



Reprinted
February 1, 2000

HOUSE BILL No. 1398

DIGEST OF HB 1398 (Updated January 31, 2000 5:38 PM - DI 101)

Citations Affected: IC 14-13; IC 24-8; IC 25-6.1; IC 36-8; noncode.

Synopsis: Provides that any money appropriated by the Ohio River Greenway Development Commission but remaining unexpended or unencumbered at the end of the year may become part of a nonreverting cumulative fund to be held in the name of the commission. (Current law requires any unexpended or unencumbered money to become part of a nonreverting cumulative fund held by the commission.) Clarifies that unbudgeted expenditures of the commission are to come from the nonreverting cumulative fund. Adds sweepstakes, contests, and prize giveaways to the definition of "promotion". Requires disclaimers of actual winning odds for promotions that make certain representations to the person receiving the promotion. Provides for disclaimer statements for promotions that do not require a purchase. Provides for disclaimer statements for promotions for which a purchase does not increase the likelihood of winning. Repeals a provision exempting certain types of promotions from certain notice requirements. Requires a licensed auctioneer to conspicuously disclose at the physical site of an auction all charges that may be imposed on the buyer of an item at the auction. Requires all advertisements of auctions to conspicuously disclose all charges that may be imposed on the buyer of an item at the auction. Allows the transfer of money between and among the accounts of the wireless emergency telephone system fund. Provides procedures for the transfers. Requires that transfers be approved by the affirmative vote of at least eight members of the wireless enhanced 911 advisory board.
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Effective: Upon passage; July 1, 2000.

Bottorff, Duncan

January 11, 2000, read first time and referred to Committee on Commerce and Economic Development.
January 25, 2000, amended, reported — Do Pass.
January 31, 2000, read second time, amended, ordered engrossed.

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Digest Continued

Requires the regulatory flexibility commission to study the possibility of requiring a board or agency that: (1) regulates a specified profession; and (2) requires continuing education as a condition of registration, certification, or licensure; to allow not less than one-half of the continuing education requirements to be earned from distance learning courses.

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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.

HOUSE BILL No. 1398

A BILL FOR AN ACT to amend the Indiana Code concerning commerce.

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

1 SECTION 1. IC 14-13-5-16 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 16. (a) The commission
3 shall prepare and adopt by majority vote an annual budget that shall be
4 submitted to each municipality or agency appropriating money for the
5 use of the commission. After the commission approves the budget,
6 money may be expended only as budgeted unless a majority vote of the
7 commission authorizes other expenditures. If money is appropriated by
8 the commission for the use of a county, a municipality, or an agency,
9 the money may not later be diverted from the county, municipality, or
10 agency without the consent of the county, municipality, or agency.

11 (b) Any appropriated amounts remaining unexpended or
12 unencumbered at the end of the year **may** become part of a
13 nonreverting cumulative fund to be held in the name of the
14 commission.

15 (c) The commission may authorize unbudgeted expenditures from
16 the **nonreverting cumulative** fund by a majority vote of the
17 commission.

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1 (d) The commission is responsible for money the commission
2 receives under this chapter. The state board of accounts shall:

- 3 (1) prescribe the methods and forms for keeping; and
4 (2) periodically audit;

5 the accounts, records, and books of the commission.

6 SECTION 2. IC 24-8-2-5 IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2000]: Sec. 5. "Promotion" means a written
8 notice offering:

- 9 (1) property; or
10 (2) a chance to obtain property;

11 to a person based on a representation that the person has been awarded
12 or may have been awarded a prize. **The term includes sweepstakes,
13 contests, and prize giveaways.**

14 SECTION 3. IC 24-8-3-5.5 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2000]: Sec. 5.5. (a) **If a promotion represents that the person:**

- 17 (1) **is a winner;**
18 (2) **is a finalist;**
19 (3) **has been specially selected;**
20 (4) **is in "first place"; or**
21 (5) **is otherwise among a limited group of persons with an
22 enhanced likelihood of receiving a prize;**

23 **the written prize notice must contain a statement of the maximum
24 number of persons described in subdivision (1), (2), (3), (4), or (5).**

25 (b) **The statement required under subsection (a) must be in at
26 least 10 point boldface contrasting color type on the first page of
27 the promotion.**

28 SECTION 4. IC 24-8-3-7.5 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 2000]: Sec. 7.5. (a) **If a promotion offers a prize for which the
31 purchase of goods or services is not necessary, the first page of the
32 notice must clearly state that purchase is not necessary.**

33 (b) **Disclosure must be made by using the following statement:
34 "No purchase is necessary to enter this promotion."**

