

**IC 24-3**

**ARTICLE 3. REGULATED PRICES**

**IC 24-3-1**

**Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2426.)*

## **IC 24-3-2**

### **Chapter 2. Cigarette Fair Trade Act**

#### **IC 24-3-2-1**

##### **Declaration of policy**

Sec. 1. It is declared to be the public policy of this state to promote the public welfare by making unlawful unfair, dishonest, deceptive, destructive and fraudulent business practices now existing in transactions involving the sale of, offer to sell, or inducement to sell cigarettes in this state in wholesale and retail trades. The offering for sale or sale of cigarettes below cost in the retail or wholesale trade with the intent of injuring competitors or destroying or substantially lessening competition is an unfair and deceptive business practice and adversely affects the collection of revenue due this state from the sale of cigarettes.

*(Formerly: Acts 1949, c.51, s.1.)*

#### **IC 24-3-2-2**

##### **Definitions**

Sec. 2. Unless the context in this chapter requires otherwise, the term:

(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material; provided the definition in this paragraph shall not be construed to include cigars.

(b) "Person" or the term "company", used in this chapter interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, limited liability company, joint vendor, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation, or other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" shall mean and include every person who sells, barter, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases for resale cigarettes from a manufacturer of cigarettes or from a wholesaler, jobber, or distributor outside the state of Indiana who is not a distributor holding a registration certificate issued under the provisions of IC 6-7-1.

(d) "Retailer" shall mean every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes to consumers or to any person for any purpose other than resale, irrespective of quantity or amount or the number of sales.

(e) "Sell at retail", "sale at retail", and "retail sales" shall mean

and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of the seller's business to the purchaser for consummation or use.

(f) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of a distributor's business.

(g) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or distributor, as the case may be, or the replacement cost of cigarettes to the retailer or distributor, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased, whichever is the lower, less all trade discounts and customary discounts for cash, plus the cost at full face value of any stamps which may be required by IC 6-7-1, if not included by the manufacturer in his selling price to the distributor.

(h) "Department" shall mean the alcohol and tobacco commission or its duly authorized assistants and employees.

(i) "Cost to the retailer" shall mean the basic cost of cigarettes to the retailer, plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses paid or incurred and must include without limitation labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; however, any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, discounts ordinarily allowed on purchases by a distributor shall, in determining costs to the retailer pursuant to this section, add the cost to the distributor, as defined in paragraph (j), to the basic cost of cigarettes to said retailer as well as the cost of doing business by the retailer. In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the retailer. In the absence of proof of a lesser or higher cost of doing business, the cost of doing business by the retailer, who in connection with the retailer's purchase receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, the discounts ordinarily allowed upon purchases by a distributor, shall be presumed to be eight percent (8%) of the sum of the basic cost of cigarettes plus the cost of doing business by the distributor.

(j) "Cost to the distributor" shall mean the basic cost of cigarettes to the distributor, plus the cost of doing business by the distributor as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include without limitation labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. In the absence of proof of

a lesser or higher cost of doing business by the distributor making the sale, the cost of doing business by the wholesaler shall be presumed to be four percent (4%) of the basic cost of cigarettes to the distributor, plus cartage to the retail outlet, if performed or paid for by the distributor, which cartage cost, in the absence of proof of a lesser or higher cost, shall be deemed to be one-half of one percent (0.5%) of the basic cost of cigarettes to the distributor.

(k) "Registration certificate" refers to the registration certificate issued to cigarette distributors by the department of state revenue under IC 6-7-1-16.

*(Formerly: Acts 1949, c.51, s.2.) As amended by P.L.152-1986, SEC.35; P.L.8-1993, SEC.344; P.L.204-2001, SEC.61; P.L.252-2003, SEC.12.*

### **IC 24-3-2-3**

#### **Sale at less than cost; penalty**

Sec. 3. (a) It is a Class A infraction for a retailer or distributor, with intent to injure competitors or destroy or substantially lessen competition, to offer to sell or sell at retail or wholesale cigarettes at less than the cost to him. The registration certificate held by such a distributor under IC 6-7-1 may be revoked by the department for the balance of the term thereof.

(b) Evidence of offering to sell or sale of cigarettes by any retailer or distributor at less than the cost to him is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(c) Notwithstanding IC 34-28-5-5(c), a judgment for a violation of this section shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

*(Formerly: Acts 1949, c.51, s.3.) As amended by Acts 1978, P.L.2, SEC.2408; P.L.252-2003, SEC.13.*

### **IC 24-3-2-4**

#### **Sale of multiple items at combined price**

Sec. 4. In all offers for sale or sales involving two (2) or more items, at least one (1) of which items is cigarettes, at a combined price, and in all offers for sale or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the retailer's or distributor's combined selling price shall not be below the cost to the retailer or the cost to the distributor, irrespective of the total of all articles, products, commodities, gifts and concessions included in such transactions.

*(Formerly: Acts 1949, c.51, s.4.)*

### **IC 24-3-2-4.7**

#### **Failure to provide documentary evidence of distributor; penalty; seizure of cigarettes or other tobacco products**

Sec. 4.7. (a) A retailer shall produce an invoice or other documentary evidence proving that the retailer obtained cigarettes or a tobacco product (as defined in IC 6-7-2-5) from a distributor that

holds a valid registration certificate.

