Reprinted
February 22, 2000

ENGROSSED
SENATE BILL No. 108

DIGEST OF SB 108 (Updated February 21, 2000 3:20 PM - DI 77)

Citations Affected: IC 4-4; IC 4-12; IC 6-7; IC 16-46; IC 24-3; IC 24-5; noncode.

Synopsis: Provides the Indiana rural development council $300,000 for five years. Establishes the rural community impact fund and appropriates $8.2 million (and $3.7 million for the following five years). Increases the amount of funding local boards of health receive from the local health maintenance fund. Establishes the tobacco fund executive advisory council to make final recommendations to the governor on programs to be funded by the tobacco settlement fund. Establishes the tobacco control advisory committee, the enhanced health planning advisory committee, and the prescriptive drug advisory committee to review program applications and provide oversight and coordination concerning approved programs. Provides that certain cigarettes may not be sold or possessed in Indiana. Appropriates from the tobacco settlement fund: $50 million for operating expenses for programs recommended by the tobacco fund executive advisory council; $7.5 million for addiction services; $2 million for hospice care; $15 million to the state department of health for community health centers; $5 million to the Indiana twenty-first century research and technology fund for tobacco related disease research; $10 million for capital costs associated with approved community health center and minority health initiatives; $2.5million to the local health maintenance fund; $5 million to the Hoosier assurance plan for tobacco programs for certain children; and $2.5 million to ICHIA for premium reductions.

Effective: Upon passage; July 1, 2000.

Borst, Johnson, Miller, Simpson
(HOUSE SPONSORS — BROWN C, MURPHY)

November 18, 1999, read first time and referred to Committee on Finance.
January 28, 2000, amended, reported favorably — Do Pass.
January 31, 2000, read second time, amended, ordered engrossed.
February 1, 2000, engrossed. Read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

February 7, 2000, read first time and referred to Committee on Public Health.
February 16, 2000, amended, reported — Do Pass; referred to Committee on Ways and Means, pursuant to Rule 127.
February 17, 2000, reported — Do Pass.
February 21, 2000, read second time, amended, ordered engrossed.

C o p y

Reprinted
February 22, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 108

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration and to make an appropriation.

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

SECTION 1. IC 4-4-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

Chapter 9.5. Indiana Rural Development Council

Sec. 1. As used in this chapter, "council" refers to the Indiana Rural Development Council established by the 1993 memorandum of understanding between Indiana and the United States Department of Agriculture.

Sec. 2. With the approval of the governing board of the council, the council may use not more than two hundred fifty thousand dollars ($250,000) each year to provide funding for the Southern Indiana Rural Development Project, Inc. for rural development programs.

Sec. 3. (a) There is appropriated to the council from interest earned on money in the tobacco settlement fund three hundred thousand dollars ($300,000) beginning July 1, 2000, and ending June 30, 2005, to carry out the purposes of this chapter.

(b) This section expires July 1, 2005.

SECTION 2. IC 4-4-30 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

Chapter 30. Rural Community Impact Fund

Sec. 1. As used in this chapter, "fund" refers to the rural community impact fund established by section 2 of this chapter.

Sec. 2. (a) The rural community impact fund is established. The fund shall be administered by the commissioner of agriculture and the department of commerce.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligation of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 3. (a) Money in the fund shall be used for the following purposes:

(1) To develop new agricultural enterprises in areas that were used for tobacco production, including facilities for research and development, new market opportunities, educational programs, leadership developmental programs, and direct financial assistance.

(2) Assistance to rural communities that suffer a negative economic impact from the loss of tobacco production.

(b) The commissioner of agriculture shall approve money for projects under subsection (a)(1).

(c) The department of commerce shall approve money for projects under subsection (a)(2).

Sec. 4. (a) The fund consists of interest earned on money in the tobacco settlement fund and transferred to the fund as follows:

(1) On July 1, 2000, eight million two hundred thousand dollars ($8,200,000).

(2) On July 1, 2001, three million seven hundred thousand dollars ($3,700,000).

(3) On July 1, 2002, three million seven hundred thousand dollars ($3,700,000).

(4) On July 1, 2003, three million seven hundred thousand dollars ($3,700,000).

(5) On July 1, 2004, three million seven hundred thousand

C o p y

dollars ($3,700,000).

(6) On July 1, 2005, three million seven hundred thousand dollars ($3,700,000).

(b) Money transferred under subsection (a) is appropriated to the fund.

(c) This section expires July 1, 2005.

SECTION 3. IC 4-12-1-14.3, AS ADDED BY P.L.273-1999, SECTION 232, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 14.3. **(a) As used in this section, "advisory council" refers to the tobacco fund executive advisory council established under subsection (d).**

(b) As used in this section, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

(c) There is hereby created the tobacco settlement fund for the purpose of depositing money received by the state from the master settlement agreement. ~~with the United States' tobacco product manufacturers.~~ The fund shall be administered by the budget agency. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money is invested. **Except as provided in IC 4-4-9.5-3 and IC 4-4-30-4,** interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

(d) The tobacco fund executive advisory council is established. The advisory council consists of the following members:

(1) The commissioner of the state department of health.

