12 part of a correctional industries program.

13 "Secondary distributor" means any person engaged in the  
14 business of selling cigarettes who purchases stamped original  
15 packages of cigarettes from a licensed distributor under this  
16 Act or the Cigarette Use Tax Act, sells 75% or more of those  
17 cigarettes to retailers for resale, and maintains an  
18 established business where a substantial stock of cigarettes is  
19 available to retailers for resale.

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

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

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

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

1       "Unstamped package of cigarettes" means a package of  
2 cigarettes that does not bear a tax stamp as required by this  
3 Act, including a package of cigarettes that bears a tax stamp  
4 of another state or taxing jurisdiction, a package of  
5 cigarettes that bears a counterfeit tax stamp, and a stamped or  
6 unstamped package of cigarettes that is marked "Not for sale in  
7 the United States".

8       (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;  
9       96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

10       (35 ILCS 130/3-10)

11       Sec. 3-10. Cigarette enforcement.

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

13               (1) to sell or distribute in this State; to acquire,  
14       hold, own, possess, or transport, for sale or distribution  
15       in this State; or to import, or cause to be imported into  
16       this State for sale or distribution in this State:

17               (A) any cigarettes the package of which:

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

25                       (ii) does not comply with:

1           (aa) all requirements imposed by or  
2           pursuant to federal law regarding warnings and  
3           other information on packages of cigarettes  
4           manufactured, packaged, or imported for sale,  
5           distribution, or use in the United States,  
6           including but not limited to the precise  
7           warning labels specified in the federal  
8           Cigarette Labeling and Advertising Act, 15  
9           U.S.C. 1333; and

10           (bb) all federal trademark and copyright  
11           laws;

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

15           (C) any cigarettes that such person otherwise  
16           knows or has reason to know the manufacturer did not  
17           intend to be sold, distributed, or used in the United  
18           States; or

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

25           (2) to alter the package of any cigarettes, prior to  
26           sale or distribution to the ultimate consumer, so as to

1           remove, conceal, or obscure:

2                   (A) any statement, label, stamp, sticker, or  
3           notice described in subdivision (a)(1)(A)(i) of this  
4           Section;

5                   (B) any health warning that is not specified in, or  
6           does not conform with the requirements of, the federal  
7           Cigarette Labeling and Advertising Act, 15 U.S.C.  
8           1333; or

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

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

18                  (1) a copy of:

19                       (A) the permit issued pursuant to the Internal  
20           Revenue Code, 26 U.S.C. 5713, to the person importing  
21           the cigarettes into the United States allowing the  
22           person to import the cigarettes; and

23                       (B) the customs form containing, with respect to  
24           the cigarettes, the internal revenue tax information  
25           required by the U.S. Bureau of Alcohol, Tobacco and  
26           Firearms;

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

13          (3) a statement, signed by an officer of the  
14          manufacturer or importer under penalty of perjury,  
15          certifying that the manufacturer or importer has complied  
16          with:

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

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



1 the meaning of Exhibit T.

2 (c) Administrative sanctions.

3 (1) Upon finding that a distributor, secondary  
4 distributor, retailer, or person has committed any of the  
5 acts prohibited by subsection (a), knowing or having reason  
6 to know that he or she has done so, or upon finding that a  
7 distributor or person has failed to comply with any  
8 requirement of subsection (b), the Department may revoke or  
9 suspend the license or licenses of any distributor,  
10 retailer, or secondary distributor pursuant to the  
11 procedures set forth in Section 6 and impose, on the  
12 distributor, retailer, secondary distributor, or person, a  
13 civil penalty in an amount not to exceed the greater of  
14 500% of the retail value of the cigarettes involved or  
15 \$5,000.

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

25 (d) Unfair trade practices. In addition to any other  
26 penalties provided for in this Act, a violation of subsection

1 (a) or subsection (b) of this Section shall constitute an  
2 unlawful practice as provided in the Consumer Fraud and  
3 Deceptive Business Practices Act.

4 (d-1) Retailers and secondary distributors shall not be  
5 liable under subsections (c)(1) and (d) of this Section for  
6 unknowingly possessing, selling, or distributing to consumers  
7 or users cigarettes identified in subsection (a)(1) of this  
8 Section if the cigarettes possessed, sold, or distributed by  
9 the retailer or secondary distributor were obtained from a  
10 distributor licensed under this Act.

11 (d-5) Criminal penalties. A person who violates subsection  
12 (a) or subsection (b) of this Section shall be guilty of a  
13 Class 4 felony.

14 (e) Unfair cigarette sales. For purposes of the Trademark  
15 Registration and Protection Act and the Counterfeit Trademark  
16 Act, cigarettes imported or reimported into the United States  
17 for sale or distribution under any trade name, trade dress, or  
18 trademark that is the same as, or is confusingly similar to,  
19 any trade name, trade dress, or trademark used for cigarettes  
20 manufactured in the United States for sale or distribution in  
21 the United States shall be presumed to have been purchased  
22 outside of the ordinary channels of trade.

23 (f) General provisions.

24 (1) This Section shall be enforced by the Department;  
25 provided that, at the request of the Director of Revenue or  
26 the Director's duly authorized agent, the State police and

1 all local police authorities shall enforce the provisions  
2 of this Section. The Attorney General has concurrent power  
3 with the State's Attorney of any county to enforce this  
4 Section.

5 (2) For the purpose of enforcing this Section, the  
6 Director of Revenue and any agency to which the Director  
7 has delegated enforcement responsibility pursuant to  
8 subdivision (f)(1) may request information from any State  
9 or local agency and may share information with and request  
10 information from any federal agency and any agency of any  
11 other state or any local agency of any other state.

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

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

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

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

26 (h) Applicability.

1 (1) This Section does not apply to:

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

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

11 (2) The penalties provided in this Section are in  
12 addition to any other penalties imposed under other  
13 provision of law.

14 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;  
15 96-1027, eff. 7-12-10.)

16 (35 ILCS 130/4f new)

17 Sec. 4f. Retailer's license.

18 (a) Commencing January 1, 2012, no person may engage in  
19 business as a retailer of cigarettes in this State without  
20 first having obtained a retailer's license from the Department.  
21 Application for a license shall be made to the Department in  
22 form as furnished and prescribed by the Department. Each  
23 applicant for a license under this Section shall furnish to the  
24 Department on the form signed and verified by the applicant the  
25 following information:

1           (1) the name and address of the applicant;  
2           (2) the address of the location at which the applicant  
3           proposes to engage in business as a retailer of cigarettes  
4           in this State; and

5           (3) such other additional information as the  
6           Department may lawfully require by its rules and  
7           regulations.

8           (b) The annual license fee payable to the Department for  
9           each retailer's license shall be \$250. The fee will be placed  
10           into the Tax Compliance and Administration Fund and used  
11           towards the cost of retail inspections. Each applicant for a  
12           license shall pay that fee to the Department at the time of  
13           submitting the application for a license to the Department.

14           (c) The Department may, in its discretion, require an  
15           applicant who is required to procure a retailer's license to  
16           file with the application a joint and several bond. If  
17           required, such bond shall be executed to the Department of  
18           Revenue, with good and sufficient surety or sureties residing  
19           or licensed to do business within the State of Illinois, in an  
20           amount of not less than \$2,500, conditioned upon the true and  
21           faithful compliance by the licensee with all of the provisions  
22           of this Act. If required, such bond, or a reissue thereof, or a  
23           substitute therefor, shall be kept in effect during the entire  
24           period covered by the license. A separate application for  
25           license shall be made, a separate annual license fee paid, and,  
26           if required, a separate bond filed, for each place of business

1 at which a person who is required to procure a retailer's  
2 license under this Section proposes to engage in business as a  
3 retailer in Illinois under this Act.