35 (c) **The disclosure statement must be in at least 10 point
36 boldface contrasting color type.**

37 SECTION 5. IC 24-8-3-7.6 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2000]: Sec. 7.6. (a) **If a promotion offers a prize for which the
40 purchase of goods or services does not enhance the likelihood of
41 receiving a prize, the first page of the notice must clearly state that
42 a purchase does not enhance the likelihood of receiving a prize.**



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1 **(b) Disclosure must be made by using the following statement:**
 2 **"A purchase does not increase your chance of winning."**

3 **(c) The disclosure statement must be in at least 10 point**
 4 **boldface contrasting color type.**

5 SECTION 6. IC 24-8-3-10 IS REPEALED [EFFECTIVE JULY 1,
 6 2000].

7 SECTION 7. IC 25-6.1-6-1 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. ~~Performance by~~
 9 ~~Auctioneer.~~ **(a)** In performing the duties of an auctioneer, every
 10 auctioneer shall follow all reasonable requests of the owner or
 11 consignor of the goods or real estate being sold at the auction, shall
 12 perform his duties so that the highest or most favorable offer made by
 13 a member of his audience is accepted, and shall otherwise perform his
 14 duties in accordance with the highest standards of the auctioneering
 15 profession.

16 **(b) An auctioneer shall conspicuously disclose, at the physical**
 17 **site of an auction where buyers are present, all charges that may**
 18 **be imposed on the buyer of an item at the auction.**

19 SECTION 8. IC 25-6.1-6-5 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. ~~Advertising.~~ **(a)** All
 21 advertisements of auctions shall **conspicuously** disclose:

22 (1) the auctioneer's name and the name of the auction house or the
 23 auction company involved; ~~and~~

24 (2) the name of the owner or consignor of goods or real estate to
 25 be sold, or the fact that the goods are being sold on general
 26 consignment; **and**

27 **(3) all charges that may be imposed on the buyer of an item at**
 28 **an auction.**

29 SECTION 9. IC 36-8-16.5-19 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 19. A majority of the
 31 members of the board constitutes a quorum for purposes of taking
 32 action. **Except as provided in section 39(b) of this chapter,** the board
 33 may take action approved by a majority of the members of the board.

34 SECTION 10. IC 36-8-16.5-39 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 39. **(a)** Except as
 36 provided by section 26 of this chapter **and subsection (b),** the fund
 37 must be managed in the following manner:

38 (1) Three cents (\$0.03) of the emergency wireless 911 fee
 39 collected from each subscriber must be held in an interest bearing
 40 escrow account to be used for implementation of phase two (2) of
 41 the FCC order. The board shall reevaluate the fees placed into
 42 escrow not later than May 1, 2000. The board shall determine if



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1 the fee should be reduced, remain the same, or be increased based
 2 on the latest information available concerning the costs associated
 3 with phase two (2) of the FCC order.

4 (2) At least twenty-five cents (\$0.25) of the emergency wireless
 5 911 fee collected from each subscriber must be held in escrow
 6 and used to reimburse CMRS providers for the actual costs
 7 incurred by the CMRS providers in complying with the wireless
 8 911 requirements established by the FCC order and rules that are
 9 adopted by the FCC under the FCC order, including costs and
 10 expenses incurred in designing, upgrading, purchasing, leasing,
 11 programming, installing, testing, or maintaining all necessary
 12 data, hardware, and software required to provide service as well
 13 as the costs of operating the service. Except as provided by
 14 section 38 of this chapter, the carrier may only request funds for
 15 true cost recovery. The board may increase the amount held in
 16 escrow under this subdivision not more than one (1) time a
 17 calendar year. If the board adjusts the emergency wireless 911 fee
 18 under section 26 of this chapter within a calendar year, an
 19 adjustment to the amount held in escrow under this subdivision
 20 for the calendar year must be made at that time.

21 (3) Two percent (2%) of the emergency wireless 911 fee collected
 22 from each subscriber may be used by the board to recover the
 23 board's expenses in administering this chapter. However, the
 24 board may increase this percentage at the time the board may
 25 adjust the monthly fee assessed against each CMRS mobile
 26 telephone number to allow for full recovery of administration
 27 expenses.

28 (4) Money remaining in the fund must be held in escrow and used
 29 for monthly distributions to eligible PSAPs that provide wireless
 30 enhanced 911 service and that have submitted written notice to
 31 the board. The board shall maintain a list of eligible PSAPs. The
 32 fund held in escrow under this subdivision must be distributed in
 33 the following manner:

34 (A) Ninety-eight percent (98%) must be distributed among the
 35 eligible PSAPs based upon the percentage of the state's
 36 population (as reported in the most recent official United
 37 States census) served by each PSAP.

