



March 23, 1999

ENGROSSED HOUSE BILL No. 1870

DIGEST OF HB1870 (Updated March 18, 1999 1:34 pm - DI 44)

Citations Affected: IC 24-3.

Synopsis: Escrow fund for tobacco company payments. Requires a cigarette manufacturer that is not a participant in the master settlement agreement among cigarette manufacturers and various states (including Indiana) to make payments into an escrow account.

Effective: July 1, 1999.

Bauer, Cochran

(SENATE SPONSORS — MILLS, WASHINGTON)

January 26, 1999, read first time and referred to Committee on Ways and Means.
February 10, 1999, reported — Do Pass.
February 15, 1999, read second time, ordered engrossed. Engrossed.
February 18, 1999, read third time, passed. Yeas 87, nays 9.

SENATE ACTION

March 3, 1999, read first time and referred to Committee on Finance.
March 22, 1999, amended, reported favorably — Do Pass.

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March 23, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1870

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-3-3 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:

4 **Chapter 3. Qualified Escrow Fund for Tobacco Product**
5 **Manufacturers**

6 **Sec. 1. The General Assembly makes the following findings:**

7 (1) **Cigarette smoking presents serious public health concerns**
8 **to the state and to the citizens of Indiana. The Surgeon**
9 **General has determined that smoking causes lung cancer,**
10 **heart disease, and other serious diseases, and that there are**
11 **hundreds of thousands of tobacco related deaths in the United**
12 **States each year. These diseases most often do not appear**
13 **until many years after the person in question begins smoking.**

14 (2) **Cigarette smoking also presents serious financial concerns**
15 **for the state. Under certain health care programs, the state**
16 **may have a legal obligation to provide medical assistance to**

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1 eligible persons for health conditions associated with cigarette
 2 smoking, and those persons may have a legal entitlement to
 3 receive such medical assistance.

4 (3) Under these programs, the state pays millions of dollars
 5 each year to provide medical assistance for these persons for
 6 health conditions associated with cigarette smoking.

7 (4) It is the policy of the state that financial burdens imposed
 8 on the state by cigarette smoking be borne by tobacco product
 9 manufacturers rather than by the state to the extent that such
 10 manufacturers either determine to enter into a settlement
 11 with the state or are found culpable by the courts.

12 (5) On November 23, 1998, leading United States tobacco
 13 product manufacturers entered into a settlement agreement,
 14 entitled the "Master Settlement Agreement", with the state.
 15 The Master Settlement Agreement obligates these
 16 manufacturers, in return for a release of past, present, and
 17 certain future claims against them as described in the Master
 18 Settlement Agreement, to:

19 (A) pay substantial sums to the state (tied in part to their
 20 volume of sales);

21 (B) fund a national foundation devoted to the interests of
 22 public health; and

23 (C) make substantial changes in their advertising and
 24 marketing practices and corporate culture, with the
 25 intention of reducing underage smoking.

26 (6) It would be contrary to the policy of the state if tobacco
 27 product manufacturers who determine not to enter into such
 28 a settlement could use a resulting cost advantage to derive
 29 large, short term profits in the years before liability may arise
 30 without ensuring that the state will have an eventual source of
 31 recovery from them if they are proven to have acted culpably.
 32 It is thus in the interest of the state to require that such
 33 manufacturers establish a reserve fund to guarantee a source
 34 of compensation and to prevent such manufacturers from
 35 deriving large, short term profits and then becoming
 36 judgment proof before liability may arise.

37 Sec. 2. As used in this chapter, "adjusted for inflation" means
 38 increased in accordance with the formula for inflation adjustment
 39 set forth in Exhibit C to the Master Settlement Agreement.

40 Sec. 3. As used in this chapter, "affiliate" means a person who
 41 directly or indirectly owns or controls, is owned or controlled by,
 42 or is under common ownership or control with, another person.



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1 Solely for purposes of this definition, the terms "owns", "is
2 owned", and "ownership" mean ownership of an equity interest,
3 or the equivalent thereof, of ten percent (10%) or more, and the
4 term "person" means an individual, partnership, committee,
5 association, corporation, or any other organization or group of
6 persons.

7 Sec. 4. As used in this chapter, "allocable share" means
8 Allocable Share as that term is defined in the Master Settlement
9 Agreement.

10 Sec. 5. As used in this chapter, "cigarette" means any product
11 that contains nicotine, is intended to be burned or heated under
12 ordinary conditions of use, and consists of or contains:

13 (1) any roll of tobacco wrapped in paper or in any substance
14 not containing tobacco;

15 (2) tobacco, in any form, that is functional in the product,
16 which, because of its appearance, the type of tobacco used in
17 the filler, or its packaging and labeling, is likely to be offered
18 to, or purchased by, consumers as a cigarette; or

19 (3) any roll of tobacco wrapped in any substance containing
20 tobacco which, because of its appearance, the type of tobacco
21 used in the filler, or its packaging and labeling, is likely to be
22 offered to, or purchased by, consumers as a cigarette
23 described in subdivision (1).