4 The following are ineligible to receive a retailer's  
5 license under this Act:

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

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

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

18 (4) a person who possesses a distributor's license  
19 under Section 4 of this Act or a distributor's license  
20 under Section 4b of this Act.

21 (d) The Department, upon receipt of an application, license  
22 fee, and bond in proper form from a person who is eligible to  
23 receive a retailer's license under this Act, shall issue to the  
24 applicant a license in form as prescribed by the Department,  
25 which license shall permit the applicant to engage in business  
26 as a retailer under this Act at the place shown in the

1 application. All licenses issued by the Department under this  
2 Section shall be valid for not to exceed one year after  
3 issuance unless sooner revoked, canceled or suspended as  
4 provided in this Act. No license issued under this Section is  
5 transferable or assignable. The license shall be conspicuously  
6 displayed in the place of business conducted by the licensee in  
7 Illinois under the license. The Department shall not issue a  
8 license to a retailer unless the retailer is also validly  
9 registered under the Retailers' Occupation Tax Act. A person  
10 who obtains a license as a retailer and then ceases to do  
11 business as specified in the license, or who does not commence  
12 business, or who obtains a distributor's license, or whose  
13 license is suspended or revoked, shall immediately surrender  
14 the license to the Department.

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

1 (35 ILCS 130/4g new)

2 Sec. 4g. Purchases of cigarettes by licensed retailers. A  
3 person who possesses a retailer's license under Section 4f of  
4 this Act shall obtain cigarettes for sale only from a licensed  
5 distributor.

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

7 Sec. 6. Revocation, cancellation, or suspension of  
8 license.

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



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

7 (a-5) The Department may revoke, cancel, or suspend the  
8 license of any distributor for a violation of the Tobacco  
9 Product Manufacturers' Escrow Enforcement Act as provided in  
10 Section 30 of that Act. The Department may revoke, cancel, or  
11 suspend the license of any secondary distributor for a  
12 violation of subsection (e) of Section 15 of the Tobacco  
13 Product Manufacturers' Escrow Enforcement Act.

14 (a-10) The Department shall suspend for 7 days the license  
15 of a retailer for a first violation of the Sale of Tobacco to  
16 Minors Act, as provided in Section 3 of that Act.

17 The Department shall suspend for 30 days the license of a  
18 retailer for a second violation of the Sale of Tobacco to  
19 Minors Act, as provided in Section 3 of that Act.

20 The Department shall revoke the license of a retailer for a  
21 third or subsequent violation of the Sale of Tobacco to Minors  
22 Act, as provided in Section 3 of that Act.

23 (b) Any distributor, retailer, or secondary distributor  
24 aggrieved by any decision of the Department under this Section  
25 may, within 20 days after notice of the decision, protest and  
26 request a hearing. Upon receiving a request for a hearing, the

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

13 (c) No license so revoked, as aforesaid, shall be reissued  
14 to any such distributor, retailer, or secondary distributor  
15 within a period of 6 months after the date of the final  
16 determination of such revocation. No such license shall be  
17 reissued at all so long as the person who would receive the  
18 license is ineligible to receive a distributor's license under  
19 this Act for any one or more of the reasons provided for in  
20 Section 4 of this Act or is ineligible to receive a secondary  
21 distributor's license under this Act for any one or more of the  
22 reasons provided for in Section 4c of this Act, or so long as  
23 the person who would receive a retailer's license is ineligible  
24 to receive a retailer's license under this Act for any one or  
25 more of the reasons provided for in Section 4f of this Act.

26 (d) The Department upon complaint filed in the circuit

1 court may by injunction restrain any person who fails, or  
2 refuses, to comply with any of the provisions of this Act from  
3 acting as a distributor, retailer, or secondary distributor of  
4 cigarettes in this State.

5 (Source: P.A. 96-1027, eff. 7-12-10.)

6 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

7 Sec. 7. The Department or any officer or employee of the  
8 Department designated, in writing, by the Director thereof,  
9 shall at its or his or her own instance, or on the written  
10 request of any distributor, secondary distributor, retailer,  
11 or other interested party to the proceeding, issue subpoenas  
12 requiring the attendance of and the giving of testimony by  
13 witnesses, and subpoenas duces tecum requiring the production  
14 of books, papers, records or memoranda. All subpoenas and  
15 subpoenas duces tecum issued under the terms of this Act may be  
16 served by any person of full age. The fees of witnesses for  
17 attendance and travel shall be the same as the fees of  
18 witnesses before the circuit court of this State; such fees to  
19 be paid when the witness is excused from further attendance.  
20 When the witness is subpoenaed at the instance of the  
21 Department or any officer or employee thereof, such fees shall  
22 be paid in the same manner as other expenses of the Department,  
23 and when the witness is subpoenaed at the instance of any other  
24 party to any such proceeding, the cost of service of the  
25 subpoena or subpoena duces tecum and the fee of the witness

1 shall be borne by the party at whose instance the witness is  
2 summoned. In such case the Department, in its discretion, may  
3 require a deposit to cover the cost of such service and witness  
4 fees. A subpoena or subpoena duces tecum so issued shall be  
5 served in the same manner as a subpoena or subpoena duces tecum  
6 issued out of a court.

7 Any circuit court of this State, upon the application of  
8 the Department or any officer or employee thereof, or upon the  
9 application of any other party to the proceeding, may, in its  
10 discretion, compel the attendance of witnesses, the production  
11 of books, papers, records or memoranda and the giving of  
12 testimony before the Department or any officer or employee  
13 thereof conducting an investigation or holding a hearing  
14 authorized by this Act, by an attachment for contempt, or  
15 otherwise, in the same manner as production of evidence may be  
16 compelled before the court.

17 The Department or any officer or employee thereof, or any  
18 other party in an investigation or hearing before the  
19 Department, may cause the depositions of witnesses within the  
20 State to be taken in the manner prescribed by law for like  
21 depositions, or depositions for discovery in civil actions in  
22 courts of this State, and to that end compel the attendance of  
23 witnesses and the production of books, papers, records or  
24 memoranda, in the same manner hereinbefore provided.

25 (Source: P.A. 96-1027, eff. 7-12-10.)

1 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

2 Sec. 8. The Department may make, promulgate and enforce  
3 such reasonable rules and regulations relating to the  
4 administration and enforcement of this Act as may be deemed  
5 expedient.

6 Whenever notice is required by this Act, such notice may be  
7 given by United States certified or registered mail, addressed  
8 to the person concerned at his last known address, and proof of  
9 such mailing shall be sufficient for the purposes of this Act.  
10 Notice of any hearing provided for by this Act shall be so  
11 given not less than 7 days prior to the day fixed for the  
12 hearing.

13 Hearings provided for in this Act shall be held:

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

16 (2) At the Department's office nearest the taxpayer's  
17 or licensee's principal place of business, if the  
18 taxpayer's or licensee's principal place of business is in  
19 Illinois but outside Cook County;

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

22 The Circuit Court of the County wherein the hearing is held  
23 has power to review all final administrative decisions of the  
24 Department in administering this Act. The provisions of the  
25 Administrative Review Law, and all amendments and  
26 modifications thereof, and the rules adopted pursuant thereto,

1 shall apply to and govern all proceedings for the judicial  
2 review of final administrative decisions of the Department  
3 under this Act. The term "administrative decision" is defined  
4 as in Section 3-101 of the Code of Civil Procedure.