(b) Each day a retailer fails to produce an invoice or other evidence under subsection (a) constitutes a separate violation of this section.

(c) This subsection applies in addition to or instead of any other civil or criminal penalty. The department or the department of state revenue may impose on a retailer that violates subsection (a) a civil penalty that does not exceed the greater of:

(1) five hundred percent (500%) of the retail value of the cigarettes described in subsection (a); or

(2) five thousand dollars (\$5,000);

for each violation.

(d) In addition to any other penalty described in this section, the department or the department of state revenue may seize the cigarettes or other tobacco products for which the retailer is unable to produce the invoice or documentary evidence described in subsection (a). The seized cigarettes or other tobacco products shall be forfeited to the state and destroyed.

(e) Civil penalties collected under this chapter shall be deposited as follows:

(1) Seventy percent (70%) to the enforcement and administration fund established under IC 7.1-4-10.

(2) Thirty percent (30%) to the state general fund for the use of the department of state revenue.

*As added by P.L.252-2003, SEC.14.*

#### **IC 24-3-2-5**

##### **Cost to the distributor; further definition**

Sec. 5. When one distributor sells cigarettes to any other distributor, the former shall not be required to include in his selling price to the latter cost to the distributor as provided in section 2(j) of this chapter, but the latter distributor, upon resale to the retailer, shall be subject to the provisions of section 2(j) of this chapter.

*(Formerly: Acts 1949, c.51, s.5.) As amended by P.L.152-1986, SEC.36.*

#### **IC 24-3-2-6**

##### **Exceptions**

Sec. 6. The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(a) in an isolated transaction and not in the usual course of business;

(b) where cigarettes are offered for sale or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes offered for sale or to be sold;

(c) where cigarettes are offered for sale or sold as imperfect or damaged and said offering to sell or sale shall state the reason therefor and the quantity of such cigarettes offered for sale or

to be sold;

(d) where cigarettes are sold upon the final liquidation of a business; or

(e) where cigarettes are offered for sale or sold by any fiduciary or other officer acting under the order or direction of any court.

*(Formerly: Acts 1949, c.51, s.6.) As amended by P.L.152-1986, SEC.37.*

#### **IC 24-3-2-7**

##### **Sale to meet price of competitor**

Sec. 7. (a) Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer, as defined in section 2(i) of this chapter. Any distributor may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a distributor, as defined in section 2(j) of this chapter. The price of cigarettes offered for sale or sold under the exceptions specified in section 6 of this chapter shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the price of a competitor under this section, the lowest cost to the retailer or the lowest cost to the distributor, as the case may be, determined by any cost survey made pursuant to section 11 of this chapter, may be deemed the price of a competitor within the meaning of this section.

*(Formerly: Acts 1949, c.51, s.7.) As amended by P.L.152-1986, SEC.38.*

#### **IC 24-3-2-8**

##### **Contract in violation of chapter; contract**

Sec. 8. Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal and void contract, and no recovery thereon shall be had.

*(Formerly: Acts 1949, c.51, s.8.) As amended by P.L.152-1986, SEC.39.*

#### **IC 24-3-2-9**

##### **Evidence to establish cost**

Sec. 9. (a) In determining cost to the retailer and cost to the distributor, the court or the department, as the case may be, shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under any of the provisions of this chapter purchased cigarettes with respect to the sale of which complaint is made at a fictitious price, or upon terms, or in such manner, or under such invoices, as to conceal the true cost, discounts, or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost evidence of

the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis or payment made to a retailer or distributor for display, or advertising, or promotion purposes, or otherwise shall not be considered in determining the cost of cigarettes to the retailer or distributor.

*(Formerly: Acts 1949, c.51, s.9.) As amended by P.L.152-1986, SEC.40.*

#### **IC 24-3-2-10**

##### **Evidence of price outside ordinary channels of trade**

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.

*(Formerly: Acts 1949, c.51, s.10.) As amended by P.L.21-2000, SEC.9.*

#### **IC 24-3-2-11**

##### **Cost survey as evidence**

Sec. 11. Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which the offense is committed to establish the lowest cost to the retailer and the lowest cost to the distributor, said cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of this chapter.

*(Formerly: Acts 1949, c.51, s.11.) As amended by P.L.152-1986, SEC.41.*

#### **IC 24-3-2-12**

##### **Injunction**

Sec. 12. (a) The department, or any person injured by any violation or who shall suffer injury from any threatened violation of this chapter, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this chapter shall be established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation, and in addition thereto, the court shall assess in favor of

the plaintiff and against the defendant the costs of suit including reasonable attorney's fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by him.

(b) In the event that no injunctive relief is sought or required, any person injured by a violation of this chapter may maintain an action for damages and costs of suit in any court of general jurisdiction.  
*(Formerly: Acts 1949, c.51, s.12.) As amended by P.L.152-1986, SEC.42.*

### **IC 24-3-2-13**

#### **Rules; powers of department**

Sec. 13. (a) The department may adopt rules for the enforcement of this chapter, and the department is empowered to and may undertake a cost survey, as provided for in section 11 of this chapter. The department may, in accordance with IC 4-21.5-3, suspend or revoke any registration certificate issued by it to a distributor under IC 6-7-1 for failure of any registrant to comply with this chapter or any rule adopted under this chapter.