24 The term "cigarette" includes "roll-your-own" (i.e., any tobacco
25 which, because of its appearance, type, packaging, or labeling is
26 suitable for use and likely to be offered to, or purchased by,
27 consumers as tobacco for making cigarettes). For purposes of this
28 definition of "cigarette", nine-hundredths (0.09) of an ounce of
29 "roll-your-own" tobacco constitutes one (1) individual "cigarette".

30 Sec. 6. As used in this chapter, "Master Settlement Agreement"
31 means the settlement agreement (and related documents) entered
32 into on November 23, 1998, by the state and leading United States
33 tobacco product manufacturers.

34 Sec. 7. As used in this chapter, "qualified escrow fund" means
35 an escrow arrangement with a federally or state chartered
36 financial institution having no affiliation with any tobacco product
37 manufacturer and having assets of at least one billion dollars
38 (\$1,000,000,000) where the arrangement requires that the financial
39 institution hold the escrowed funds' principal for the benefit of
40 releasing parties and prohibits the tobacco product manufacturer
41 placing the funds into escrow from using, accessing, or directing
42 the use of the funds' principal except as consistent with this

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1 chapter.

2 Sec. 8. As used in this chapter, "released claims" means
3 Released Claims as that term is defined in the Master Settlement
4 Agreement.

5 Sec. 9. As used in this chapter, "releasing parties" means
6 Releasing Parties as that term is defined in the Master Settlement
7 Agreement.

8 Sec. 10. As used in this chapter, "tobacco product
9 manufacturer" means an entity that after June 30, 1999, directly
10 (and not exclusively through any affiliate):

11 (1) manufactures cigarettes anywhere that such manufacturer
12 intends to be sold in the United States, including cigarettes
13 intended to be sold in the United States through an importer
14 (except where such importer is an original participating
15 manufacturer (as that term is defined in the Master
16 Settlement Agreement) that will be responsible for the
17 payments under the Master Settlement Agreement with
18 respect to such cigarettes as a result of the provisions of
19 subsection II(mm) of the Master Settlement Agreement and
20 that pays the taxes specified in subsection II(z) of the Master
21 Settlement Agreement, and provided that the manufacturer
22 of such cigarettes does not market or advertise such cigarettes
23 in the United States);

24 (2) is the first purchaser anywhere for resale in the United
25 States of cigarettes manufactured anywhere that the
26 manufacturer does not intend to be sold in the United States;
27 or

28 (3) becomes a successor of an entity described in subdivision
29 (1) or (2).

30 The term "tobacco product manufacturer" does not include an
31 affiliate of a tobacco product manufacturer unless the affiliate
32 itself falls within subdivision (1), (2), or (3).

33 Sec. 11. As used in this chapter, "units sold" means the number
34 of individual cigarettes sold in Indiana by the applicable tobacco
35 product manufacturer (whether directly or through a distributor,
36 retailer, or similar intermediary or intermediaries) during the year
37 in question, as measured by excise taxes collected by the state on
38 packs (or "roll-your-own" tobacco containers) bearing the excise
39 tax stamp of the state. The department of state revenue shall, in the
40 manner provided by IC 4-22-2, adopt rules that are necessary to
41 ascertain the amount of state excise tax paid on the cigarettes of
42 such tobacco product manufacturer for each year.



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1 **Sec. 12. Any tobacco product manufacturer selling cigarettes to**
 2 **consumers within Indiana (whether directly or through a**
 3 **distributor, retailer, or similar intermediary or intermediaries)**
 4 **after June 30, 1999, shall do one (1) of the following:**

5 **(1) Become a participating manufacturer (as that term is**
 6 **defined in section II(jj) of the Master Settlement Agreement)**
 7 **and generally perform its financial obligations under the**
 8 **Master Settlement Agreement; or**

9 **(2) Place into a qualified escrow fund by April 15 of the year**
 10 **following the year in question the following amounts (as such**
 11 **amounts are adjusted for inflation):**

12 **(A) 1999, \$0.0094241 per unit sold after June 30, 1999.**

13 **(B) 2000, \$0.0104712 per unit sold.**

14 **(C) For each of 2001 and 2002, \$0.0136125 per unit sold.**

15 **(D) For each of 2003 through 2006, \$0.0167539 per unit**
 16 **sold.**

17 **(E) For each of 2007 and each year thereafter, \$0.0188482**
 18 **per unit sold.**

19 **Sec. 13. A tobacco product manufacturer that places funds into**
 20 **escrow under section 12(2) of this chapter shall receive the interest**
 21 **or other appreciation on such funds as earned. Such funds**
 22 **themselves shall be released from escrow only under the following**
 23 **circumstances:**

24 **(1) To pay a judgment or settlement on any released claim**
 25 **brought against such tobacco product manufacturer by the**
 26 **state or any releasing party located or residing in Indiana.**
 27 **Funds shall be released from escrow under this subdivision:**