5 Service upon the Director of Revenue or Assistant Director  
6 of Revenue of summons issued in any action to review a final  
7 administrative decision shall be service upon the Department.  
8 The Department shall certify the record of its proceedings if  
9 the distributor, retailer, or secondary distributor pays to it  
10 the sum of 75¢ per page of testimony taken before the  
11 Department and 25¢ per page of all other matters contained in  
12 such record, except that these charges may be waived where the  
13 Department is satisfied that the aggrieved party is a poor  
14 person who cannot afford to pay such charges. Before the  
15 delivery of such record to the person applying for it, payment  
16 of these charges must be made, and if the record is not paid  
17 for within 30 days after notice that such record is available,  
18 the complaint may be dismissed by the court upon motion of the  
19 Department.

20 No stay order shall be entered by the Circuit Court unless  
21 the distributor, retailer, or secondary distributor files with  
22 the court a bond in an amount fixed and approved by the court,  
23 to indemnify the State against all loss and injury which may be  
24 sustained by it on account of the review proceedings and to  
25 secure all costs which may be occasioned by such proceedings.

26 Whenever any proceeding provided by this Act is begun

1 before the Department, either by the Department or by a person  
2 subject to this Act, and such person thereafter dies or becomes  
3 a person under legal disability before such proceeding is  
4 concluded, the legal representative of the deceased person or  
5 of the person under legal disability shall notify the  
6 Department of such death or legal disability. Such legal  
7 representative, as such, shall then be substituted by the  
8 Department for such person. If the legal representative fails  
9 to notify the Department of his or her appointment as such  
10 legal representative, the Department may, upon its own motion,  
11 substitute such legal representative in the proceeding pending  
12 before the Department for the person who died or became a  
13 person under legal disability.

14 (Source: P.A. 96-1027, eff. 7-12-10.)

15 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

16 Sec. 10. The Department, or any officer or employee  
17 designated in writing by the Director thereof, for the purpose  
18 of administering and enforcing the provisions of this Act, may  
19 hold investigations and hearings concerning any matters  
20 covered by this Act, and may examine books, papers, records or  
21 memoranda bearing upon the sale or other disposition of  
22 cigarettes by a distributor, retailer, or secondary  
23 distributor, and may issue subpoenas requiring the attendance  
24 of a distributor, retailer, or secondary distributor, or any  
25 officer or employee of a distributor, retailer, or secondary

1 distributor, or any person having knowledge of the facts, and  
2 may take testimony and require proof, and may issue subpoenas  
3 duces tecum to compel the production of relevant books, papers,  
4 records and memoranda, for the information of the Department.

5 In the conduct of any investigation or hearing provided for  
6 by this Act, neither the Department, nor any officer or  
7 employee thereof, shall be bound by the technical rules of  
8 evidence, and no informality in the proceedings nor in the  
9 manner of taking testimony shall invalidate any rule, order,  
10 decision or regulation made, approved or confirmed by the  
11 Department.

12 The Director of Revenue, or any duly authorized officer or  
13 employee of the Department, shall have the power to administer  
14 oaths to such persons required by this Act to give testimony  
15 before the said Department.

16 The books, papers, records and memoranda of the Department,  
17 or parts thereof, may be proved in any hearing, investigation  
18 or legal proceeding by a reproduced copy thereof under the  
19 certificate of the Director of Revenue. Such reproduced copy  
20 shall, without further proof, be admitted into evidence before  
21 the Department or in any legal proceeding.

22 (Source: P.A. 96-1027, eff. 7-12-10.)

23 (35 ILCS 130/11) (from Ch. 120, par. 453.11)

24 Sec. 11. Every distributor and every retailer of  
25 cigarettes, who is required to procure a license under this



1 Act, shall keep within Illinois, at his licensed address,  
2 complete and accurate records of cigarettes held, purchased,  
3 manufactured, brought in or caused to be brought in from  
4 without the State, and sold, or otherwise disposed of, and  
5 shall preserve and keep within Illinois at his licensed address  
6 all invoices, bills of lading, sales records, copies of bills  
7 of sale, inventory at the close of each period for which a  
8 return is required of all cigarettes on hand and of all  
9 cigarette revenue stamps, both affixed and unaffixed, and other  
10 pertinent papers and documents relating to the manufacture,  
11 purchase, sale or disposition of cigarettes. All books and  
12 records and other papers and documents that are required by  
13 this Act to be kept shall be kept in the English language, and  
14 shall, at all times during the usual business hours of the day,  
15 be subject to inspection by the Department or its duly  
16 authorized agents and employees. The Department may adopt rules  
17 that establish requirements, including record forms and  
18 formats, for records required to be kept and maintained by  
19 taxpayers. For purposes of this Section, "records" means all  
20 data maintained by the taxpayer, including data on paper,  
21 microfilm, microfiche or any type of machine-sensible data  
22 compilation. Those books, records, papers and documents shall  
23 be preserved for a period of at least 3 years after the date of  
24 the documents, or the date of the entries appearing in the  
25 records, unless the Department, in writing, authorizes their  
26 destruction or disposal at an earlier date. At all times during

1 the usual business hours of the day any duly authorized agent  
2 or employee of the Department may enter any place of business  
3 of the distributor or retailer, without a search warrant, and  
4 inspect the premises and the stock or packages of cigarettes  
5 and the vending devices therein contained, to determine whether  
6 any of the provisions of this Act are being violated. If such  
7 agent or employee is denied free access or is hindered or  
8 interfered with in making such examination as herein provided,  
9 the license of the distributor or retailer at such premises  
10 shall be subject to revocation by the Department.

11 (Source: P.A. 88-480.)

12 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

13 Sec. 18b. Possession of ~~more than 100 original packages of~~  
14 contraband cigarettes; penalty. Any person licensed or  
15 required to be licensed as a retailer under this Act possessing  
16 original packages of unstamped packages of cigarettes is liable  
17 to pay to the Department, for deposit into the Tax Compliance  
18 and Administration Fund, a penalty for each such package of  
19 cigarettes, unless reasonable cause for possessing said  
20 unstamped packages of cigarettes can be established by the  
21 person upon whom the penalty is imposed. The penalty shall be  
22 \$15 per package for possession of less than 101 packages and  
23 \$25 for possession of each package in excess of 100 packages.  
24 This penalty is in addition to the taxes imposed by this Act.  
25 Such penalty may be recovered by the Department in a civil

1 action. Reasonable cause shall be determined in each situation  
2 in accordance with rules adopted by the Department. The  
3 provisions of the Uniform Penalty and Interest Act (35 ILCS  
4 735/) do not apply to this Section. ~~With the exception of~~  
5 ~~licensed distributors and transporters, as defined in Section~~  
6 ~~9c of this Act, possessing unstamped original packages of~~  
7 ~~cigarettes, and licensed distributors possessing original~~  
8 ~~packages of cigarettes that bear a tax stamp of another state~~  
9 ~~or taxing jurisdiction, anyone possessing contraband~~  
10 ~~cigarettes contained in original packages is liable to pay, to~~  
11 ~~the Department for deposit in the Tax Compliance and~~  
12 ~~Administration Fund, a penalty of \$25 for each such package of~~  
13 ~~cigarettes in excess of 100 packages, unless reasonable cause~~  
14 ~~can be established by the person upon whom the penalty is~~  
15 ~~imposed. This penalty is in addition to the taxes imposed by~~  
16 ~~this Act. Reasonable cause shall be determined in each~~  
17 ~~situation in accordance with rules adopted by the Department.~~  
18 ~~The provisions of the Uniform Penalty and Interest Act do not~~  
19 ~~apply to this Section.~~

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

21 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

22 Sec. 23. Every distributor, retailer, secondary  
23 distributor, or other person who shall knowingly and wilfully  
24 sell or offer for sale any original package, as defined in this  
25 Act, having affixed thereto any fraudulent, spurious,

1 imitation or counterfeit stamp, or stamp which has been  
2 previously affixed, or affixes a stamp which has previously  
3 been affixed to an original package, or who shall knowingly and  
4 wilfully sell or offer for sale any original package, as  
5 defined in this Act, having imprinted thereon underneath the  
6 sealed transparent wrapper thereof any fraudulent, spurious,  
7 imitation or counterfeit tax imprint, shall be deemed guilty of  
8 a Class 2 felony.