(b) All the powers vested in the department by IC 6-7-1 shall be available to the department in the enforcement of this chapter.  
*(Formerly: Acts 1949, c.51, s.13.) As amended by P.L.152-1986, SEC.43; P.L.7-1987, SEC.105.*



### **IC 24-3-3**

#### **Chapter 3. Qualified Escrow Fund for Tobacco Product Manufacturers**

### **IC 24-3-3-1**

#### **Findings regarding cigarette smoking**

Sec. 1. The General Assembly makes the following findings:

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of Indiana. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases, and that there are hundreds of thousands of tobacco related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the state. Under certain health care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(4) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement", with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described in the Master Settlement Agreement, to:

(A) pay substantial sums to the state (tied in part to their volume of sales);

(B) fund a national foundation devoted to the interests of public health; and

(C) make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation

and to prevent such manufacturers from deriving large, short term profits and then becoming judgment proof before liability may arise.

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-2**

##### **"Adjusted for inflation" defined**

Sec. 2. As used in this chapter, "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-3**

##### **"Affiliate" defined**

Sec. 3. As used in this chapter, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-4**

##### **"Allocable share" defined**

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

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-5**

##### **"Cigarette" defined**

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

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

The term "cigarette" includes "roll-your-own" tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this

definition of "cigarette", nine-hundredths (0.09) of an ounce of "roll-your-own" tobacco constitutes one (1) individual "cigarette".  
*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-6**

##### **"Master Settlement Agreement" defined**

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

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-7**

##### **"Qualified escrow fund" defined**

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

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-8**

##### **"Released claims" defined**

Sec. 8. As used in this chapter, "released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-9**

##### **"Releasing parties" defined**

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

*As added by P.L.223-1999, SEC.1.*

#### **IC 24-3-3-10**

##### **"Tobacco product manufacturer" defined**

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

- (1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as

a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

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

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

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

*As added by P.L.223-1999, SEC.1.*

### **IC 24-3-3-11**

#### **"Units sold" defined**

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

*As added by P.L.223-1999, SEC.1.*

### **IC 24-3-3-12**

#### **Tobacco product manufacturers required to become participating manufacturer or place money in qualified escrow fund**

Sec. 12. Any tobacco product manufacturer selling cigarettes to consumers within Indiana (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 30, 1999, shall do one (1) of the following:

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

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

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

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

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

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

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

*As added by P.L.223-1999, SEC.1.*

### **IC 24-3-3-13**

#### **Interest paid and release of escrow funds; severability**

Sec. 13. (a) Subsection (b) applies unless and until all or any part of subsection (b) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (b) or the application of all or any part of subsection (b) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (c) controls. Subsection (c) applies unless and until all or any part of subsection (c) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (c) or the application of all or any part of subsection (c) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (d) controls.

(b) A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

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

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

(2) To the extent that a tobacco product manufacturer establishes that the amount the tobacco product manufacturer is required to place in escrow on account of units sold in Indiana in a particular year exceeds the master settlement agreement payments the tobacco product manufacturer would have been required to make on account of units sold in Indiana if the tobacco product manufacturer were a participating manufacturer, as determined under section IX(i) of the master settlement agreement and after final determination of all adjustments, the excess payments shall be released from escrow and shall revert to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(c) This subsection applies only if subsection (b) is held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on the funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim

brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

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

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

(2) To the extent not released from escrow under subdivision (1), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(d) This subsection applies only if subsections (b) and (c) are held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

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

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

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

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

*As added by P.L.223-1999, SEC.1. Amended by P.L.252-2003, SEC.15.*

#### **IC 24-3-3-14**

##### **Certification of compliance with chapter; failure to make annual deposit**

Sec. 14. (a) Each tobacco product manufacturer that elects to place funds into escrow under section 12(2) of this chapter shall annually certify to the attorney general that it is in compliance with this chapter. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under section 12 and section 13

of this chapter. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under section 12(2) of this chapter shall:

(1) Be required within fifteen (15) days to place sufficient funds into escrow to bring it into compliance with this chapter. The court, upon a finding of a violation of section 12(2) of this chapter, may also impose a civil penalty to be paid to the state general fund in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen (15) days to place sufficient funds into escrow to bring it into compliance with section 12(2) of this chapter. The court, upon a finding of a knowing violation of section 12(2) of this chapter, may also impose a civil penalty to be paid to the state general fund in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow.

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

(b) Each failure to make an annual deposit required under section 12(2) of this chapter constitutes a separate violation.

*As added by P.L.223-1999, SEC.1.*

**IC 24-3-3.5**

## Chapter 3.5. Tobacco Qualified Escrow Fund Proceedings

**IC 24-3-3.5-1****Disclosure**

Sec. 1. Notwithstanding any other provision of law, for any official purpose, including enforcing IC 24-3-3 or a judgment in a civil action based on IC 24-3-3, the attorney general may disclose information obtained under IC 24-3-3-11 or IC 24-3-3-14.