(2) The secretary of family and social services.

(3) The insurance commissioner.

(4) The state superintendent of public instruction.

(5) The attorney general.

(6) A youth member of the commission for a drug free Indiana selected by the governor.

(7) A member of the enhanced health planning advisory committee established by IC 16-46-12-2 selected by the governor.

(8) A member of the tobacco control advisory committee established by IC 16-46-12-3 selected by the governor.

(9) A member of the Indiana Minority Health Coalition selected by the governor.

(10) A member of the Indiana commission for women selected by the governor.

(11) A local health officer selected by the governor.

C o p y

(12) A representative of a senior citizens organization selected by the governor.

(13) A representative of a disability organization appointed by the governor.

(14) A representative of the Indiana Chapter of the National Medical Association appointed by the governor.

(15) A member of the Native American Council appointed by the governor.

The governor shall designate a member to serve as chairperson. A vacancy with respect to a member shall be filled in the same manner as the original appointment. The advisory council shall annually elect one (1) of its members as vice chairperson. Each member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties. The state department of health shall provide staff for the advisory council. The advisory council is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3. The advisory council is a governing body for purposes of IC 5-14-1.5.

(e) A quorum consists of a majority of the voting members appointed to the council. Approval of a program requires approval by a majority of the voting members appointed to the council. The advisory council shall review all programs recommended by the:

(1) enhanced health planning advisory committee established by IC 16-46-12-2;

(2) tobacco control advisory committee established by IC 16-46-12-3; and

(3) prescription drug advisory committee established by IC 16-46-12-7.

The advisory council may reject, approve, or modify and then approve any recommended program. A program approved by the advisory council shall be recommended to the budget committee. The budget committee shall review and may approve only those programs that further the purposes of IC 16-46-12.

(f) The advisory council shall prepare an annual financial report and an annual report concerning the advisory council's activities under this section. The reports shall be transmitted to the governor and the health finance commission.

(g) The expenses of the following shall be paid from the tobacco settlement fund:

(1) The tobacco fund executive advisory council established by subsection (d).

(2) The enhanced health planning advisory committee

C o p y

established by IC 16-46-12-2.

(3) The tobacco control advisory committee established by IC 16-46-12-3.

(4) The prescription drug advisory committee established by IC 16-46-12-7.

(h) The office of the secretary of family and social services and the office of Medicaid policy and planning shall enter into contracts with health insurance companies to administer a prescription drug program approved under subsection (e).

SECTION 4. IC 6-7-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) The department is the official agent of the state for the administration and enforcement of this chapter. A sufficient sum to pay salaries and expenses is appropriated to the department out of the monies received by virtue of this chapter.

(b) The department may issue registration certificates, upon the terms and conditions provided in this chapter, and may revoke or suspend the ~~same~~ **registration certificate** upon the violation of:

(1) this chapter;

(2) IC 24-3-2; or

(3) IC 24-3-4;

by the holder of ~~such a~~ **the registration** certificate.

(c) The department may apply for membership in the National Tobacco Tax Association.

(d) The department may design and have printed or manufactured stamps of sizes and denominations to be affixed to each individual package. The stamps shall be firmly affixed on each individual package in such a manner that the stamps can not be removed without being mutilated or destroyed; however, the department may by regulation designate some other manner for cancelation of stamps. In addition to the stamps, the department may by rules and regulations authorize distributors to use metered stamping machines or other devices which will imprint distinctive indicia evidencing the payment of the tax upon each individual package. The machines shall be constructed in such a manner as will accurately record or meter the number of impressions or tax stamps made. The tax meter machines or other devices shall be kept available at all reasonable times for inspection by the department, and the machines shall be maintained in proper operating condition. A person who knowingly tampers with the printing or recording mechanism of such a machine commits a Class B misdemeanor.

SECTION 5. IC 16-46-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) Except as provided in subsections (b) and (d), the state department shall provide

C o p y

funding each year from the local health maintenance fund under the following schedule to each local board of health whose application for funding is approved by the state department:

COUNTY POPULATION		AMOUNT OF GRANT
over -	499,999	~~$ 60,000~~ **$120,000**
100,000 -	499,999	~~50,000~~ **100,000**
50,000 -	99,999	~~30,000~~ **60,000**
under -	50,000	~~20,000~~ **40,000**

(b) For purposes of determining the amount of a grant to a multiple county board of health, the state department shall regard each county of the multiple county health department as a separate county. A grant to a multiple county board of health must equal the total of grants that would be made to the separate counties based on the population of each county.

(c) A local board of health that desires to receive funding from the local health maintenance fund must file an application with the state department before May 1 of each year. The application must state how the funds will be spent. The state department may extend the deadline for filing an application upon a showing of good cause by the local board of health.

