

SENATE BILL No. 364

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1-15; IC 24-3; IC 24-5.

Synopsis: Imported cigarette enforcement. Allows the department of state revenue to suspend a cigarette distributor's registration certificate for certain violations. Provides that certain imported cigarettes are presumed to be purchased outside ordinary trade for purposes of determining fair cigarette prices. Provides that certain cigarettes may not be sold or possessed in Indiana. Establishes reporting requirements for imported cigarettes. Provides procedures and penalties for persons who violate the cigarette import and export provisions. Makes the violation of the cigarette and export provisions a deceptive act.

Effective: Upon Passage.

Meeks R

January 10, 2000, read first time and referred to Committee on Judiciary.

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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.

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SENATE BILL No. 364



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

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

1 SECTION 1. IC 6-7-1-15 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) The department is the
3 official agent of the state for the administration and enforcement of this
4 chapter. A sufficient sum to pay salaries and expenses is appropriated
5 to the department out of the monies received by virtue of this chapter.
6 (b) The department may issue registration certificates, upon the
7 terms and conditions provided in this chapter, and may revoke or
8 suspend the **same registration certificate** upon the violation of:
9 (1) this chapter;
10 (2) **IC 24-3-2; or**
11 (3) **IC 24-3-4;**
12 by the holder of ~~such a~~ **the registration** certificate.
13 (c) The department may apply for membership in the National
14 Tobacco Tax Association.
15 (d) The department may design and have printed or manufactured
16 stamps of sizes and denominations to be affixed to each individual
17 package. The stamps shall be firmly affixed on each individual package



1 in such a manner that the stamps can not be removed without being
 2 mutilated or destroyed; however, the department may by regulation
 3 designate some other manner for cancelation of stamps. In addition to
 4 the stamps, the department may by rules and regulations authorize
 5 distributors to use metered stamping machines or other devices which
 6 will imprint distinctive indicia evidencing the payment of the tax upon
 7 each individual package. The machines shall be constructed in such a
 8 manner as will accurately record or meter the number of impressions
 9 or tax stamps made. The tax meter machines or other devices shall be
 10 kept available at all reasonable times for inspection by the department,
 11 and the machines shall be maintained in proper operating condition. A
 12 person who knowingly tampers with the printing or recording
 13 mechanism of such a machine commits a Class B misdemeanor.

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

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

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

33 **Chapter 4. Cigarettes Produced for Export; Imported**
 34 **Cigarettes**

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

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



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

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

5 (1) A person in the United States to whom nontaxpaid tobacco
6 products, cigarette papers, or cigarette tubes manufactured
7 in a foreign country, Puerto Rico, the Virgin Islands, or a
8 possession of the United States are shipped or consigned.

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

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

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

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

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

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

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

28 **Sec. 8.** A person may not sell, distribute, possess, or transport
29 into Indiana any of the following cigarettes:

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

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

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

41 (4) Cigarettes that violate federal requirements on
42 importation of previously exported tobacco products,

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1 including 26 U.S.C. 5754.

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

5 (6) Cigarettes that have not had the list of the cigarette's
6 added ingredients submitted to the Secretary of the
7 Department of Health and Human Services under 15 U.S.C.
8 1335a.

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

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

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

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

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

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

27 (1) A copy of each of the following:

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

30 (B) The U.S. Customs Service form concerning the
31 cigarettes that contains the internal revenue tax
32 information required by the federal Bureau of Alcohol,
33 Tobacco, and Firearms.

34 (2) A statement that includes the following information:

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

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

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

40 (3) A statement signed by an officer of the manufacturer or
41 importer, under the penalties for perjury, that states if the
42 manufacturer is a participant in the escrow fund under

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1 **IC 24-3-3-12 and certifies that the manufacturer or importer**
 2 **has complied with the following:**

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

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

8 **Sec. 11. The department may do the following:**

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

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

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

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

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

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

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

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

41 **SECTION 4. IC 24-5-0.5-3 IS AMENDED TO READ AS**
 42 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The**

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1 following acts or representations as to the subject matter of a consumer
2 transaction, made either orally or in writing by a supplier, are deceptive
3 acts:

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

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

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

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

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

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

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

26 (8) That such consumer transaction involves or does not involve
27 a warranty, a disclaimer of warranties, or other rights, remedies,
28 or obligations, if the representation is false and if the supplier
29 knows or should reasonably know that the representation is false.