*As added by P.L.33-2002, SEC.1.*

**IC 24-3-3.5-2****Attorney's fees**

Sec. 2. The attorney general is entitled to reasonable attorney's fees from a tobacco manufacturer in settlement of matters related to IC 24-3-3, or as a remedy for an adjudicated violation of IC 24-3-3.

*As added by P.L.33-2002, SEC.1.*



#### **IC 24-3-4**

##### **Chapter 4. Cigarettes Produced for Export; Imported Cigarettes**

#### **IC 24-3-4-1**

##### **Applicability of chapter**

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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-2**

##### **"Cigarette" defined**

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

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-3**

##### **"Department" defined**

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

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-4**

##### **"Importer" defined**

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 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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-5**

##### **"Law enforcement officer" defined**

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

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-6**

##### **"Manufacturer" defined**

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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-7**

##### **"Person" defined**

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

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-8**

##### **Sale, distribution, or transportation of prohibited cigarettes**

Sec. 8. As of October 1, 2000, a person may not sell, distribute, 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. 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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-9**

##### **Affixing stamp on prohibited cigarettes**

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.  
*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-10**

##### **Monthly reports of imported cigarettes**

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, Firearms and Explosives.
- (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.

*As added by P.L.21-2000, SEC.10. Amended by P.L.1-2006, SEC.409.*

#### **IC 24-3-4-11**

##### **Powers of department**

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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-12**

##### **Seizure of cigarettes; search warrants**

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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-13**

##### **Enforcement powers; prosecution of violations**

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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-14**

##### **Injunctive or equitable relief**

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.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-15**

##### **Class A misdemeanor; sale, distribution, or transportation of prohibited cigarettes**

Sec. 15. A person who knowingly or intentionally sells,

distributes, or transports into Indiana cigarettes in violation of section 8 of this chapter commits a Class A misdemeanor.

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-16**

##### **Class A misdemeanor; affixing stamp on prohibited cigarettes**

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

*As added by P.L.21-2000, SEC.10.*

#### **IC 24-3-4-17**

##### **Class D felony; prior conviction of offense**

Sec. 17. A person who:

(1) knowingly 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 15 or 16 of this chapter;

commits a Class D felony.

*As added by P.L.21-2000, SEC.10. Amended by P.L.1-2001, SEC.29.*

## **IC 24-3-5**

### **Chapter 5. Delivery Sales of Tobacco Products**

#### **IC 24-3-5-0.1**

##### **"Cigarette"**

Sec. 0.1. As used in this chapter, "cigarette" has the meaning set forth in IC 6-7-1-2.

*As added by P.L.160-2005, SEC.1.*

#### **IC 24-3-5-0.2**

##### **"Cigarette manufacturer"**

Sec. 0.2. As used in this chapter, "cigarette manufacturer" means a person or an entity that does the following:

- (1) Manufactures cigarettes.
- (2) Does one (1) of the following:
  - (A) Participates in the Master Settlement Agreement (as defined in IC 24-3-3-6) and performs the person's or entity's financial obligations under the Master Settlement Agreement.
  - (B) Places the applicable amount into a qualified escrow fund (as defined in IC 24-3-3-7).
- (3) Pays all applicable taxes under IC 6-7-1.

*As added by P.L.160-2005, SEC.2.*

#### **IC 24-3-5-0.3**

##### **"Commission"**

Sec. 0.3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

*As added by P.L.160-2005, SEC.3.*

#### **IC 24-3-5-1**

##### **"Delivery sale"**

Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

- (1) electronically using a computer network (as defined in IC 35-43-2-3);
- (2) by mail; or
- (3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual or entity at a designated address.

*As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.4.*

#### **IC 24-3-5-1.5**

##### **"Distributor"**

Sec. 1.5. As used in this chapter, "distributor" includes the following:

- (1) A distributor as defined in IC 6-7-1-6.
- (2) A distributor as defined in IC 6-7-2-2.

*As added by P.L.160-2005, SEC.5.*

#### **IC 24-3-5-2**

##### **"Merchant"**

Sec. 2. As used in this chapter, "merchant" means a person or an entity that engages in the selling of tobacco products by delivery sale.

*As added by P.L.253-2003, SEC.1.*

#### **IC 24-3-5-3**

##### **"Tobacco product"**

Sec. 3. As used in this chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3. However, the term does not include a cigar or pipe tobacco.

*As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.6.*

#### **IC 24-3-5-4**

##### **Requirements**

Sec. 4. Subject to section 4.5 of this chapter, a merchant may not mail or ship cigarettes as part of a delivery sale unless, before mailing or shipping the cigarettes, the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing cigarettes by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the cigarette order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of cigarettes by delivery sale is a taxable event for purposes of IC 6-7-1;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

*As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.7.*

#### **IC 24-3-5-4.5**

##### **Delivery sale by merchant; penalties**

Sec. 4.5. (a) This section applies to a merchant that is not a

cigarette manufacturer.

(b) Except as provided in subsection (d), a merchant may not mail or ship cigarettes as part of a delivery sale to an Indiana resident or retailer (as defined in IC 24-3-2-2(d)) that is not a distributor.