(d) If a county has more than one (1) local health department, the county fiscal body shall adopt an ordinance to allocate the funds provided to the county under subsection (a). This ordinance must provide that each local board of health in the county must receive an allocation of funds granted under subsection (a). The county fiscal body shall file a copy of the ordinance with the state department before May 1 of each year.

(e) By June 1 of each year, the state department shall:

(1) allocate money in the local health maintenance fund (for distribution the following January) to each local board of health whose application is approved in accordance with the schedule in subsection (a); and

(2) determine how much money in the local health maintenance fund has not been applied for.

The state department may use the money that has not been applied for or otherwise allocated to fund joint plans entered into by two (2) or more local boards of health or by a multiple county board as provided in subsections (g) and (i).

(f) If two (2) or more local boards of health cooperate in providing any of the services set out in section 3 of this chapter, those boards of health shall file a joint plan that must be approved by the state department. The joint plan must specify the following:

C o p y

(1) The services to be provided under the plan.

(2) The cost of each service to be provided under the plan.

(3) The percentage of the total cost of services to be provided under the joint plan by each local board of health.

(g) If two (2) or more local boards of health join together to provide services in accordance with a joint plan filed with the state department of health under subsection (f), and the state department determines that the services to be provided under the joint plan are eligible for funding from the local health maintenance fund, the state department shall grant (in addition to the funds provided to each county in which the local boards of health are located under subsection (a)) an amount not to exceed fifteen thousand dollars ($15,000) to fund the joint plan. The state department shall grant money to fund joint plans that most effectively accomplish the following goals in accordance with standards adopted by the state department:

(1) Benefit the greatest number of people.

(2) Provide services in a cost effective manner.

(3) Address the most serious health care needs of the area served.

(4) Provide additional public health services in a medically underserved or economically distressed area.

This money shall be allocated directly to each local board of health participating in the joint plan in the same percentages specified in the joint plan under subsection (f)(3).

(h) A multiple county health board may file a plan under this section to provide any of the services set out in section 3 of this chapter. If the state department determines that the services to be provided under the plan submitted by a multiple county health board are eligible for funding from the local health maintenance fund, the state department shall grant (in addition to the funds provided under subsection (a) to each county in which the local boards of health are located) an amount not to exceed fifteen thousand dollars ($15,000) to fund the plan.

(i) Services funded under this section must be in addition to, and not in place of, services funded at the local level.

SECTION 6. IC 16-46-12 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

Chapter 12. Tobacco Settlement Fund Programs

Sec. 1. The tobacco settlement programs to be funded under this chapter must be designed to achieve one (1) or more of the following goals:

(1) Prevention, intervention, and reduction of tobacco use, especially among children and youth, and smoking cessation

C o p y

programs offered by local health departments that use a combination of classes and treatment for nicotine addiction.

(2) Provide better access to quality health care, including mental health and addictions treatment.

(3) Increase the availability of quality health care in underserved geographic areas and for low income individuals.

(4) Research treatments and cures for tobacco related diseases.

(5) Address the special health care needs of those who suffer most from tobacco related diseases, including end of life and long term care alternatives.

(6) Eliminate health disparities for ethnic racial minorities.

Sec. 2. (a) The enhanced health planning advisory committee is established. The committee consists of appointees by the governor who represent the following organizations or interests:

(1) One (1) consumer of community health services.

(2) The Indiana Dental Association.

(3) The Indiana Hospital Association.

(4) The Indiana Minority Health Coalition.

(5) The American Academy of Pediatrics, Indiana Chapter.

(6) The Indiana State Medical Association.

(7) The Indiana State Nurses Association.

(8) The Indiana Health Care Association.

(9) A local health officer or a representative of the Indiana Public Health Association.

(10) A primary health care organization.

(11) A rural health organization.

(12) A senior citizens organization.

(13) The Indiana chapter of the National Medical Association.

(14) The Indiana Council of Community Mental Health Centers.

(15) A consumer or representative of an end of life care organization, an alternative to long term care services, or a disability organization.

(b) The members of the enhanced health planning advisory committee serve at the pleasure of the governor. The term of each member is two (2) years. Not more than eight (8) members of the enhanced health planning advisory committee may be from the same political party.

(c) The governor may reappoint a sitting member.

(d) A vacancy with respect to a member shall be filled in the same manner as the original appointment.

C o p y

(e) The governor shall designate a member to serve as chairperson. The board shall annually elect one (1) of its members as vice chairperson.

(f) Each member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(g) The state department of health shall provide the staff for the enhanced health planning advisory committee.

(h) The enhanced health planning advisory committee is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3.

(i) The enhanced health planning advisory committee is a governing body for purposes of IC 5-14-1.5.

Sec. 3. (a) The tobacco control advisory committee is established.

(b) The voting members of the tobacco control advisory committee consist of appointees by the governor who represent the following organizations or interests:

(1) The Indiana Chapter of the American Cancer Society.