9 (Source: P.A. 96-1027, eff. 7-12-10.)

10 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

11 Sec. 24. Punishment for sale or possession of packages of  
12 contraband cigarettes.

13 (a) Any person licensed or required to be licensed as a  
14 retailer under this Act, other than a person licensed as a  
15 distributor, secondary distributor, or a transporter, as  
16 defined in Section 9c of this Act, who has in his possession,  
17 offers for sale, or sells 100 or fewer original packages of  
18 unstamped packages of cigarettes, shall be guilty of a Class A  
19 misdemeanor for a first offense and a Class 4 felony for each  
20 subsequent offense.

21 (b) Any person licensed or required to be licensed as a  
22 retailer under this Act, other than a person licensed as a  
23 distributor, secondary distributor, or a transporter, as  
24 defined in Section 9c of this Act, who has in his possession,  
25 offers for sale or sells more than 100 but fewer than 1001

1 original packages of unstamped packages of cigarettes, shall be  
2 guilty of a Class 4 felony.

3 (c) Any person licensed or required to be licensed as a  
4 retailer under this Act, other than a person licensed as a  
5 distributor, secondary distributor, or a transporter, as  
6 defined in Section 9c of this Act, who has in his possession,  
7 offers for sale or sells more than 1000 original packages of  
8 unstamped packages of cigarettes, shall be guilty of a Class 3  
9 felony.

10 (d) If a retailer possesses more than 100 original packages  
11 of unstamped packages of cigarettes, the prima facie  
12 presumption shall arise that the retailer was offering the  
13 original packages of unstamped packages of cigarettes for sale.  
14 If more than 100 original packages of unstamped packages of  
15 cigarettes are found at a location, the prima facie presumption  
16 shall arise that the retailer is in possession of the original  
17 packages of unstamped packages of cigarettes.

18 (e) Any person licensed as a distributor, secondary  
19 distributor, or transporter, as defined in Section 9c of this  
20 Act, who sells an original package of an unstamped package of  
21 cigarettes, except when the sale is made under such  
22 circumstances that the tax imposed by this Act may not legally  
23 be levied because of the Constitution or laws of the United  
24 States, shall be guilty of a Class 3 felony.

25 ~~(a) Possession or sale of 100 or less packages of~~  
26 ~~contraband cigarettes. With the exception of licensed~~

1 ~~distributors, licensed secondary distributors, or licensed~~  
2 ~~transporters, as defined in Section 9c of this Act, any person~~  
3 ~~who has in his or her possession or sells 100 or less original~~  
4 ~~packages of contraband cigarettes is guilty of a Class A~~  
5 ~~misdemeanor.~~

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

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

21 ~~(d) Possession or sale of more than 1,000 packages of~~  
22 ~~contraband cigarettes. With the exception of licensed~~  
23 ~~distributors, licensed secondary distributors, or licensed~~  
24 ~~transporters, as defined in Section 9c of this Act, any person~~  
25 ~~who has in his or her possession or sells more than 1,000~~  
26 ~~original packages of contraband cigarettes is guilty of a Class~~

1 ~~3 felony.~~

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

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

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

1 ~~inventory to the retailer, and the distributor retains the~~  
2 ~~inventory in its books and records and promptly notifies the~~  
3 ~~Department of Revenue.~~

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

22 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

23 (35 ILCS 130/26a new)

24 Sec. 26a. Operation without retail license. Any person who  
25 operates as a retailer of original packages of cigarettes as



1 defined by this Act without having a license as required by  
2 this Act shall be guilty of a Class 4 felony.

3 (35 ILCS 130/18c rep.)

4 Section 915. The Cigarette Tax Act is amended by repealing  
5 Section 18c.

6 Section 920. The Cigarette Use Tax Act is amended by  
7 changing Sections 1, 3-10, 12, and 25b as follows:

8 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

11 "Use" means the exercise by any person of any right or  
12 power over cigarettes incident to the ownership or possession  
13 thereof, other than the making of a sale thereof in the course  
14 of engaging in a business of selling cigarettes and shall  
15 include the keeping or retention of cigarettes for use, except  
16 that "use" does not include the use of cigarettes by a  
17 not-for-profit research institution conducting tests  
18 concerning the health effects of tobacco products, provided the  
19 cigarettes are not offered for resale.

20 "Brand Style" means a variety of cigarettes distinguished  
21 by the tobacco used, tar and nicotine content, flavoring used,  
22 size of the cigarette, filtration on the cigarette or  
23 packaging.

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

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

11 "Original Package" means the individual ~~packet, box or~~  
12 ~~other~~ container ~~whatsoever~~ used to ~~contain and to~~ convey  
13 cigarettes to the consumer upon which a tax stamp or other  
14 indicia of tax payment is or should be affixed.

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

16 a. Any person engaged in the business of selling  
17 cigarettes in this State who brings or causes to be brought  
18 into this State from without this State any original  
19 packages of cigarettes, on which original packages there is  
20 no authorized evidence underneath a sealed transparent  
21 wrapper showing that the tax liability imposed by this Act  
22 has been paid or assumed by the out-of-State seller of such  
23 cigarettes, for sale in the course of such business.

24 b. Any person who makes, manufactures or fabricates  
25 cigarettes in this State for sale, except a person who  
26 makes, manufactures or fabricates cigarettes for sale to

1 residents incarcerated in penal institutions or resident  
2 patients or a State-operated mental health facility.

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

9 "Distributor" does not include any person with respect to a  
10 sale of cigarettes to a purchaser for use or consumption, and  
11 not for resale.

12 "Distributor" does not include any person who transfers  
13 cigarettes to a not-for-profit research institution that  
14 conducts tests concerning the health effects of tobacco  
15 products and who does not offer the cigarettes for resale.

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

26 "Business" means any trade, occupation, activity or

1 enterprise engaged in or conducted in this State for the  
2 purpose of selling cigarettes.

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

19 "Secondary distributor" means any person engaged in the  
20 business of selling cigarettes who purchases stamped original  
21 packages of cigarettes from a licensed distributor under this  
22 Act or the Cigarette Tax Act, sells 75% or more of those  
23 cigarettes to retailers for resale, and maintains an  
24 established business where a substantial stock of cigarettes is  
25 available to retailers for resale.

26 "Secondary distributor maintaining a place of business in

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

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

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

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

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

17 "Unstamped package of cigarettes" means a package of  
18 cigarettes that does not bear a tax stamp as required by this  
19 Act, including a package of cigarettes that bears a tax stamp  
20 of another state or taxing jurisdiction, a package of  
21 cigarettes that bears a counterfeit tax stamp, and a stamped or  
22 unstamped package of cigarettes that is marked "Not for sale in  
23 the United States".