(c) If the commission determines that a merchant has violated subsection (b):

(1) a distributor may not accept a shipment of cigarettes from the merchant for a period, not to exceed one (1) year, determined by the commission; and

(2) the commission may impose a civil penalty, not to exceed five thousand dollars (\$5,000), on the merchant for each violation of subsection (b), as determined by the commission.

(d) A merchant may make a drop shipment of tobacco products to an Indiana resident or retailer that is billed through a distributor.

*As added by P.L.160-2005, SEC.8.*

### **IC 24-3-5-5**

#### **Mailing or shipping tobacco products; requirements; penalties**

Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

**INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.**

(b) The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships



cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the cigarettes without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

*As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.9.*

#### **IC 24-3-5-6**

##### **Filing with department of state revenue; compliance**

Sec. 6. (a) A merchant shall, before mailing or shipping cigarettes as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships cigarettes as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the cigarettes were delivered.

(2) The brand name of the cigarettes that were delivered to the customer.

(3) The quantity of cigarettes that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

*As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.10.*

#### **IC 24-3-5-7**

##### **Pay taxes or provide notice; penalties**

Sec. 7. (a) A merchant who delivers cigarettes to a customer as

part of a delivery sale shall:

- (1) collect and pay all applicable taxes under IC 6-7-1; or
- (2) place a legible and conspicuous notice on the outside of the container in which the cigarettes are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these cigarettes have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these cigarettes, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

(b) For a violation of this section the commission may impose, in addition to any other remedies, civil penalties as follows:

- (1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).
- (2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).
- (3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).
- (4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).
- (5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

*As added by P.L.253-2003, SEC.1. Amended by P.L.97-2004, SEC.87; P.L.160-2005, SEC.11.*

## **IC 24-3-5-8**

### **Civil penalties**

Sec. 8. The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) on a:

- (1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or
- (2) merchant who sells cigarettes by delivery sale to a person less than eighteen (18) years of age.

The commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

*As added by P.L.253-2003, SEC.1. Amended by P.L.160-2005, SEC.12.*

**IC 24-3-5.2**

**Repealed**

*(Repealed by P.L.160-2005, SEC.18.)*

#### **IC 24-3-5.4**

##### **Chapter 5.4. Master Settlement Agreement Protection Act**

#### **IC 24-3-5.4-1**

##### **"Brand family"**

Sec. 1. As used in this chapter, "brand family" means cigarettes that are:

- (1) sold under the same trademark; and
- (2) differentiated from one another by means of modifiers such as menthol, lights, kings, or 100s.

The term includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification that is identical or similar to or identifiable with a previously known brand of cigarettes.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-2**

##### **"Cigarette"**

Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-3-5.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-3**

##### **"Commission"**

Sec. 3. As used in this chapter, "commission" means the alcohol and tobacco commission created by IC 7.1-2-1-1.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-4**

##### **"Department"**

Sec. 4. As used in this chapter, "department" means the department of state revenue.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-5**

##### **"Distributor"**

Sec. 5. As used in this chapter, "distributor" means a person that:

- (1) purchases cigarettes on which the tax under IC 6-7-1 is not paid; and
- (2) stores, sells, or otherwise disposes of the cigarettes.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-6**

##### **"Master settlement agreement"**

Sec. 6. As used in this chapter, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-7**

##### **"Nonparticipating manufacturer"**

Sec. 7. As used in this chapter, "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-8**

##### **"Participating manufacturer"**

Sec. 8. As used in this chapter, "participating manufacturer" has the meaning set forth in IC 24-3-3-12(1).

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-9**

##### **"Qualified escrow fund"**

Sec. 9. As used in this chapter, "qualified escrow fund" has the meaning set forth in IC 24-3-3-7.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-10**

##### **"Stamping agent"**

Sec. 10. As used in this chapter, "stamping agent" means a person that may affix a stamp to a package of cigarettes under IC 6-7-1-15.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-11**

##### **"Tobacco product manufacturer"**

Sec. 11. As used in this chapter, "tobacco product manufacturer" has the meaning set forth in IC 24-3-3-10.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-12**

##### **"Units sold"**

Sec. 12. As used in this chapter, "units sold" has the meaning set forth in IC 24-3-3-11.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-13**

##### **Tobacco product manufacturer certification; brand family list; maintenance of sales documentation by nonparticipating manufacturer**

Sec. 13. (a) Not later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in Indiana, whether directly or through a distributor, retailer, or similar intermediary, shall certify to the department and the attorney general that, as of the date of the certification, the tobacco product manufacturer is:

- (1) a participating manufacturer; or
- (2) in full compliance with IC 24-3-3.

The department shall prescribe the form of the certification.

(b) A participating manufacturer shall include in a certification under subsection (a) a list of the participating manufacturer's brand families. The participating manufacturer shall update the list by filing

a supplemental certification with the department and the attorney general not less than thirty (30) days before the participating manufacturer adds a brand family or otherwise modifies the list of brand families.

(c) A nonparticipating manufacturer shall include in a certification under subsection (a) a list of the nonparticipating manufacturer's brand families, including the following:

(1) A separate listing of each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(2) A separate listing of the number of units sold for each brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(3) An indication of any brand family that was sold in Indiana during the calendar year before the year in which the certification is filed and that is not sold in Indiana as of the date of the certification.