(2) The Indiana Chapter of the American Heart Association.

(3) The Indiana Chapter of the American Lung Association.

(4) The Indiana Dental Association.

(5) The state excise police within the Indiana alcoholic beverage commission.

(6) The Indiana Minority Health Coalition.

(7) The Indiana State Medical Association.

(8) The Indiana State Mental Health Association.

(9) An individual doing tobacco disease research.

(10) A local health officer.

(11) A senior citizens organization.

(12) A representative of a tobacco free youth organization.

(13) The Indiana Chapter of the National Medical Association.

(14) The Indiana Council of Community Mental Health Centers.

(15) The Indiana Pharmacists Alliance.

(c) The nonvoting members of the tobacco control advisory committee consist of appointees by the governor who represent the following organizations:

(1) The division of mental health.

(2) The Governor's Commission for a Drug-Free Indiana.

(3) The office of tobacco control within the state department of health.

C o p y

(4) The department of education.

(d) The members of the tobacco control advisory committee serve at the pleasure of the governor. The term of each member is two (2) years. Not more than eight (8) voting members of the tobacco control advisory committee may be from the same political party.

(e) The governor may reappoint a sitting member.

(f) A vacancy with respect to a member shall be filled in the same manner as the original appointment.

(g) The governor shall designate a member to serve as chairperson. The committee shall annually elect one (1) of its members vice chairperson.

(h) Each member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(i) The state department of health shall provide the staff for the tobacco control advisory committee.

(j) The tobacco control advisory committee is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3.

(k) The tobacco control advisory committee is a governing body for purposes of IC 5-14-1.5.

Sec. 4. The enhanced health planning advisory committee shall study health needs of the population and recommend to the tobacco fund executive advisory council established by IC 4-12-1-14.3 goals and programs that:

(1) promote health and wellness activities, including mental health and addictions;

(2) encourage the prevention of disease, particularly tobacco related diseases;

(3) address alternative services to meet the health care of seniors;

(4) address minority health disparities;

(5) address the impact of tobacco related diseases, particularly on minorities;

(6) promote community based health care, particularly in areas with a high percentage of uninsured and underinsured citizens, including individuals with disabilities, or with a shortage of health care professionals;

(7) enhance local health department services; and

(8) expand community based minority health infrastructure.

Sec. 5. The tobacco control advisory committee shall recommend to the tobacco fund executive advisory council

C o p y

established by IC 4-12-1-14.3 programs that do the following:

(1) Provide screening and counseling for tobacco users.

(2) Emphasize the prevention and reduction of tobacco use by minorities, pregnant women, children, and youth.

(3) Provide smoking cessation.

(4) Produce and distribute information concerning the dangers of tobacco use.

(5) Provide research on issues related to reduction of tobacco use, especially chronic diseases, including mental illness and addictive disorders, common to tobacco users.

(6) Enforce Indiana tobacco use laws.

(7) Educate the public about the harms of tobacco use.

(8) Provide research and information needed to assess programs.

(9) Develop a minority health epidemiology center to collect minority specific health data through research and clinical trials.

(10) Assess attitudes, beliefs, and behaviors of minority populations.

(11) Assess the impact of cultural, social, economic, religious, environmental, and psychosocial factors on health outcomes for minorities.

Sec. 6. (a) A public or private entity or an individual may submit an application to the enhanced health planning advisory committee, the tobacco control advisory committee, or the prescription drug advisory committee for program funding from the tobacco settlement fund. Each application must be in writing and contain the following information:

(1) A clear objective to be achieved with the program.

(2) A plan for implementation of the program.

(3) A statement of the manner in which the proposed program will further the goals of the enhanced health planning advisory committee, the tobacco control advisory committee, or the prescription drug advisory committee.

(4) The amount of funding requested.

(5) An evaluation and assessment component to determine the program's performance.

(6) Any other information required by the enhanced health planning advisory committee, the tobacco control advisory committee, or the prescription drug advisory committee.

The enhanced health planning advisory committee, the tobacco control advisory committee, and the prescription drug advisory

C o p y

committee may each adopt written guidelines to establish procedures, forms, additional evaluation criteria, and application deadlines for programs.

(b) The approval by a majority of the voting members appointed to serve on a specific committee is required for approval of a program by the enhanced health planning advisory committee, the tobacco control advisory committee, or the prescription drug advisory committee.

Sec. 7. (a) The prescription drug advisory committee is established to recommend to the tobacco fund executive advisory council established by IC 4-12-1-14.3 programs that address the pharmaceutical costs of low income elderly and disabled individuals.

(b) The prescription drug advisory committee consists of seven (7) members appointed by the governor who have knowledge, skill, and expertise in health planning and the impact of pharmaceutical costs on low income elderly and disabled individuals. The term of each member is two (2) years. The committee must include the following members:

(1) A health economist with expertise in pharmaceutical benefits and outcomes.

(2) A medical actuary with expertise in prescription drug benefits.