24 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;  
25 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

1 (35 ILCS 135/3-10)

2 Sec. 3-10. Cigarette enforcement.

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

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

8 (A) any cigarettes the package of which:

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

16 (ii) does not comply with:

17 (aa) all requirements imposed by or  
18 pursuant to federal law regarding warnings and  
19 other information on packages of cigarettes  
20 manufactured, packaged, or imported for sale,  
21 distribution, or use in the United States,  
22 including but not limited to the precise  
23 warning labels specified in the federal  
24 Cigarette Labeling and Advertising Act, 15  
25 U.S.C. 1333; and

26 (bb) all federal trademark and copyright

1 laws;

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

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

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

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

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

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

25 (3) to affix any stamp required pursuant to this Act to  
26 the package of any cigarettes described in subdivision



1 (a)(1) of this Section or altered in violation of  
2 subdivision (a)(2).

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

8 (1) a copy of:

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

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

17 (2) a statement, signed by the person under penalty of  
18 perjury, which shall be treated as confidential by the  
19 Department and exempt from disclosure under the Freedom of  
20 Information Act, identifying the brand and brand styles of  
21 all such cigarettes, the quantity of each brand style of  
22 such cigarettes, the supplier of such cigarettes, and the  
23 person or persons, if any, to whom such cigarettes have  
24 been conveyed for resale; and a separate statement, signed  
25 by the individual under penalty of perjury, which shall not  
26 be treated as confidential or exempt from disclosure,

1 separately identifying the brands and brand styles of such  
2 cigarettes; and

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

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

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

18 (c) Administrative sanctions.

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

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

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

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

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

26 (d-5) Criminal penalties. A person who violates subsection

1 (a) or subsection (b) of this Section shall be guilty of a  
2 Class 4 felony.

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

12 (f) General provisions.

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

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

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

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

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

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

15           (h) Applicability.

16           (1) This Section does not apply to:

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

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

26           (2) The penalties provided in this Section are in

1 addition to any other penalties imposed under other  
2 provision of law.

3 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;  
4 96-1027, eff. 7-12-10.)

5 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

6 Sec. 12. Declaration of possession of cigarettes on which  
7 tax not paid.

8 (a) When cigarettes are acquired for use in this State by a  
9 person ~~(including a distributor as well as any other person),~~  
10 who did not pay the tax herein imposed to a distributor, the  
11 person, within 30 days after acquiring the cigarettes, shall  
12 file with the Department a return declaring the possession of  
13 the cigarettes and shall transmit with the return to the  
14 Department the tax imposed by this Act.

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

20 (c) The return referred to in paragraph (a) shall contain  
21 the name and address of the person possessing the cigarettes  
22 involved, the location of the cigarettes and the quantity,  
23 brand name, place, and date of the acquisition of the  
24 cigarettes.

25 (d) Nothing in this Section shall permit a secondary

1 distributor to purchase unstamped original packages of  
2 cigarettes or to purchase original packages of cigarettes from  
3 a person other than a licensed distributor.

4 (e) The provisions of the Uniform Penalty and Interest Act  
5 (35 ILCS 735/) do not apply to this Section.

6 (Source: P.A. 96-1027, eff. 7-12-10.)

7 (35 ILCS 135/25b)

8 Sec. 25b. Possession of cigarette packages by persons not  
9 licensed as a distributor or a retailer; penalty. Possession of  
10 not less than 10 and not more than 100 original packages not  
11 tax stamped or improperly tax stamped; penalty. Any person  
12 other than a person licensed as a distributor or a retailer  
13 under the Cigarette Tax Act in possession of more than 10 but  
14 fewer than 101 original packages of unstamped packages of  
15 cigarettes and who has not paid the taxes imposed by this Act  
16 within 30 days of acquiring the cigarettes, shall be liable to  
17 pay to the Department for deposit into the Tax Compliance and  
18 Administration Fund, a penalty of \$15 for possession of each  
19 package of cigarettes. Any person other than a person licensed  
20 as a distributor or a retailer under the Cigarette Tax Act in  
21 possession of more than 100 original packages of unstamped  
22 packages of cigarettes and who has not paid the taxes imposed  
23 by this Act within 30 days of acquiring the cigarettes, shall  
24 be liable to pay to the Department for deposit into the Tax  
25 Compliance and Administration Fund, a penalty of \$25 for

1 possession of each package of cigarettes. Any person who  
2 purchases and possesses a total of 10 or fewer original  
3 packages of unstamped cigarettes per month shall be exempt from  
4 the penalties of this Section. The provisions of the Uniform  
5 Penalty and Interest Act (35 ILCS 735/) do not apply to this  
6 Section. ~~With the exception of licensed distributors and~~  
7 ~~transporters, as defined in Section 9c of the Cigarette Tax~~  
8 ~~Act, possessing unstamped packages of cigarettes, and licensed~~  
9 ~~distributors possessing original packages of cigarettes that~~  
10 ~~bear a tax stamp of another state or taxing jurisdiction,~~  
11 ~~anyone possessing not less than 10 and not more than 100~~  
12 ~~packages of contraband cigarettes contained in original~~  
13 ~~packages is liable to pay to the Department, for deposit into~~  
14 ~~the Tax Compliance and Administration Fund, a penalty of \$20~~  
15 ~~for each such package of cigarettes, unless reasonable cause~~  
16 ~~can be established by the person upon whom the penalty is~~  
17 ~~imposed. Reasonable cause shall be determined in each situation~~  
18 ~~in accordance with rules adopted by the Department. Any person~~  
19 ~~who purchases and possesses a total of 9 or fewer original~~  
20 ~~packages of unstamped cigarettes per month is exempt from the~~  
21 ~~penalties of this Section. The provisions of the Uniform~~  
22 ~~Penalty and Interest Act do not apply to this Section.~~

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

24 (35 ILCS 135/25a rep.)

25 Section 925. The Cigarette Use Tax Act is amended by



1 repealing Section 25a.

2 Section 930. The Tobacco Products Tax Act of 1995 is  
3 amended by changing Sections 10-5, 10-20, 10-25, 10-30, 10-35,  
4 and 10-50 and by adding Sections 10-21, 10-22, 10-36, and 10-53  
5 as follows:

6 (35 ILCS 143/10-5)

7 Sec. 10-5. Definitions. For purposes of this Act:

8 "Business" means any trade, occupation, activity, or  
9 enterprise engaged in, at any location whatsoever, for the  
10 purpose of selling tobacco products.

11 "Cigarette" has the meaning ascribed to the term in Section  
12 1 of the Cigarette Tax Act.

13 "Correctional Industries program" means a program run by a  
14 State penal institution in which residents of the penal  
15 institution produce tobacco products for sale to persons  
16 incarcerated in penal institutions or resident patients of a  
17 State operated mental health facility.

18 "Department" means the Illinois Department of Revenue.

19 "Distributor" means any of the following:

20 (1) Any manufacturer or wholesaler in this State  
21 engaged in the business of selling tobacco products who  
22 sells, exchanges, or distributes tobacco products to  
23 retailers or consumers in this State.

24 (2) Any manufacturer or wholesaler engaged in the

1 business of selling tobacco products from without this  
2 State who sells, exchanges, distributes, ships, or  
3 transports tobacco products to retailers ~~or consumers~~  
4 located in this State, who (i) so long as that manufacturer  
5 ~~or wholesaler~~ has or maintains within this State, directly  
6 or by subsidiary, an office, sales house, or other place of  
7 business, or any agent or other representative operating  
8 within this State under the authority of the person or  
9 subsidiary, irrespective of whether the place of business  
10 or agent or other representative is located here  
11 permanently or temporarily, or (ii) elects to apply for a  
12 distributor's license and is approved by the Department as  
13 a licensed distributor.