(4) The name and address of any other manufacturer of a brand family that was sold in Indiana during the calendar year before the year in which the certification is filed.

(d) A nonparticipating manufacturer shall file a supplemental certification with the attorney general not less than thirty (30) days before the nonparticipating manufacturer adds to or otherwise modifies its list of brand families.

(e) A nonparticipating manufacturer shall certify the following in a certification under subsection (a):

(1) The nonparticipating manufacturer:

(A) is registered to do business in Indiana; or

(B) has appointed an agent for service of process and provided notice under section 16 of this chapter.

(2) The nonparticipating manufacturer has:

(A) established and continues to maintain a qualified escrow fund; and

(B) executed a qualified escrow agreement that:

(i) the attorney general has approved; and

(ii) governs the qualified escrow fund.

(3) The nonparticipating manufacturer is in full compliance with:

(A) this section; and

(B) IC 24-3-3.

(4) The name, address, and telephone number of the financial institution that holds the nonparticipating manufacturer's qualified escrow fund.

(5) The account number and any subaccount numbers of the nonparticipating manufacturer's qualified escrow fund.

(6) The amounts and dates of deposits that the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Indiana during the calendar year before the year in which the certification is filed, including any verification required by the attorney general.

(7) The amounts and dates of withdrawals or transfers of funds that the nonparticipating manufacturer made from a qualified escrow fund into which the nonparticipating manufacturer made or makes escrow payments under IC 24-3-3.

(f) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification under subsection (a) unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the year in which the certification is filed in the volume and shares determined under the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is considered to be the nonparticipating manufacturer's cigarettes for purposes of IC 24-3-3-12(2).

(g) This section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of IC 24-3-3.

(h) A nonparticipating manufacturer shall maintain all invoices and documentation of sales and any other relevant information for a period of five (5) years unless otherwise required by law to maintain the invoices, documentation of sales, or other relevant information for more than five (5) years.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-14**

##### **Brand family directory; refunds**

Sec. 14. (a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on accessIndiana (as operated under IC 4-13.1-2) a directory listing all brand families listed in certifications filed under section 13 of this chapter.

(b) A directory described in subsection (a) shall not include the name or brand families of a nonparticipating manufacturer:

(1) that fails to comply with section 13 of this chapter; or

(2) whose certification fails to comply with section 13(c) or 13(e) of this chapter, unless the attorney general determines that the failure has been remedied.

(c) The directory may not include a tobacco product manufacturer or a brand family if the attorney general concludes that:

(1) in the case of a nonparticipating manufacturer, all escrow payments required under IC 24-3-3-12 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(2) all outstanding final judgments, including interest on the

judgments, for violations of IC 24-3-3 have not been fully satisfied for the tobacco product manufacturer or brand family.

(d) The attorney general shall update the directory as necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

(e) The attorney general shall post in the directory and transmit by electronic mail or other means to each distributor or stamping agent notice of any removal from the directory of a tobacco product manufacturer or brand family not later than thirty (30) days before the attorney general removes the tobacco product manufacturer or brand family from the directory.

(f) Unless otherwise provided in an agreement between a tobacco product manufacturer and a distributor or stamping agent, a distributor or stamping agent is entitled to a refund from a tobacco product manufacturer for any money paid by the distributor or stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that:

- (1) are in the possession of the distributor or stamping agent on;  
or
- (2) the distributor or stamping agent receives from a retailer after;

the date on which the tobacco product manufacturer or brand family is removed from the directory.

(g) Unless otherwise provided in an agreement between a retailer and a distributor, stamping agent, or tobacco product manufacturer, a retailer is entitled to a refund from a distributor, stamping agent, or tobacco product manufacturer for any money paid by the retailer to the distributor, stamping agent, or tobacco product manufacturer for any cigarettes of the tobacco product manufacturer or brand family that are in the possession of the retailer on the date on which the tobacco product manufacturer or brand family is removed from the directory.

(h) The attorney general shall not restore a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer pays a distributor, stamping agent, or retailer any refund due under subsection (f) or (g).

(i) A distributor or stamping agent shall provide and update as necessary an electronic mail address to the attorney general for purposes of receiving a notification required by this chapter.

*As added by P.L.252-2003, SEC.16. Amended by P.L.177-2005, SEC.44.*

#### **IC 24-3-5.4-15**

##### **Stamping, sale, or importation of unlisted cigarettes prohibited**

Sec. 15. A person may not:

- (1) affix a stamp to a package or other container of cigarettes;  
or
- (2) sell, offer or possess for sale, or import for personal consumption in Indiana cigarettes;



of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

*As added by P.L.252-2003, SEC.16. Amended by P.L.160-2005, SEC.13.*

#### **IC 24-3-5.4-16**

##### **Appointment of agent by foreign nonparticipating manufacturer; termination of agency**

Sec. 16. (a) A foreign nonparticipating manufacturer that has not registered to do business in Indiana shall, as a condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter, appoint and engage without interruption the services of an agent in Indiana to act as the foreign nonparticipating manufacturer's agent for the service of process. Service on an agent under this section constitutes legal and valid service of process on the foreign nonparticipating manufacturer that appointed and engaged the services of the agent. The foreign nonparticipating manufacturer shall provide the following information to the department and the attorney general:

- (1) The name, address, and telephone number of the agent.
- (2) Proof of the appointment of the agent.
- (3) The availability of the agent.
- (4) Any other information required by the department or the attorney general.