(3) A person representing a pharmaceutical research company.

(4) A physician with a specialty in geriatrics.

(5) A health planner or health finance person with expertise in health programs for the elderly.

(6) Two (2) senior citizen consumers with knowledge in health planning and the impact of pharmaceutical costs on low income elderly individuals.

(c) The office of family and social services shall provide staff for the prescription drug advisory committee.

(d) The prescription drug advisory committee is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3.

(e) The prescription drug advisory committee is a governing body for purposes of IC 5-14-1.5.

(f) Each member of the committee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties. The expenses of the committee shall be paid from the tobacco settlement fund created by IC 14-12-1-14.3.

C o p y

(g) The prescription drug advisory committee or the tobacco fund executive advisory council may not recommend the use of funds from the tobacco settlement fund for a state prescription drug benefit for elderly persons program if there is a federal statute or program providing a prescription drug benefit for the benefit of elderly persons.

SECTION 7. IC 24-3-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. **(a)** In establishing the cost of cigarettes to the retailer or distributor, the invoice cost of said cigarettes purchased at a forced, bankrupt, or close-out sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or distributor, within thirty (30) days prior to the date of sale, in the quantity last purchased, through the ordinary channels of trade.

(b) Any cigarettes that are imported or reimported into the United States for sale or distribution under a trade name, trade dress, or trademark that is the same as or confusingly similar to a trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States are presumed to be purchased outside the ordinary channels of trade.

SECTION 8. IC 24-3-4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 4. Cigarettes Produced for Export; Imported Cigarettes

Sec. 1. This chapter does not apply to cigarettes sold or intended to be sold as duty free merchandise by a duty free sales enterprise that complies with federal requirements, including the requirements under 19 U.S.C. 1555(b). However, this chapter applies to cigarettes that are brought back into the United States that have not been assessed a federal tax or federal duty.

Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-2-2(a).

Sec. 3. As used in this chapter, "department" refers to the department of state revenue.

Sec. 4. As used in this chapter, "importer'' means any of the following:

(1) A person in the United States to whom nontaxpaid tobacco products, cigarette papers, or cigarette tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a

C o p y

possession of the United States are shipped or consigned.

(2) A person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

(3) A person who smuggles or unlawfully brings tobacco products, cigarette papers, or cigarette tubes into the United States.

Sec. 5. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17.

Sec. 6. As used in this chapter, "manufacturer" means a person who manufactures a product made from tobacco that is made for smoking or chewing, including snuff. However, the term does not include the following:

(1) A person who produces a product made from tobacco that is made for smoking or chewing, including snuff, solely for the person's own personal consumption or use.

(2) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of the warehouse.

Sec. 7. As used in this chapter, "person" has the meaning set forth in IC 24-3-2-2(b).

Sec. 8. As of October 1, 2000, a person may not sell, distribute, possess, or transport into Indiana any of the following cigarettes:

(1) Cigarettes that have been marked for sale, distribution, or use outside the United States, including labels stating "For Export Only", "U.S. Tax-Exempt", and "For Use Outside U.S.".

(2) Cigarettes that do not comply with the federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) or with other federal requirements regarding health warnings and other information on cigarette packages manufactured, packaged, or imported for sale, distribution, or use in the United States.

(3) Cigarettes that do not comply with federal trademark and copyright laws.

(4) Cigarettes that violate federal requirements on importation of previously exported tobacco products, including 26 U.S.C. 5754.

(5) Cigarettes that the person knows or has reason to know that the manufacturer did not intend to be sold, distributed, or used in the United States.

(6) Cigarettes that have not had the list of the cigarette's added ingredients submitted to the Secretary of the Department of Health and Human Services under 15 U.S.C.

C o p y

1335a.

(7) Cigarettes that have had the package altered before the cigarettes are sold or distributed to the consumer that remove, conceal, or obscure any of the following:

(A) A marking that indicates the cigarettes are intended to be sold, distributed, or used outside the United States.

(B) A health warning or other information required under 15 U.S.C. 1333.

Sec. 9. A person may not affix a stamp (as defined by IC 6-7-1-9) on a package of cigarettes described in section 8 of this chapter.

Sec. 10. (a) A person who, for the purpose of selling or distributing the cigarettes in Indiana, imports cigarettes into Indiana that were manufactured outside the United States, shall file a monthly report with the department and keep and maintain the records required under IC 6-7-1-19 and IC 6-7-1-19.5.

(b) The report required under subsection (a) must be signed by the person who imports the cigarettes, under penalties of perjury, and must contain the following information concerning cigarettes that the person imported during the preceding month:

(1) A copy of each of the following:

(A) The permit issued under 26 U.S.C. 5713 that allows the person to import the cigarettes into the United States.

(B) The United States Customs Service form concerning the cigarettes that contains the internal revenue tax information required by the federal Bureau of Alcohol, Tobacco, and Firearms.

(2) A statement that includes the following information:

(A) The brand and brand styles of the cigarettes imported.