28 **(A) in the order in which they were placed into escrow;**
 29 **and**

30 **(B) only to the extent and at the time necessary to make**
 31 **payments required under such a judgment or settlement.**

32 **(2) To the extent that a tobacco product manufacturer**
 33 **establishes that the amount it was required to place into**
 34 **escrow in a particular year was greater than the state's**
 35 **allocable share of the total payments that the manufacturer**
 36 **would have been required to make in that year under the**
 37 **Master Settlement Agreement (as determined pursuant to**
 38 **section IX(i)(2) of the Master Settlement Agreement, and**
 39 **before any of the adjustments or offsets described in section**
 40 **IX(i)(3) of that Agreement other than the Inflation**
 41 **Adjustment) had it been a participating manufacturer, the**
 42 **excess shall be released from escrow and revert back to the**



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1 tobacco product manufacturer.

2 (3) To the extent not released from escrow under subdivision
3 (1) or (2), funds shall be released from escrow and revert back
4 to such tobacco product manufacturer twenty-five (25) years
5 after the date on which the funds were placed into escrow.

6 Sec. 14.(a) Each tobacco product manufacturer that elects to
7 place funds into escrow under section 12(2) of this chapter shall
8 annually certify to the attorney general that it is in compliance
9 with this chapter. The attorney general may bring a civil action on
10 behalf of the state against any tobacco product manufacturer that
11 fails to place into escrow the funds required under section 12 and
12 section 13 of this chapter. Any tobacco product manufacturer that
13 fails in any year to place into escrow the funds required under
14 section 12(2) of this chapter shall:

15 (1) Be required within fifteen (15) days to place sufficient
16 funds into escrow to bring it into compliance with this
17 chapter. The court, upon a finding of a violation of section
18 12(2) of this chapter, may also impose a civil penalty to be
19 paid to the state general fund in an amount not to exceed five
20 percent (5%) of the amount improperly withheld from escrow
21 per day of the violation and in a total amount not to exceed
22 one hundred percent (100%) of the original amount
23 improperly withheld from escrow.

24 (2) In the case of a knowing violation, be required within
25 fifteen (15) days to place sufficient funds into escrow to bring
26 it into compliance with section 12(2) of this chapter. The
27 court, upon a finding of a knowing violation of section 12(2)
28 of this chapter, may also impose a civil penalty to be paid to
29 the state general fund in an amount not to exceed fifteen
30 percent (15%) of the amount improperly withheld from
31 escrow per day of the violation and in a total amount not to
32 exceed three hundred percent (300%) percent of the original
33 amount improperly withheld from escrow.

34 (3) In the case of a second knowing violation, be prohibited
35 from selling cigarettes to consumers within Indiana (whether
36 directly or through a distributor, retailer or similar
37 intermediary) for a period not to exceed two (2) years.

38 (b) Each failure to make an annual deposit required under
39 section 12(2) of this chapter constitutes a separate violation.



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1870, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BAUER, Chair

Committee Vote: yeas 19, nays 2.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred House Bill No. 1870, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 2, after "equivalent" insert "**thereof**".

Page 3, line 2, delete "at least".

Page 3, line 2, after "(10%)" insert "**or more**".

Page 3, line 26, after "(0.09)" insert "**of an**".

Page 3, line 36, delete "in which" and insert "**where**".

Page 4, line 17, delete "section" and insert "**subsection**".

Page 4, line 18, delete "section" and insert "**subsection**".

Page 5, line 6, delete "." and insert "; **or**".

Page 5, line 10, delete "For".

Page 5, line 11, delete "For".

Page 5, line 35, delete "under" and insert "**pursuant to**".

Page 6, line 9, delete "12(2)" and insert "**12 and section 13**".

Page 6, line 12, delete "is subject to the following sanctions" and insert "**shall**".

Page 6, line 13, delete "The court shall require the tobacco product manufacturer," and insert "**Be required**".

Page 6, line 14, delete "of the court's determination that the".

Page 6, delete line 15.

Page 6, line 16, delete "the funds required by section 12(2) of this chapter,".

Page 6, line 18, after "court" insert ", **upon a finding of a violation of section 12(2) of this chapter**,".

Page 6, line 24, delete "the court shall require" and insert "**be required**".

Page 6, line 25, delete "the tobacco product manufacturer,".

Page 6, line 25, delete "of".

Page 6, delete lines 26 through 27.

Page 6, line 28, delete "required by section 12(2) of this chapter,".

Page 6, line 29, after "with" insert "**section 12(2) of**".

Page 6, line 30, after "violation" insert "**of section 12(2) of this chapter**".

Page 6, line 37, delete "the tobacco".

Page 6, line 38, delete "product manufacturer shall".

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and when so amended that said bill do pass.

(Reference is to HB 1870 as printed February 11, 1999.)

BORST, Chairperson

Committee Vote: Yeas 12, Nays 0.

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