



February 11, 1999

HOUSE BILL No. 1870

DIGEST OF HB1870 (Updated February 9, 1999 1:00 pm - DI 58)

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

January 26, 1999, read first time and referred to Committee on Ways and Means.
February 10, 1999, reported — Do Pass.

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HB 1870—LS 8090/DI 44+



February 11, 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.

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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
17 eligible persons for health conditions associated with cigarette

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- 1 smoking, and those persons may have a legal entitlement to
 2 receive such medical assistance.
- 3 (3) Under these programs, the state pays millions of dollars
 4 each year to provide medical assistance for these persons for
 5 health conditions associated with cigarette smoking.
- 6 (4) It is the policy of the state that financial burdens imposed
 7 on the state by cigarette smoking be borne by tobacco product
 8 manufacturers rather than by the state to the extent that such
 9 manufacturers either determine to enter into a settlement
 10 with the state or are found culpable by the courts.
- 11 (5) On November 23, 1998, leading United States tobacco
 12 product manufacturers entered into a settlement agreement,
 13 entitled the "Master Settlement Agreement", with the state.
 14 The Master Settlement Agreement obligates these
 15 manufacturers, in return for a release of past, present, and
 16 certain future claims against them as described in the Master
 17 Settlement Agreement, to:
- 18 (A) pay substantial sums to the state (tied in part to their
 19 volume of sales);
 - 20 (B) fund a national foundation devoted to the interests of
 21 public health; and
 - 22 (C) make substantial changes in their advertising and
 23 marketing practices and corporate culture, with the
 24 intention of reducing underage smoking.
- 25 (6) It would be contrary to the policy of the state if tobacco
 26 product manufacturers who determine not to enter into such
 27 a settlement could use a resulting cost advantage to derive
 28 large, short term profits in the years before liability may arise
 29 without ensuring that the state will have an eventual source of
 30 recovery from them if they are proven to have acted culpably.
 31 It is thus in the interest of the state to require that such
 32 manufacturers establish a reserve fund to guarantee a source
 33 of compensation and to prevent such manufacturers from
 34 deriving large, short term profits and then becoming
 35 judgment proof before liability may arise.
- 36 Sec. 2. As used in this chapter, "adjusted for inflation" means
 37 increased in accordance with the formula for inflation adjustment
 38 set forth in Exhibit C to the Master Settlement Agreement.
- 39 Sec. 3. As used in this chapter, "affiliate" means a person who
 40 directly or indirectly owns or controls, is owned or controlled by,
 41 or is under common ownership or control with, another person.
 42 Solely for purposes of this definition, the terms "owns", "is

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1 owned", and "ownership" mean ownership of an equity interest,
2 or the equivalent, of at least ten percent (10%), and the term
3 "person" means an individual, partnership, committee, association,
4 corporation, or any other organization or group of persons.

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

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

- 11 (1) any roll of tobacco wrapped in paper or in any substance
- 12 not containing tobacco;
- 13 (2) tobacco, in any form, that is functional in the product,
- 14 which, because of its appearance, the type of tobacco used in
- 15 the filler, or its packaging and labeling, is likely to be offered
- 16 to, or purchased by, consumers as a cigarette; or
- 17 (3) any roll of tobacco wrapped in any substance containing
- 18 tobacco which, because of its appearance, the type of tobacco
- 19 used in the filler, or its packaging and labeling, is likely to be
- 20 offered to, or purchased by, consumers as a cigarette
- 21 described in subdivision (1).

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

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

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

42 Sec. 8. As used in this chapter, "released claims" means

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1 Released Claims as that term is defined in the Master Settlement
2 Agreement.

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

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

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

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

25 or

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

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

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

41 Sec. 12. Any tobacco product manufacturer selling cigarettes to
42 consumers within Indiana (whether directly or through a



1 distributor, retailer, or similar intermediary or intermediaries)
2 after June 30, 1999, shall do one (1) of the following:

3 (1) Become a participating manufacturer (as that term is
4 defined in section II(jj) of the Master Settlement Agreement)
5 and generally perform its financial obligations under the
6 Master Settlement Agreement.

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

10 (A) For 1999, \$0.0094241 per unit sold after June 30, 1999.

11 (B) For 2000, \$0.0104712 per unit sold.

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

13 (D) For each of 2003 through 2006, \$0.0167539 per unit
14 sold.

15 (E) For each of 2007 and each year thereafter, \$0.0188482
16 per unit sold.

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

22 (1) To pay a judgment or settlement on any released claim
23 brought against such tobacco product manufacturer by the
24 state or any releasing party located or residing in Indiana.

25 Funds shall be released from escrow under this subdivision:

26 (A) in the order in which they were placed into escrow;
27 and

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

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

42 (3) To the extent not released from escrow under subdivision



1 (1) or (2), funds shall be released from escrow and revert back
2 to such tobacco product manufacturer twenty-five (25) years
3 after the date on which the funds were placed into escrow.

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

13 (1) The court shall require the tobacco product manufacturer,
14 within fifteen (15) days of the court's determination that the
15 tobacco product manufacturer has failed to place into escrow
16 the funds required by section 12(2) of this chapter, to place
17 sufficient funds into escrow to bring it into compliance with
18 this chapter. The court 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, the court shall require
25 the tobacco product manufacturer, within fifteen (15) days of
26 the court's determination that the tobacco product
27 manufacturer has failed to place into escrow the funds
28 required by section 12(2) of this chapter, to place sufficient
29 funds into escrow to bring it into compliance with this
30 chapter. The court, upon a finding of a knowing violation,
31 may also impose a civil penalty to be paid to the state general
32 fund in an amount not to exceed fifteen percent (15%) of the
33 amount improperly withheld from escrow per day of the
34 violation and in a total amount not to exceed three hundred
35 percent (300%) percent of the original amount improperly
36 withheld from escrow.

37 (3) In the case of a second knowing violation, the tobacco
38 product manufacturer shall be prohibited from selling
39 cigarettes to consumers within Indiana (whether directly or
40 through a distributor, retailer or similar intermediary) for a
41 period not to exceed two (2) years.

42 (b) Each failure to make an annual deposit required under

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1 **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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