(B) The quantity of each brand style of the cigarettes imported.

(C) The name and address of each person to whom the cigarettes have been shipped.

(3) A statement signed by an officer of the manufacturer or importer, under the penalties for perjury, that states whether the manufacturer is a participant in the escrow fund under IC 24-3-3-12 and certifies that the manufacturer or importer has complied with the following:

(A) The federal cigarette package health warning requirements (15 U.S.C. 1333) and the federal ingredient reporting requirements (15 U.S.C. 1335a).

(B) The qualified escrow fund for tobacco product manufacturers requirements under IC 24-3-3.

C o p y

Sec. 11. The department may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Assess tax due, penalties, and interest on cigarettes in violation of this chapter.

(3) Revoke or suspend the registration certificate issued under IC 6-7-1-16 of a person who violates this chapter.

Sec. 12. (a) If the department or a law enforcement officer discovers cigarettes that are in violation of section 8 or 9 of this chapter, the department or a law enforcement officer may seize and take possession of the cigarettes together with any vending machine or receptacle in which the cigarettes are held for sale. The seized cigarettes, vending machine, or receptacle, not including money contained in the vending machine or receptacle, shall be forfeited to the state. The department or law enforcement agency shall, within a reasonable time after the seizure, destroy the confiscated cigarettes and vending machine or receptacle.

(b) The confiscation, destruction, sale, or redemption of cigarettes does not relieve a person of any penalties imposed for violation of this chapter.

(c) When the department has reason to believe that any cigarettes are being kept, sold, offered for sale, or given away in violation of this chapter, an officer of the department or a law enforcement officer may make an affidavit for a search warrant under IC 35-33-5. If the judge issues a search warrant under IC 35-33-1, a law enforcement officer or an authorized agent of the department may search any place or vehicle designated in the affidavit and search warrant and seize any cigarettes.

Sec. 13. (a) This chapter may be enforced by the department or a law enforcement officer.

(b) Upon referral of a violation of this chapter by the department or a law enforcement officer, the prosecuting attorney or the attorney general shall prosecute the person who violates this chapter.

Sec. 14. In addition to any other remedy, any person may bring an action for appropriate injunctive or equitable relief for a violation of this chapter that caused actual damages to the person. The person who brings the action may recover actual damages, interest on the damages from the date the complaint was filed, costs, and reasonable attorney's fees. If the court finds that the violation was flagrant, the court may increase the recovery to an amount not exceeding three (3) times the amount of actual damages.

C o p y

Sec. 15. A person who knowingly or intentionally possesses, sells, distributes, or transports into Indiana cigarettes in violation of section 8 of this chapter commits a Class A misdemeanor.

Sec. 16. A person who knowingly or intentionally possesses, sells, or distributes cigarettes that bear Indiana tax stamps affixed in violation of this chapter commits a Class A misdemeanor.

Sec. 17. A person who:

(1) knowingly possesses, sells, distributes, or transports more than twelve thousand (12,000) cigarettes in violation of section 8 or 9 of this chapter; and

(2) has previously been convicted of an offense under section 8 or 9 of this chapter;

commits a Class D felony.

SECTION 9. IC 24-5-0.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The following acts or representations as to the subject matter of a consumer transaction, made either orally or in writing by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction he does not have, and which the supplier knows or should reasonably know that he does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies,

C o p y

or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know he could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that he will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars ($750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a

Copy

consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in

Copy

reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

SECTION 10. [EFFECTIVE JULY 1, 2000] **(a) The following amounts are appropriated from the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, to the budget agency to cover total operating expenses incurred in carrying out the purposes of IC 16-46-12, as added by this act, for the period beginning July 1, 2000, and ending June 30, 2001:**

(1) Thirty million dollars ($30,000,000) for tobacco education, prevention, and use control, with emphasis on mental health addictions treatment and intervention programs. However, two million five hundred thousand dollars ($2,500,000) must be used to fund minority organizations, agencies, and businesses to implement minority prevention and intervention programs.

(2) Twenty million dollars ($20,000,000) for pharmaceutical assistance for the low income elderly or low income persons with disabilities.

(3) Nine million five hundred thousand dollars ($9,500,000) for the following:

(A) Seven million five hundred thousand dollars ($7,500,000) for addiction services provided under IC 12-23-2.

(B) Two million dollars ($2,000,000) for hospice programs (as defined in IC 16-25-1.1-4) for individuals with a terminal illness or disease.

(b) Fifteen million dollars ($15,000,000) is appropriated from

C o p y

the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, to the state department of health for total operating expenses for community health centers for the period beginning July 1, 2000, and ending June 30, 2001.

(c) Five million dollars ($5,000,000) shall be transferred from the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, to the Indiana twenty-first century research and technology fund (IC 4-4-5.1), and is appropriated to pay for research on tobacco related diseases for the period beginning July 1, 2000, and ending June 30, 2001.

