



February 15, 2005

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## HOUSE BILL No. 1579

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DIGEST OF HB 1579 (Updated February 9, 2005 6:48 pm - DI 14)

**Citations Affected:** IC 24-3; noncode.

**Synopsis:** Contraband cigarettes. Requires cigarette importers and manufacturers to obtain licenses from the alcohol and tobacco commission. Specifies to and from whom distributors, importers, manufacturers, and retailers may sell and receive cigarettes. Requires importers and manufacturers to maintain documentation concerning certain cigarette transactions. Imposes a monetary penalty. Provides for public and private rights of action.

**Effective:** July 1, 2005.

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### Cherry, Mahern

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January 25, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.

February 14, 2005, amended, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.

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HB 1579—LS 7429/DI 103+



February 15, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## HOUSE BILL No. 1579

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

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

- 1 SECTION 1. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]:  
4 **Chapter 6. Contraband Cigarettes**  
5 **Sec. 1. As used in this chapter, "commission" means the alcohol**  
6 **and tobacco commission created by IC 7.1-2-1-1.**  
7 **Sec. 2. As used in this chapter, "distributor" means a**  
8 **distributor (as defined in IC 6-7-1-6) that holds a registration**  
9 **certificate issued under IC 6-7-1-16.**  
10 **Sec. 3. As used in this chapter, "importer" means a person that**  
11 **brings cigarettes into the United States for sale or distribution.**  
12 **Sec. 4. As used in this chapter, "licensed" means holding a**  
13 **license issued under section 9 of this chapter.**  
14 **Sec. 5. As used in this chapter, "manufacturer" means a person**  
15 **that manufactures or otherwise produces cigarettes to be sold in**  
16 **the United States.**  
17 **Sec. 6. As used in this chapter, "person" has the meaning set**

HB 1579—LS 7429/DI 103+



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forth in IC 6-7-1-4.

Sec. 7. As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.

Sec. 8. As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

Sec. 9. (a) The commission may issue or renew a license to the following applicants:

- (1) An importer.
- (2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An applicant that conducts business in Indiana must apply for a license for the applicant's principal place of business. An applicant shall display the license at the applicant's principal place of business.

(c) The commission shall prescribe the form and duration of a license issued under this section. However, a license may not be valid for more than three (3) years from the date of issuance.

(d) A license issued under this section is nontransferable.

(e) The commission shall impose a fee of five hundred dollars (\$500) to issue or renew a license issued under this section.

(f) The commission shall not issue or renew a license if:

- (1) the applicant owes at least five hundred dollars (\$500) in taxes imposed under IC 6-7-1-12;
- (2) the commission revoked the applicant's license within two (2) years before the application;
- (3) the applicant commits an offense under IC 6-7-1-21;
- (4) the applicant does not comply with IC 24-3-3-12; or
- (5) the applicant violates IC 24-3-4.

(g) The commission may revoke or suspend a license if the applicant:

- (1) is not eligible to receive or renew a license under subsection (e); or
- (2) violates this chapter.

Sec. 10. (a) A distributor may apply a stamp only to cigarettes that are received from a licensed importer or licensed manufacturer.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as provided in IC 6-7-1-18.

Sec. 11. (a) A manufacturer or an importer may sell cigarettes in Indiana only to a distributor or a licensed importer.

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- 1           (b) A manufacturer that sells cigarettes to a licensed importer
- 2 under subsection (a) must be a licensed manufacturer.
- 3           (c) A distributor may sell cigarettes only to a distributor or a
- 4 retailer.
- 5           (d) A distributor may obtain cigarettes only from a distributor,
- 6 a licensed importer, or a licensed manufacturer.
- 7           (e) A retailer may obtain cigarettes only from a distributor.
- 8       Sec. 12. (a) This section does not apply to a distributor who:
- 9           (1) is a licensed manufacturer; and
- 10          (2) complies with section 13 of this chapter.
- 11          (b) A distributor shall report the following information for each
- 12 place of business belonging to the distributor to the office of the
- 13 attorney general not later than the fifteenth day of each month:
- 14           (1) The number and brand of cigarettes:
- 15               (A) distributed;
- 16               (B) shipped into Indiana; or
- 17               (C) shipped within Indiana;
- 18           during the immediately preceding month.
- 19           (2) The name and address of each person to which cigarettes
- 20 described in subdivision (1) were distributed or shipped.
- 21       Sec. 13. (a) An importer or a manufacturer shall maintain
- 22 documentation for each place of business belonging to the importer
- 23 or manufacturer for each transaction other than a retail
- 24 transaction with a consumer involving the sale, purchase, transfer,
- 25 consignment, or receipt of cigarettes. The documentation must
- 26 include:
- 27           (1) the name and address of the parties to the transaction; and
- 28           (2) the quantity by brand style of cigarettes involved in the
- 29 transaction.
- 30          (b) Subject to subsection (c), an importer or a manufacturer
- 31 shall preserve documentation described in subsection (a) at the
- 32 place of business at which each transaction occurs.
- 33          (c) The commission may allow an importer or a manufacturer
- 34 with multiple places of business to preserve documentation
- 35 described in subsection (a) at a centralized location. However, the
- 36 importer or manufacturer shall provide duplicate documentation
- 37 at each place of business upon request by the commission.
- 38          (d) An importer or a manufacturer shall maintain
- 39 documentation under this section for five (5) years from the date
- 40 of the transaction.
- 41          (e) The commission may:
- 42           (1) obtain access to; and