14 ~~(3) Any retailer who receives tobacco products on which~~  
15 ~~the tax has not been or will not be paid by another~~  
16 ~~distributor.~~

17 "Distributor" does not include any person with respect to a  
18 sale of tobacco products to a purchaser for use or consumption,  
19 and not for resale.

20 "Distributor" does not include any person, wherever  
21 resident or located, who makes, manufactures, or fabricates  
22 tobacco products as part of a Correctional Industries program  
23 for sale to residents incarcerated in penal institutions or  
24 resident patients of a State operated mental health facility.

25 "Manufacturer" means any person, wherever resident or  
26 located, who manufactures and sells tobacco products, except a

1 person who makes, manufactures, or fabricates tobacco products  
2 as a part of a Correctional Industries program for sale to  
3 persons incarcerated in penal institutions or resident  
4 patients of a State operated mental health facility.

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

11 "Place of business" means and includes any place where  
12 tobacco products are sold or where tobacco products are  
13 manufactured, stored, or kept for the purpose of sale or  
14 consumption, including any vessel, vehicle, airplane, train,  
15 or vending machine.

16 "Retailer" means any person in this State engaged in the  
17 business of selling tobacco products to consumers in this  
18 State, regardless of quantity or number of sales.

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

22 "Tobacco products" means any cigars; cheroots; stogies;  
23 periques; granulated, plug cut, crimp cut, ready rubbed, and  
24 other smoking tobacco; snuff or snuff flour; cavendish; plug  
25 and twist tobacco; fine-cut and other chewing tobaccos; shorts;  
26 refuse scraps, clippings, cuttings, and sweeping of tobacco;

1 and other kinds and forms of tobacco, prepared in such manner  
2 as to be suitable for chewing or smoking in a pipe or  
3 otherwise, or both for chewing and smoking; but does not  
4 include cigarettes or tobacco purchased for the manufacture of  
5 cigarettes by cigarette distributors and manufacturers defined  
6 in the Cigarette Tax Act and persons who make, manufacture, or  
7 fabricate cigarettes as a part of a Correctional Industries  
8 program for sale to residents incarcerated in penal  
9 institutions or resident patients of a State operated mental  
10 health facility.

11 "Wholesale price" means the established list price for  
12 which a manufacturer sells tobacco products to a distributor,  
13 before the allowance of any discount, trade allowance, rebate,  
14 or other reduction. In the absence of such an established list  
15 price, the manufacturer's invoice price at which the  
16 manufacturer sells the tobacco product to unaffiliated  
17 distributors, before any discounts, trade allowances, rebates,  
18 or other reductions, shall be presumed to be the wholesale  
19 price.

20 "Wholesaler" means any person, wherever resident or  
21 located, engaged in the business of selling tobacco products to  
22 others for the purpose of resale.

23 (Source: P.A. 92-231, eff. 8-2-01.)

24 (35 ILCS 143/10-20)

25 Sec. 10-20. Distributor's Licenses. It shall be unlawful

1 for any person to engage in business as a distributor of  
2 tobacco products within the meaning of this Act without first  
3 having obtained a license to do so from the Department.  
4 Application for that license shall be made to the Department in  
5 a form prescribed and furnished by the Department. Each  
6 applicant for a license shall furnish to the Department on a  
7 form, signed and verified by the applicant, the following  
8 information:

9 (1) The name of the applicant.

10 (2) The address of the location at which the applicant  
11 proposes to engage in business as a distributor of tobacco  
12 products.

13 (3) Other information the Department may reasonably  
14 require.

15 Except as otherwise provided in this Section, every  
16 applicant who is required to procure a distributor's license  
17 shall file with his or her application a joint and several  
18 bond. The bond shall be executed to the Department of Revenue,  
19 with good and sufficient surety or sureties residing or  
20 licensed to do business within the State of Illinois,  
21 conditioned upon the true and faithful compliance by the  
22 licensee with all of the provisions of this Act. The Department  
23 shall fix the amount of the bond for each applicant, taking  
24 into consideration the amount of money expected to become due  
25 from the applicant under this Act. The amount of bond required  
26 by the Department shall be an amount that, in its opinion, will

1 protect the State of Illinois against failure to pay the amount  
2 that may become due from the applicant under this Act, but the  
3 amount of the security required by the Department shall not  
4 exceed 3 times the amount of the applicant's average monthly  
5 tax liability, or \$50,000, whichever amount is lower. The bond,  
6 a reissue, or a substitute shall be kept in full force and  
7 effect during the entire period covered by the license. A  
8 separate application for license shall be made, and bond filed,  
9 for each place of business at which a person who is required to  
10 procure a distributor's license proposes to engage in business  
11 as a distributor under this Act.

12 The Department, upon receipt of an application and bond in  
13 proper form, shall issue to the applicant a license, in a form  
14 prescribed by the Department, which shall permit the applicant  
15 to whom it is issued to engage in business as a distributor at  
16 the place shown on his or her application. The license shall be  
17 issued by the Department without charge or cost to the  
18 applicant. No license issued under this Act is transferable or  
19 assignable. The license shall be conspicuously displayed in the  
20 place of business conducted by the licensee under the license.

21 The bonding requirement in this Section does not apply to  
22 an applicant for a distributor's license who is already bonded  
23 under the Cigarette Tax Act or the Cigarette Use Tax Act.  
24 Licenses issued by the Department under this Act shall be valid  
25 for a period not to exceed one year after issuance unless  
26 sooner revoked, canceled, or suspended as provided in this Act.

1           No license shall be issued to any person who is in default  
2 to the State of Illinois for moneys due under this Act or any  
3 other tax Act administered by the Department.

4           The Department may, in its discretion, upon application,  
5 authorize the payment of the tax imposed under Section 10-10 by  
6 any distributor or manufacturer not otherwise subject to the  
7 tax imposed under this Act who, to the satisfaction of the  
8 Department, furnishes adequate security to ensure payment of  
9 the tax. The distributor or manufacturer shall be issued,  
10 without charge, a license to remit the tax. When so authorized,  
11 it shall be the duty of the distributor or manufacturer to  
12 remit the tax imposed upon the wholesale price of tobacco  
13 products sold or otherwise disposed of to retailers or  
14 consumers located in this State, in the same manner and subject  
15 to the same requirements as any other distributor or  
16 manufacturer licensed under this Act.

17           The Department may revoke, suspend, or cancel the license  
18 of a distributor of roll-your-own tobacco (as that term is used  
19 in Section 10 of the Tobacco Product Manufacturers' Escrow Act)  
20 under this Act if the tobacco product manufacturer, as defined  
21 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
22 that made or sold the roll-your-own tobacco has failed to  
23 become a participating manufacturer, as defined in subdivision  
24 (a) (1) of Section 15 of the Tobacco Product Manufacturers'  
25 Escrow Act, or has failed to create a qualified escrow fund for  
26 any roll-your-own tobacco manufactured by the tobacco product

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

4 Any person aggrieved by any decision of the Department  
5 under this Section may, within 20 days after notice of that  
6 decision, protest and request a hearing, whereupon the  
7 Department must give notice to that person of the time and  
8 place fixed for the hearing and must hold a hearing in  
9 conformity with the provisions of this Act and then issue its  
10 final administrative decision in the matter to that person. In  
11 the absence of such a protest within 20 days, the Department's  
12 decision becomes final without any further determination being  
13 made or notice given.