(d) Ten million dollars ($10,000,000) is appropriated from the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, as follows:

(1) To the budget agency, four million six hundred twenty-five thousand dollars ($4,625,000) to cover capital costs for the period beginning July 1, 2000, and ending June 30, 2002, for community health centers to carry out programs approved by the tobacco fund executive advisory council under IC 4-12-1-14.3, as amended by this act.

(2) To the state department of health, two million three hundred seventy-five thousand dollars ($2,375,000) to expand local minority health coalitions.

(3) To the Indiana minority health coalition and Martin University, three million dollars ($3,000,000) to establish a minority epidemiology resource center.

(e) In addition to the money appropriated under IC 6-7-1-30.5 and under P.L.273-1999, SECTION 8, two million five hundred thousand dollars ($2,500,000) shall be transferred from the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, to the local health maintenance fund established by IC 16-46-10-1 and is appropriated for total operating expenses of the local health maintenance fund beginning July 1, 2000, and ending June 30, 2001.

(f) Five million dollars ($5,000,000) is appropriated from the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, to the division of mental health for the purpose of funding a special program for prevention, intervention, and reduction of tobacco use by seriously emotionally disturbed children who are enrolled in the division's Hoosier assurance plan. All providers who participate in the program under this subsection shall submit service data, including measures, to the division of mental health.

C o p y

(g) Notwithstanding IC 4-12-1-14.3, as amended by this act, two million five hundred thousand dollars ($2,500,000) is appropriated from interest earned on the tobacco settlement fund established by IC 4-12-1-14.3, as amended by this act, to the Indiana comprehensive health insurance association (ICHIA) to provide reduced premiums to qualified individuals who are unable to afford ICHIA health insurance without the reduction.

(h) The general assembly encourages the governor to include the following programs in the governor's next recommended appropriations from the tobacco settlement fund:

(1) Two million five hundred thousand dollars ($2,500,000) to the Indiana comprehensive health insurance association (ICHIA) to provide reduced premiums to qualified individuals who are unable to afford ICHIA health insurance without the reduction.

(2) Thirty million dollars ($30,000,000) to be combined with existing funds for hospital care for the indigent to be used by the office of Medicaid policy and planning to be used with the funds for hospital care for the indigent to secure federal Medicaid matching funds. The office of Medicaid policy and planning is encouraged to apply for any federal waivers necessary to secure the federal Medicaid matching funds and to use the funds to provide health care coverage for individuals who are uninsured, working, and poor.

(3) Twenty million dollars ($20,000,000) to be used to expand the number of Medicaid waivers and provide emergency services and immediate need care to individuals who have applied for but have not yet received a Medicaid waiver.

(i) This SECTION expires July 1, 2002.

SECTION 11. **An emergency is declared for this act.**

C o p y

SENATE MOTION

Mr. President: I move that Senator Simpson be added as coauthor of Senate Bill 108.

BORST

Copy

COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill No. 108, 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 40, delete "Eight (8)" and insert "**Eleven (11)**".

Page 4, line 11, delete "four (4)" and insert "**six (6)**".

Page 5, line 8, delete "Eight (8)" and insert "**Ten (10)**".

Page 6, line 11, delete "money received by the state" and insert "**the Indiana tobacco master settlement agreement fund;**".

Page 6, delete line 12.

Page 6, line 17, delete "The board shall establish and implement investment policies" and insert "**The fund shall be administered by the authority. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as public money is invested under IC 5-13. Money in the fund at the end of a state fiscal year does not revert to the state general fund.**".

Page 6, delete line 18.

Page 6, line 30, delete "and".

Page 6, line 32, delete "." and insert "**; and**".

Page 6, between lines 32 and 33, begin a new line double block indented and insert:

> "**(E) other activities that the board considers necessary and appropriate for inclusion in the mission statement; and**".

Page 7, line 20, delete "A" and insert "**The expenditure of state funds (other than a grant awarded under this chapter) for a**".

Page 7, line 21, delete "established" and insert "**operated**".

Page 7, line 21, delete "after June 30," and insert "**or a public or private entity**".

Page 7, line 22, delete "2001,".

Page 7, line 22, after "agency" insert "**or public or private entity**".

Page 7, line 23, delete "program" and insert "**expenditure**".

Page 7, line 24, delete "program".

Page 7, line 26, delete "program" and insert "**expenditure**".

Page 7, line 27, delete "program" and insert "**expenditure**".

Page 7, line 28, delete "program" and insert "**expenditure**".

Page 7, line 29, delete "programs" and insert "**expenditures**".

Page 7, line 29, after "agencies" insert "**, public or private entities,**".

Page 8, line 34, delete "money received by the state" and insert "**the**

Copy

Indiana tobacco master settlement agreement fund;".

Page 8, delete line 35.

Page 9, between lines 21 and 22, begin a new line block indented and insert:

"**(9) Other purposes recommended by the Indiana health care trust fund advisory board established by section 5 of this chapter.**

However, money in the fund may not be used to pay any costs related to the construction, expansion, repair, or renovation of facilities or infrastructure.".