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1           (2) inspect at reasonable times;  
 2 the documentation maintained under this section. The commission  
 3 may share the documentation with other law enforcement officials.  
 4       Sec. 14. (a) The commission may enter and inspect, without a  
 5 warrant during normal business hours or with a warrant during  
 6 nonbusiness hours, the facilities and records of an importer or a  
 7 manufacturer.  
 8       (b) If the commission or a law enforcement officer has  
 9 knowledge or reasonable grounds to believe that a vehicle is  
 10 transporting cigarettes in violation of this chapter, the commission  
 11 or the law enforcement officer may stop and inspect the vehicle for  
 12 cigarettes being transported in violation of this chapter.  
 13       Sec. 15. (a) A person who violates this chapter is liable for a civil  
 14 penalty equal to the greater of:  
 15       (1) five (5) times the value of the cigarettes involved in the  
 16 violation; or  
 17       (2) one thousand dollars (\$1,000).  
 18       (b) A civil penalty under this section is in addition to any other  
 19 penalty imposed.  
 20       Sec. 16. (a) Either or both of the following may bring an action  
 21 to prevent or restrain violations of this chapter:  
 22       (1) The attorney general or the attorney general's designee.  
 23       (2) A person that holds a valid permit under 26 U.S.C. 5712.  
 24       (b) A person that brings an action under subsection (a) shall  
 25 provide notice to the attorney general of the commencement of the  
 26 action.  
 27       SECTION 2. [EFFECTIVE JULY 1, 2005] Notwithstanding  
 28 IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined  
 29 in IC 24-3-6-2, as added by this act) is not required to report the  
 30 information required in IC 24-3-6-12(b)(2), as added by this act,  
 31 until the later of the following:  
 32       (1) The attorney general is capable of receiving the  
 33 information reported in an electronic format.  
 34       (2) July 1, 2008.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy and Veterans Affairs, to which was referred House Bill 1579, 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:

Page 2, line 11, delete "If an applicant conducts business at two (2) or more places".

Page 2, delete line 12.

Page 2, line 13, delete "place of business. If an applicant does not conduct" and insert "**An applicant that conducts**".

Page 2, line 14, delete ", the applicant".

Page 2, line 15, delete "a" and insert "**the**".

Page 2, line 16, delete "each" and insert "**the applicant's principal**".

Page 2, delete lines 21 through 24.

Page 2, line 25, delete "(f)" and insert "**(e)**".

Page 2, line 27, delete "(g)" and insert "**(f)**".

Page 2, line 32, delete "or".

Page 2, line 33, delete "." and insert "**;** or

**(5) the applicant violates IC 24-3-4.**

Page 2, line 34, delete "(h)" and insert "**(g)**".

Page 2, line 37, delete "(f)" and insert "**(e)**".

Page 2, line 40, delete ":".

Page 2, line 41, delete "(1)".

Page 2, run in lines 40 through 41.

Page 2, line 42, delete "; and" and insert ".".

Page 3, delete line 1.

Page 3, line 6, after "sell" delete "or".

Page 3, line 7, delete "distribute".

Page 3, line 9, delete "or distributes".

Page 3, line 12, delete "or distribute".

Page 3, delete lines 17 through 27.

Page 3, line 28, delete "13." and insert "**12. (a) This section does not apply to a distributor who:**

**(1) is a licensed manufacturer; and**

**(2) complies with section 13 of this chapter.**

**(b)**".

Page 3, line 38, delete "14." and insert "**13.**".

Page 4, line 21, delete "15." and insert "**14.**".

Page 4, line 30, delete "16." and insert "**15.**".

Page 4, line 37, delete "17." and insert "**16. (a)**".

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Page 4, after line 40, begin a new paragraph and insert:

**"(b) A person that brings an action under subsection (a) shall provide notice to the attorney general of the commencement of the action.**

**SECTION 2. [EFFECTIVE JULY 1, 2005] Notwithstanding IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined in IC 24-3-6-2, as added by this act) is not required to report the information required in IC 24-3-6-12(b)(2), as added by this act, until the later of the following:**

- (1) The attorney general is capable of receiving the information reported in an electronic format.**
- (2) July 1, 2008."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1579 as introduced.)

ALDERMAN, Chair

Committee Vote: yeas 11, nays 0.

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