14 (Source: P.A. 92-231, eff. 8-2-01; 92-737, eff. 7-25-02.)

15 (35 ILCS 143/10-21 new)

16 Sec. 10-21. Retailer's license.

17 (a) Commencing January 1, 2012, no person may engage in  
18 business as a retailer of tobacco products in this State  
19 without first having obtained a retailer's license from the  
20 Department. Application for a license shall be made to the  
21 Department in form as furnished and prescribed by the  
22 Department. Each applicant for a license under this Section  
23 shall furnish to the Department on the form signed and verified  
24 by the applicant the following information:

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



1           (2) the address of the location at which the applicant  
2           proposes to engage in business as a retailer of tobacco  
3           products in this State; and

4           (3) such other additional information as the  
5           Department may lawfully require by its rules and  
6           regulations.

7           (b) The annual license fee payable to the Department for  
8           each retailer's license shall be \$250. The fee will be placed  
9           into the Tax Compliance and Administration Fund and used  
10           towards the cost of retail inspections. Each applicant for a  
11           license shall pay that fee to the Department at the time of  
12           submitting the application for a license to the Department.

13           (c) The Department may, in its discretion, require an  
14           applicant who is required to procure a retailer's license to  
15           file with the application a joint and several bond. If  
16           required, such bond shall be executed to the Department of  
17           Revenue, with good and sufficient surety or sureties residing  
18           or licensed to do business within the State of Illinois, in an  
19           amount of not less than \$2,500, conditioned upon the true and  
20           faithful compliance by the licensee with all of the provisions  
21           of this Act. If required, such bond, or a reissue thereof, or a  
22           substitute therefor, shall be kept in effect during the entire  
23           period covered by the license. A separate application for  
24           license shall be made, a separate annual license fee paid, and,  
25           if required, a separate bond filed, for each place of business  
26           at which a person who is required to procure a retailer's

1 license under this Section proposes to engage in business as a  
2 retailer in Illinois under this Act.

3 The following are ineligible to receive a retailer's  
4 license under this Act:

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

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

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

17 (4) a person who possesses a distributor's license  
18 under Section 10-20 of this Act.

19 (d) The Department, upon receipt of an application, license  
20 fee, and bond in proper form from a person who is eligible to  
21 receive a retailer's license under this Act, shall issue to the  
22 applicant a license in form as prescribed by the Department,  
23 which license shall permit the applicant to engage in business  
24 as a retailer under this Act at the place shown in the  
25 application. All licenses issued by the Department under this  
26 Section shall be valid for not to exceed one year after

1 issuance unless sooner revoked, canceled or suspended as  
2 provided in this Act. No license issued under this Section is  
3 transferable or assignable. The license shall be conspicuously  
4 displayed in the place of business conducted by the licensee in  
5 Illinois under the license. The Department shall not issue a  
6 license to a retailer unless the retailer is also validly  
7 registered under the Retailers' Occupation Tax Act. A person  
8 who obtains a license as a retailer and then ceases to do  
9 business as specified in the license, or who does not commence  
10 business, or who obtains a distributor's license, or whose  
11 license is suspended or revoked, shall immediately surrender  
12 the license to the Department. A retailer as defined under the  
13 Cigarette Tax Act need not obtain an additional license under  
14 this Act, but shall be deemed to be sufficiently licensed by  
15 virtue of his being properly licensed as a retailer under  
16 Section 4f of the Cigarette Tax Act.

17 (e) Any person aggrieved by any decision of the Department  
18 under this subsection may, within 20 days after notice of the  
19 decision, protest and request a hearing. Upon receiving a  
20 request for a hearing, the Department shall give notice to the  
21 person requesting the hearing of the time and place fixed for  
22 the hearing and shall hold a hearing in conformity with the  
23 provisions of this Act and then issue its final administrative  
24 decision in the matter to that person. In the absence of a  
25 protest and request for a hearing within 20 days, the  
26 Department's decision shall become final without any further

1 determination being made or notice given.

2 (35 ILCS 143/10-22 new)

3 Sec. 10-22. Purchases of tobacco products by licensed  
4 retailers. A person who possesses a retailer's license under  
5 Section 10-21 of this Act shall obtain tobacco products for  
6 sale only from a licensed distributor.

7 (35 ILCS 143/10-25)

8 Sec. 10-25. License actions.

9 (a) The Department may, after notice and a hearing, revoke,  
10 cancel, or suspend the license of any distributor or retailer  
11 who violates any of the provisions of this Act. The notice  
12 shall specify the alleged violation or violations upon which  
13 the revocation, cancellation, or suspension proceeding is  
14 based.

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

19 (c) The Department shall suspend for 7 days the license of  
20 a retailer for a first violation of the Sale of Tobacco to  
21 Minors Act, as provided in Section 3 of that Act.

22 The Department shall suspend for 30 days the license of a  
23 retailer for a second violation of the Sale of Tobacco to  
24 Minors Act, as provided in Section 3 of that Act.

1       The Department shall revoke the license of a retailer for a  
2 third or subsequent violation of the Sale of Tobacco to Minors  
3 Act, as provided in Section 3 of that Act.

4       (d) The Department may, by application to any circuit  
5 court, obtain an injunction restraining any person who engages  
6 in business as a distributor of tobacco products without a  
7 license (either because his or her license has been revoked,  
8 canceled, or suspended or because of a failure to obtain a  
9 license in the first instance) from engaging in that business  
10 until that person, as if that person were a new applicant for a  
11 license, complies with all of the conditions, restrictions, and  
12 requirements of Section 10-20 (for a distributor's license) or  
13 Section 10-21 (for a retailer's license) ~~of this Act~~ and  
14 qualifies for and obtains a license. Refusal or neglect to obey  
15 the order of the court may result in punishment for contempt.

16       (Source: P.A. 92-737, eff. 7-25-02.)

17       (35 ILCS 143/10-30)

18       Sec. 10-30. Returns.

19       (a) Every distributor shall, on or before the 15th day of  
20 each month, file a return with the Department covering the  
21 preceding calendar month. The return shall disclose the  
22 wholesale price for tobacco products sold or otherwise disposed  
23 of and other information that the Department may reasonably  
24 require. The return shall be filed upon a form prescribed and  
25 furnished by the Department.

1           At the time when any return of any distributor is due to be  
2 filed with the Department, the distributor shall also remit to  
3 the Department the tax liability that the distributor has  
4 incurred for transactions occurring in the preceding calendar  
5 month.

6           (b) A retailer who possesses, acquires, or purchases  
7 tobacco products on which the tax imposed by this Act has not  
8 been paid shall file a return and pay the tax in a format and at  
9 a time prescribed by the Department by rule.

10         (Source: P.A. 89-21, eff. 6-6-95.)

11           (35 ILCS 143/10-35)

12           Sec. 10-35. Record keeping.

13           (a) Every distributor, as defined in Section 10-5, shall  
14 keep complete and accurate records of tobacco products held,  
15 purchased, manufactured, brought in or caused to be brought in  
16 from without the State, and tobacco products sold, or otherwise  
17 disposed of, and shall preserve and keep all invoices, bills of  
18 lading, sales records, and copies of bills of sale, the  
19 wholesale price for tobacco products sold or otherwise disposed  
20 of, an inventory of tobacco products prepared as of December 31  
21 of each year or as of the last day of the distributor's fiscal  
22 year if he or she files federal income tax returns on the basis  
23 of a fiscal year, and other pertinent papers and documents  
24 relating to the manufacture, purchase, sale, or disposition of  
25 tobacco products. Every sales invoice issued by a licensed

1 distributor to a retailer in this State shall contain the  
2 distributor's Tobacco Products License number.