(b) A foreign nonparticipating manufacturer shall provide notice to the department and the attorney general not less than thirty (30) days before the foreign nonparticipating manufacturer terminates the authority of an agent appointed under this section. The foreign nonparticipating manufacturer shall provide proof to the satisfaction of the attorney general of the appointment of a new agent not less than five (5) days before the foreign nonparticipating manufacturer terminates an existing agency appointment.

(c) If an agent terminates an agency appointment, the foreign nonparticipating manufacturer shall:

- (1) notify the department and the attorney general of the termination not more than five (5) days after the termination; and
- (2) provide proof to the satisfaction of the attorney general of the appointment of a new agent.

(d) A foreign nonparticipating manufacturer that:

- (1) sells products in Indiana; and
- (2) has not appointed an agent under this section;

is considered to have appointed the secretary of state as the foreign nonparticipating manufacturer's agent. The appointment of the secretary of state under this subsection as the foreign nonparticipating manufacturer's agent does not satisfy the condition precedent to having the foreign nonparticipating manufacturer's brand families listed in a directory under section 14 of this chapter.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-17**

##### **Distributor or stamping agent required to send information to department, commission, and attorney general**

Sec. 17. (a) This section applies after July 31, 2003.

(b) Not later than January 20, April 20, July 20, and October 20 of a calendar year, or more frequently if ordered by the department, the commission, or the attorney general, a distributor or stamping agent shall submit the following information to the department, the commission, and the attorney general:

- (1) A list by brand family of the total number of cigarettes for which the distributor or stamping agent affixed stamps or otherwise paid taxes during the immediately preceding three (3) months.
- (2) Any other information required by the department or the attorney general.

The distributor or stamping agent shall maintain and make available to the department, the commission, and the attorney general for a period of five (5) years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information that the distributor or stamping agent relied on in reporting to the department, the commission, and the attorney general.

(c) The attorney general may require a distributor or a tobacco product manufacturer to submit additional information to determine whether a tobacco product manufacturer is in compliance with this chapter. The additional information may include samples of the packaging or labeling of each of the tobacco product manufacturer's brand families.

*As added by P.L.252-2003, SEC.16. Amended by P.L.160-2005, SEC.14.*

#### **IC 24-3-5.4-18**

##### **Disclosure and sharing of information among department, commission, and attorney general**

Sec. 18. The department and the commission shall disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing this chapter. The department, the commission, and the attorney general:

- (1) shall share with each other the information received under this chapter; and
- (2) may share the information received under this chapter with other federal, state, or local agencies only for purposes of enforcing this chapter or a corresponding law in another state.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-19**

##### **Proof of qualified escrow fund by nonparticipating manufacturer**

Sec. 19. The attorney general may require a nonparticipating manufacturer to provide from the financial institution that holds the nonparticipating manufacturer's qualified escrow fund for purposes

of complying with this chapter proof of:

- (1) the amount of money in the qualified escrow fund being held on behalf of the state;
- (2) the dates of any deposits into the qualified escrow fund; and
- (3) the dates and amounts of any withdrawals from the qualified escrow fund.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-20**

##### **Rules**

Sec. 20. The department or the attorney general may adopt rules under IC 4-22-2 to implement this chapter, including rules to:

- (1) require a tobacco product manufacturer subject to section 13(c) of this chapter to make required escrow deposits in installments during the calendar year in which the sales covered by the deposits are made; or
- (2) produce information sufficient to enable the attorney general to determine the adequacy of the amount of an installment deposit described in subdivision (1).

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-21**

##### **Revocation of suspension of distributor's license; penalty**

Sec. 21. (a) This section applies in addition to or instead of any other civil or criminal penalty.

(b) The department may revoke or suspend the license of a distributor, a stamping agent, or any other person that violates section 15 of this chapter.

(c) Each:

- (1) stamp affixed;
- (2) sale of cigarettes; or
- (3) offer or possession of cigarettes for sale;

in violation of section 15 of this chapter constitutes a separate violation.

(d) The department or the commission may impose a civil penalty that does not exceed the greater of:

- (1) five hundred percent (500%) of the retail value of the cigarettes sold; or
- (2) five thousand dollars (\$5,000);

for each violation of section 15 of this chapter.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-22**

##### **Seizure and forfeiture of unlisted cigarettes**

Sec. 22. Whenever the department or the commission discovers any cigarettes that have been sold, offered for sale, or possessed for sale in Indiana in violation of section 15 of this chapter, the department or the commission may seize and take possession of the cigarettes. The seized cigarettes shall be forfeited to the state. The department or the commission shall destroy the seized cigarettes.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-23**

##### **Injunction**

Sec. 23. The attorney general may seek an injunction to:

- (1) restrain a threatened or an actual violation of section 15 of this chapter by a stamping agent; and
- (2) compel the stamping agent to comply with sections 15, 17(b), and 17(c) of this chapter.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-24**

##### **Violation; Class C misdemeanor**

Sec. 24. (a) A person shall not:

- (1) sell or distribute; or
- (2) acquire, hold, own, possess, transport, import, or cause to be imported;

cigarettes that the person knows or should know are intended for distribution or sale in Indiana in violation of section 15 of this chapter.