38 (B) Two percent (2%) must be distributed among the eligible
 39 PSAPs under a formula:

40 (i) established by the board; and

41 (ii) based on a PSAP's CMRS 911 call volume.

42 **(b) Notwithstanding the requirements described in subsection**



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1 (a), the board may transfer money between and among the
 2 accounts in subsection (a) in accordance with the following
 3 procedures:

4 (1) A transfer must be approved by the affirmative vote of at
 5 least eight (8) board members.

6 (2) The board may make transfers only one (1) time during a
 7 calendar year.

8 (3) The board may not make a transfer that:

9 (A) impairs cost recovery by CMRS providers or PSAPs;
 10 or

11 (B) impairs the ability of the board to fulfill its
 12 management and administrative obligations described in
 13 this chapter.

14 SECTION 11. [EFFECTIVE UPON PASSAGE] (a) The regulatory
 15 flexibility committee established by IC 8-1-2.6-4 shall:

16 (1) study the possibility of requiring a board or agency that:

17 (A) either:

18 (i) regulates a profession under IC 15, IC 16, or IC 22; or

19 (ii) is subject to the jurisdiction of the professional
 20 licensing agency under IC 25-1-6; and

21 (B) requires continuing education as a condition of
 22 registration, certification, or licensure;

23 to allow not less than one-half (1/2) of the continuing
 24 education requirements to be earned from distance learning
 25 courses, including home study, teleconference seminars, and
 26 computer, video, and audio programs; and

27 (2) report the results of its study to the legislative council
 28 before November 1, 2000.

29 (b) This SECTION expires December 31, 2000.

30 SECTION 12. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1398, 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 the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning commerce.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1398 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1398 be amended to read as follows:

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 7. IC 25-6.1-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. ~~Performance by Auctioneer.~~ (a) In performing the duties of an auctioneer, every auctioneer shall follow all reasonable requests of the owner or consignor of the goods or real estate being sold at the auction, shall perform his duties so that the highest or most favorable offer made by a member of his audience is accepted, and shall otherwise perform his duties in accordance with the highest standards of the auctioneering profession.

(b) An auctioneer shall conspicuously disclose, at the physical site of an auction where buyers are present, all charges that may be imposed on the buyer of an item at the auction.

SECTION 8. IC 25-6.1-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. ~~Advertising.~~ (a) All advertisements of auctions shall **conspicuously** disclose:

- (1) the auctioneer's name and the name of the auction house or the auction company involved; ~~and~~
- (2) the name of the owner or consignor of goods or real estate to be sold, or the fact that the goods are being sold on general consignment; ~~and~~
- (3) all charges that may be imposed on the buyer of an item at an auction."**

Re-number all SECTIONS consecutively.

(Reference is to HB1398 as printed January 26, 2000.)

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1398 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-13-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 16. (a) The commission shall prepare and adopt by majority vote an annual budget that shall be

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submitted to each municipality or agency appropriating money for the use of the commission. After the commission approves the budget, money may be expended only as budgeted unless a majority vote of the commission authorizes other expenditures. If money is appropriated by the commission for the use of a county, a municipality, or an agency, the money may not later be diverted from the county, municipality, or agency without the consent of the county, municipality, or agency.

(b) Any appropriated amounts remaining unexpended or unencumbered at the end of the year **may** become part of a nonreverting cumulative fund to be held in the name of the commission.

(c) The commission may authorize unbudgeted expenditures from the **nonreverting cumulative** fund by a majority vote of the commission.

(d) The commission is responsible for money the commission receives under this chapter. The state board of accounts shall:

- (1) prescribe the methods and forms for keeping; and
- (2) periodically audit;

the accounts, records, and books of the commission.".

Renumber all SECTIONS consecutively.

(Reference is to HB 1398 as printed January 26, 2000.)

BOTTORFF

HOUSE MOTION

Mr. Speaker: I move that House Bill 1398 be amended to read as follows:

Page 4, line 15, after "(A)" insert "**either:**
(i)".

Page 4, line 15, after "IC 16," insert "**or**".

Page 4, line 15, delete "IC 22," and insert "**IC 22;**".

Page 4, delete line 16, begin a new line triple block indented, and insert:

"(ii) is subject to the jurisdiction of the professional licensing agency under IC 25-1-6; and".

(Reference is to HB 1398 as printed January 26, 2000.)

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