3 (b) Every retailer, as defined in Section 10-5, shall keep  
4 within Illinois, at his or her licensed address, complete and  
5 accurate records of tobacco products held, purchased, sold, or  
6 otherwise disposed of, and shall preserve and keep all  
7 invoices, bills of lading, sales records, copies of bills of  
8 sale, returns, and other pertinent papers and documents  
9 relating to the purchase, sale, or disposition of tobacco  
10 products.

11 (c) Books, records, papers, and documents that are required  
12 by this Act to be kept shall, at all times during the usual  
13 business hours of the day, be subject to inspection by the  
14 Department or its duly authorized agents and employees. The  
15 books, records, papers, and documents for any period with  
16 respect to which the Department is authorized to issue a notice  
17 of tax liability shall be preserved until the expiration of  
18 that period.

19 (Source: P.A. 89-21, eff. 6-6-95.)

20 (35 ILCS 143/10-36 new)

21 Sec. 10-36. Proof of payment of tax imposed by this Act.  
22 Every licensed distributor of tobacco products in this State is  
23 required to show proof of the tax having been paid as required  
24 by this Act by displaying his or her Tobacco Products License  
25 number on every sales invoice issued to a retailer in this

1 State. No retailer shall possess tobacco products without  
2 either (i) a proper invoice indicating that the tobacco  
3 products tax was paid by a distributor for the tobacco products  
4 in the retailer's possession or (ii) proof that the tax was  
5 paid by the retailer if it has purchased tobacco products on  
6 which tax has not been paid as required by this Act. Failure to  
7 comply with the provisions of this Section may be grounds for  
8 revocation of a distributor's or retailer's license in  
9 accordance with Section 10-25 of this Act or Section 6 of the  
10 Cigarette Tax Act. In addition, the Department may impose a  
11 civil penalty not to exceed \$1,000 for each violation, which  
12 shall be deposited into the Tax Compliance and Administration  
13 Fund.

14 (35 ILCS 143/10-50)

15 Sec. 10-50. Violations and penalties.

16 (a) When the amount due is under \$300, any distributor who  
17 fails to file a return, willfully ~~wilfully~~ fails or refuses to  
18 make any payment to the Department of the tax imposed by this  
19 Act, or files a fraudulent return, or any officer or agent of a  
20 corporation engaged in the business of distributing tobacco  
21 products to retailers and consumers located in this State who  
22 signs a fraudulent return filed on behalf of the corporation,  
23 or any accountant or other agent who knowingly enters false  
24 information on the return of any taxpayer under this Act is  
25 guilty of a Class 4 felony.



1       (b) Any person who violates any provision of Section 10-20,  
2       10-21, or 10-22 of this Act, fails to keep books and records as  
3       required under this Act, or willfully ~~wilfully~~ violates a rule  
4       or regulation of the Department for the administration and  
5       enforcement of this Act is guilty of a Class 4 felony. A person  
6       commits a separate offense on each day that he or she engages  
7       in business in violation of Section 10-20, 10-21, or 10-22 of  
8       this Act.

9       (c) When the amount due is under \$300, any person who  
10       accepts money that is due to the Department under this Act from  
11       a taxpayer for the purpose of acting as the taxpayer's agent to  
12       make the payment to the Department, but who fails to remit the  
13       payment to the Department when due, is guilty of a Class 4  
14       felony.

15       (d) When the amount due is \$300 or more, any distributor  
16       who files, or causes to be filed, a fraudulent return, or any  
17       officer or agent of a corporation engaged in the business of  
18       distributing tobacco products to retailers and consumers  
19       located in this State who files or causes to be filed or signs  
20       or causes to be signed a fraudulent return filed on behalf of  
21       the corporation, or any accountant or other agent who knowingly  
22       enters false information on the return of any taxpayer under  
23       this Act is guilty of a Class 3 felony.

24       (e) When the amount due is \$300 or more, any person engaged  
25       in the business of distributing tobacco products to retailers  
26       and consumers located in this State who fails to file a return,

1 ~~willfully~~ ~~willfully~~ fails or refuses to make any payment to the  
2 Department of the tax imposed by this Act, or accepts money  
3 that is due to the Department under this Act from a taxpayer  
4 for the purpose of acting as the taxpayer's agent to make  
5 payment to the Department but fails to remit such payment to  
6 the Department when due is guilty of a Class 3 felony.

7 (f) When the amount due is under \$300, any retailer who  
8 fails to file a return, willfully fails or refuses to make any  
9 payment to the Department of the tax imposed by this Act, or  
10 files a fraudulent return, or any officer or agent of a  
11 corporation engaged in the retail business of selling tobacco  
12 products to purchasers of tobacco products for use and  
13 consumption located in this State who signs a fraudulent return  
14 filed on behalf of the corporation, or any accountant or other  
15 agent who knowingly enters false information on the return of  
16 any taxpayer under this Act is guilty of a Class 4 felony.

17 (g) When the amount due is \$300 or more, any retailer who  
18 fails to file a return, willfully fails or refuses to make any  
19 payment to the Department of the tax imposed by this Act, or  
20 files a fraudulent return, or any officer or agent of a  
21 corporation engaged in the retail business of selling tobacco  
22 products to purchasers of tobacco products for use and  
23 consumption located in this State who signs a fraudulent return  
24 filed on behalf of the corporation, or any accountant or other  
25 agent who knowingly enters false information on the return of  
26 any taxpayer under this Act is guilty of a Class 3 felony.

1       (h) Any person whose principal place of business is in this  
2 State and who is charged with a violation under this Section  
3 shall be tried in the county where his or her principal place  
4 of business is located unless he or she asserts a right to be  
5 tried in another venue. If the taxpayer does not have his or  
6 her principal place of business in this State, however, the  
7 hearing must be held in Sangamon County unless the taxpayer  
8 asserts a right to be tried in another venue.

9       (i) Any taxpayer or agent of a taxpayer who with the intent  
10 to defraud purports to make a payment due to the Department by  
11 issuing or delivering a check or other order upon a real or  
12 fictitious depository for the payment of money, knowing that it  
13 will not be paid by the depository, is guilty of a deceptive  
14 practice in violation of Section 17-1 of the Criminal Code of  
15 1961.

16       (j) A prosecution for a violation described in this Section  
17 may be commenced within 3 years after the commission of the act  
18 constituting the violation.

19 (Source: P.A. 92-231, eff. 8-2-01.)

20 (35 ILCS 143/10-53 new)

21 Sec. 10-53. Acting as a retailer of tobacco products  
22 without a license. Any person who knowingly acts as a retailer  
23 of tobacco products in this State without first having obtained  
24 a license to do so in compliance with Section 10-21 of this Act  
25 or a license in compliance with Section 4f of the Cigarette Tax

1 Act shall be guilty of a Class 4 felony.

2 Section 940. The Sale of Tobacco to Minors Act is amended  
3 by adding Section 3 as follows:

4 (720 ILCS 675/3 new)

5 Sec. 3. Additional penalties for retailers. In addition to  
6 the penalties provided in Section 2 of this Act, if a person  
7 who is a licensed retailer under the Cigarette Tax Act or the  
8 Tobacco Products Tax Act of 1995 commits a violation of this  
9 Act, that person's retailer's license shall be:

10 (1) suspended for 7 days for a first violation of this  
11 Act;

12 (2) suspended for 30 days for a second violation of  
13 this Act; and

14 (3) revoked for a third or subsequent violation of this  
15 Act.

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