(b) A person who violates this section commits a Class C misdemeanor.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-25**

##### **Unfair and deceptive business practice**

Sec. 25. A person who violates section 15 of this chapter engages in an unfair and deceptive business practice.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-26**

##### **Judicial review**

Sec. 26. A determination by the attorney general to not list in or to remove from a directory under section 14 of this chapter a brand family or a tobacco product manufacturer is subject to review only by the Marion County circuit court.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-27**

##### **Issuance of registration certificate**

Sec. 27. The department shall not issue a registration certificate under IC 6-7-1-16(a) to a distributor unless the distributor certifies in writing that the distributor will comply with this chapter.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-28**

##### **Recovery of costs**

Sec. 28. In an action brought by the state to enforce this chapter, the state may recover:

- (1) the costs of investigation;

- (2) expert witness fees;
- (3) the costs of the action; and
- (4) attorney's fees.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-29**

##### **Disgorged profits**

Sec. 29. If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the treasurer of state for deposit in the Indiana tobacco master settlement agreement fund under IC 4-12-1-14.3.

*As added by P.L.252-2003, SEC.16.*

#### **IC 24-3-5.4-30**

##### **Penalties deposited in enforcement and administration fund**

Sec. 30. All:

- (1) civil penalties imposed under; and
- (2) judgments for violations of;

this chapter shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

*As added by P.L.252-2003, SEC.16.*

**IC 24-3-6**

## Chapter 6. Contraband Cigarettes

**IC 24-3-6-1****"Commission"**

Sec. 1. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-2****"Distributor"**

Sec. 2. As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-3****"Importer"**

Sec. 3. As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-4****"Licensed"**

Sec. 4. As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-5****"Manufacturer"**

Sec. 5. As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-6****"Person"**

Sec. 6. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-7****"Retailer"**

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

*As added by P.L.160-2005, SEC.15.*

**IC 24-3-6-8****"Stamp"**

Sec. 8. As used in this chapter, "stamp" has the meaning set forth

in IC 6-7-1-9.

*As added by P.L.160-2005, SEC.15.*

#### **IC 24-3-6-9**

##### **Licenses; application, issuance, and renewal; revocation or suspension**

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 importer or manufacturer that conducts business in Indiana must apply under this section for a license for the importer's or manufacturer's principal place of business. An importer or manufacturer that is issued a license shall display the license at the importer's or manufacturer'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 not issue or renew a license under this section 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.

(f) The commission may revoke or suspend a license issued under this section if the applicant:

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

*As added by P.L.160-2005, SEC.15.*

#### **IC 24-3-6-10**

##### **Stamped and unstamped cigarettes**

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.

*As added by P.L.160-2005, SEC.15.*

#### **IC 24-3-6-11**

##### **Selling or obtaining cigarettes**

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

(b) A manufacturer that sells cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.

(c) A distributor may sell cigarettes only to a distributor or a retailer.

(d) A distributor may obtain cigarettes only from another distributor, a licensed importer, or a licensed manufacturer.

(e) Except as provided in subsection (f), a retailer may obtain cigarettes only from a distributor.

(f) A retailer that is a holder of a certificate issued under IC 7.1-3-18.5 may purchase up to one thousand dollars (\$1,000) of cigarettes per week from another retailer that holds a certificate issued under IC 7.1-3-18.5.

*As added by P.L.160-2005, SEC.15.*

### **IC 24-3-6-12**

#### **Reporting information by distributor to attorney general**

Sec. 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) A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:

- (1) The number and brand of cigarettes:
  - (A) distributed;
  - (B) shipped into Indiana; or
  - (C) shipped within Indiana;during the immediately preceding month.
- (2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

*As added by P.L.160-2005, SEC.15.*

### **IC 24-3-6-13**

#### **Documentation of transactions; preservation; review**

Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must include:

- (1) the name and address of the parties to the transaction; and
- (2) the quantity by brand style of cigarettes involved in the transaction.

(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.

(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.

(d) An importer or a manufacturer shall maintain documentation



under this section for five (5) years from the date of the transaction.

(e) The commission may:

- (1) obtain access to; and
- (2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

*As added by P.L.160-2005, SEC.15.*

#### **IC 24-3-6-14**

##### **Inspection by commission or law enforcement officer**

Sec. 14. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

*As added by P.L.160-2005, SEC.15.*

#### **IC 24-3-6-15**

##### **Civil penalty**

Sec. 15. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

- (1) five (5) times the value of the cigarettes involved in the violation; or
- (2) one thousand dollars (\$1,000).

(b) A civil penalty under this section is in addition to any other penalty imposed.

*As added by P.L.160-2005, SEC.15.*

#### **IC 24-3-6-16**

##### **Right of action; notice to attorney general**

Sec. 16. (a) Either or both of the following may bring an action to prevent or restrain violations of this chapter:

- (1) The attorney general or the attorney general's designee.
- (2) A person that holds a valid permit under 26 U.S.C. 5712.

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

*As added by P.L.160-2005, SEC.15.*