Page 9, line 29, delete "four (4)" and insert "**three (3)**".

Page 9, delete lines 36 through 37.

Page 10, between lines 2 and 3, begin a new line block indented and insert:

"**(5) A member appointed by the governor upon the recommendation of the Indiana State Medical Association.**

(6) A member appointed by the governor who has knowledge and experience in the special health needs of minorities.

"**(7) A representative of the Indiana health care association appointed by the governor.**".

Page 10, line 14, after "(b)(4)" insert "**through (b)(7)**".

Page 10, line 14, delete "this" and insert "**these**".

Page 10, line 15, delete "member serves" and insert "**members serve**".

Page 10, line 18, after "the" delete "member" and insert "**members**".

Page 10, line 19, after "(b)(4)" insert "**through (b)(7)**".

Page 10, line 24, delete "Five (5)" and insert "**Six (6)**".

Page 10, line 26, delete "five (5)" and insert "**six (6)**".

Page 11, line 24, delete "money received by the state" and insert "**the Indiana tobacco master settlement agreement fund;**".

Page 11, delete line 25.

Page 12, line 27, delete "money received by the state" and insert "**the Indiana tobacco master settlement agreement fund;**".

Page 12, delete line 28.

Page 14, delete lines 1 through 36.

Page 15, line 6, delete "money received by the state" and insert "**the Indiana tobacco master settlement agreement fund;**".

Page 15, delete line 7.

Page 15, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 8. IC 4-12-10 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

C o p y

Chapter 10. Rural Community Impact Fund

Sec. 1. As used in this chapter, "fund" refers to the rural community impact fund established by section 2 of this chapter.

Sec. 2. (a) The rural community impact fund is established. The fund shall be administered by the commissioner of agriculture and the department of commerce. The fund consists of:

(1) amounts, if any, that another statute requires to be distributed to the fund from the Indiana tobacco master settlement agreement fund;

(2) appropriations to the fund from other sources;

(3) grants, gifts, and donations intended for deposit in the fund; and

(4) interest that accrues from money in the fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of the state fiscal year does not revert to the state general fund.

Sec. 3. (a) Subject to subsection (b), money in the fund shall be used for the following purposes:

(1) To develop new agricultural enterprises in areas that were used for tobacco production, including facilities for research and development, new market opportunities, educational programs, leadership developmental programs, and direct financial assistance.

(2) Assistance to rural communities that suffer a negative economic impact from the loss of tobacco production.

(b) Expenditures from the fund are subject to appropriation by the general assembly, review by the budget committee, and approval by the budget agency. In addition, the commissioner of agriculture shall approve expenditures for projects under subsection (a)(1), and the department of commerce shall approve money for projects under subsection (a)(2).".

Page 16, line 2, delete "eight (8)" and insert "**eleven (11)**".

Page 16, line 6, delete "Two (2)" and insert "**Three (3)**".

Page 16, line 7, delete "Three (3)" and insert "**Four (4)**".

Page 16, line 8, delete "Three (3)" and insert "**Four (4)**".

C o p y

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 108 as introduced.)

BORST, Chairperson

Committee Vote: Yeas 14, Nays 1.

Copy

SENATE MOTION

Mr. President: I move that Senate Bill 108 be amended to read as follows:

Replace the effective dates in SECTIONS 2 through 3 with "[EFFECTIVE APRIL 1, 2000]".

Replace the effective date in SECTION 9 with "[EFFECTIVE APRIL 1, 2000]".

Page 16, line 41, delete "July 1, 2001" and insert "**April 1, 2000**".

Page 16, after line 42, begin a new paragraph and insert:

"SECTION 10. **An emergency is declared for this act.**".

(Reference is to SB 108 as printed January 28, 2000)

BORST

Copy

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 108, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be referred to the Committee on Ways and Means per Rule 127.

(Reference is to SB as reprinted February 1, 2000.)

BROWN C, Chair

Committee Vote: yeas 11, nays 1.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 108, 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 22, nays 3.

Copy

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 108 be amended to read as follows:

Page 14, line 21, delete "July" and insert "**October**".

(Reference is to ESB 108 as printed February 18, 2000.)

BROWN C

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 108 be amended to read as follows:

Page 8, line 20, delete "Indiana Pediatric Association" and insert "**American Academy of Pediatrics, Indiana Chapter**".

Page 12, line 20, delete "an".

Page 15, line 23, delete "U.S." and insert "**United States**".

(Reference is to ESB 108 as printed February 18, 2000.)

BROWN C

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 108 be amended to read as follows:

Page 22, line 25, delete "combined with" and insert "**used to expand the number of Medicaid waivers and provide emergency services and immediate need care to individuals who have applied for but have not yet received a Medicaid waiver.**".

Page 22, delete lines 26 through 30.

(Reference is to ESB 108 as printed February 18, 2000.)

GOEGLEIN

Copy