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

37 (10) That the supplier is able to deliver or complete the subject of
38 the consumer transaction within a stated period of time, when the
39 supplier knows or should reasonably know he could not. If no
40 time period has been stated by the supplier, there is a presumption
41 that the supplier has represented that he will deliver or complete
42 the subject of the consumer transaction within a reasonable time,



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- 1 according to the course of dealing or the usage of the trade.
- 2 (11) That the consumer will be able to purchase the subject of the
- 3 consumer transaction as advertised by the supplier, if the supplier
- 4 does not intend to sell it.
- 5 (12) That the replacement or repair constituting the subject of a
- 6 consumer transaction can be made by the supplier for the estimate
- 7 the supplier gives a customer for the replacement or repair, if the
- 8 specified work is completed and:
- 9 (A) the cost exceeds the estimate by an amount equal to or
- 10 greater than ten percent (10%) of the estimate;
- 11 (B) the supplier did not obtain written permission from the
- 12 customer to authorize the supplier to complete the work even
- 13 if the cost would exceed the amounts specified in clause (A);
- 14 (C) the total cost for services and parts for a single transaction
- 15 is more than seven hundred fifty dollars (\$750); and
- 16 (D) the supplier knew or reasonably should have known that
- 17 the cost would exceed the estimate in the amounts specified in
- 18 clause (A).
- 19 (13) That the replacement or repair constituting the subject of a
- 20 consumer transaction is needed, and that the supplier disposes of
- 21 the part repaired or replaced earlier than seventy-two (72) hours
- 22 after both:
- 23 (A) the customer has been notified that the work has been
- 24 completed; and
- 25 (B) the part repaired or replaced has been made available for
- 26 examination upon the request of the customer.
- 27 (14) Engaging in the replacement or repair of the subject of a
- 28 consumer transaction if the consumer has not authorized the
- 29 replacement or repair, and if the supplier knows or should
- 30 reasonably know that it is not authorized.
- 31 (15) The act of misrepresenting the geographic location of the
- 32 supplier by listing a fictitious business name or an assumed
- 33 business name (as described in IC 23-15-1) in a local telephone
- 34 directory if:
- 35 (A) the name misrepresents the supplier's geographic location;
- 36 (B) the listing fails to identify the locality and state of the
- 37 supplier's business;
- 38 (C) calls to the local telephone number are routinely forwarded
- 39 or otherwise transferred to a supplier's business location that
- 40 is outside the calling area covered by the local telephone
- 41 directory; and
- 42 (D) the supplier's business location is located in a county that

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- 1 is not contiguous to a county in the calling area covered by the
 2 local telephone directory.
- 3 (16) The act of listing a fictitious business name or assumed
 4 business name (as described in IC 23-15-1) in a directory
 5 assistance database if:
- 6 (A) the name misrepresents the supplier's geographic location;
 7 (B) calls to the local telephone number are routinely forwarded
 8 or otherwise transferred to a supplier's business location that
 9 is outside the local calling area; and
 10 (C) the supplier's business location is located in a county that
 11 is not contiguous to a county in the local calling area.
- 12 **(17) That the supplier violated IC 24-3-4 concerning cigarettes**
 13 **for import or export.**
- 14 (b) Any representations on or within a product or its packaging or
 15 in advertising or promotional materials which would constitute a
 16 deceptive act shall be the deceptive act both of the supplier who places
 17 such representation thereon or therein, or who authored such materials,
 18 and such other suppliers who shall state orally or in writing that such
 19 representation is true if such other supplier shall know or have reason
 20 to know that such representation was false.
- 21 (c) If a supplier shows by a preponderance of the evidence that an
 22 act resulted from a bona fide error notwithstanding the maintenance of
 23 procedures reasonably adopted to avoid the error, such act shall not be
 24 deceptive within the meaning of this chapter.
- 25 (d) It shall be a defense to any action brought under this chapter that
 26 the representation constituting an alleged deceptive act was one made
 27 in good faith by the supplier without knowledge of its falsity and in
 28 reliance upon the oral or written representations of the manufacturer,
 29 the person from whom the supplier acquired the product, any testing
 30 organization, or any other person provided that the source thereof is
 31 disclosed to the consumer.
- 32 (e) For purposes of subsection (a)(12), a supplier that provides
 33 estimates before performing repair or replacement work for a customer
 34 shall give the customer a written estimate itemizing as closely as
 35 possible the price for labor and parts necessary for the specific job
 36 before commencing the work.
- 37 (f) For purposes of subsection (a)(15), a telephone company or other
 38 provider of a telephone directory or directory assistance service or its
 39 officer or agent is immune from liability for publishing the listing of a
 40 fictitious business name or assumed business name of a supplier in its
 41 directory or directory assistance database unless the telephone
 42 company or other provider of a telephone directory or directory

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1 assistance service is the same person as the supplier who has
2 committed the deceptive act.

3 **SECTION 5. An emergency is declared for this act.**

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