



February 17, 2015

SENATE BILL No. 463

DIGEST OF SB 463 (Updated February 12, 2015 2:46 pm - DI 55)

Citations Affected: IC 7.1-3; IC 24-3.

Synopsis: Cigarettes and tobacco sales. Prohibits the sale at retail of an electronic cigarette without a valid tobacco sales certificate issued by the alcohol and tobacco commission (commission). Amends the law on the qualified escrow fund for tobacco product manufacturers: (1) to exempt cigarettes sold on federal military installations and other state excise tax exempt cigarette sales from the definition of "units sold"; and (2) to require the department of state revenue (department) to adopt rules that are necessary to ascertain the number of units sold of a tobacco product manufacturer for each year regardless of whether the state excise tax was due or collected. Authorizes the department, the commission, and the attorney general to provide certain information to courts, arbitrators, and data clearinghouses for the purpose of making calculations under the tobacco master settlement agreement if a protective order is executed. Makes specified tobacco sales data that is provided by an outside party confidential. Prohibits the manufacture, sale, or distribution of: (1) a liquid or gel substance containing nicotine; or (2) a nicotine liquid container; unless the product is contained in child resistant packaging. Authorizes the commission to seize and destroy products sold or distributed in violation of this prohibition and to impose a civil penalty on a person who sells or distributes a product in violation of the prohibition. Limits the civil penalty to the greater of: (1) 500% of the retail value of the product sold or distributed; or (2) \$5,000.

Effective: July 1, 2015.

Miller Patricia, Merritt, Randolph

January 14, 2015, read first time and referred to Committee on Commerce & Technology.
February 16, 2015, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

SB 463—LS 7319/DI 104



February 17, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 463

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 7.1-3-18.5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) A person may not
3 sell or otherwise distribute in exchange for consideration a tobacco
4 product **or electronic cigarette** at retail without a valid tobacco sales
5 certificate issued by the commission.
6 (b) A certificate may be issued only to a person who owns or
7 operates at least one (1) of the following:
8 (1) A premises consisting of a permanent building or structure
9 where the tobacco product **or electronic cigarette** is sold or
10 distributed.
11 (2) A premises upon which a cigarette vending machine (as
12 defined by IC 35-43-4-7) is located.
13 SECTION 2. IC 24-3-3-11 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. (a) As used in this
15 chapter, "units sold" means the number of individual cigarettes sold in
16 Indiana by the applicable tobacco product manufacturer (whether

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1 directly or through a distributor, retailer, or similar intermediary or
 2 intermediaries) during the year in question. ~~as measured by excise~~
 3 ~~taxes collected by the state on packs (or "roll-your-own" tobacco~~
 4 ~~containers) bearing the excise tax stamp of the state.~~ The department
 5 of state revenue shall, in the manner provided by IC 4-22-2, adopt rules
 6 that are necessary to ascertain the amount of state excise tax paid on
 7 the cigarettes **number of units sold** of such tobacco product
 8 manufacturer for each year **regardless of whether the state excise tax**
 9 **was due or collected.**

10 **(b) The term does not include cigarettes sold on federal military**
 11 **installations or that are otherwise exempt from state excise tax**
 12 **under federal law.**

13 **(c) For purposes of this section, concerning cigarettes for which**
 14 **the state cigarette or other tobacco product tax is paid, the**
 15 **cigarettes shall be deemed as being sold in Indiana:**

16 **(1) upon the affixing of the state cigarette tax stamp; or**

17 **(2) for "roll your own" tobacco, when the state tax on other**
 18 **tobacco products is paid.**

19 SECTION 3. IC 24-3-5.4-18 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. **(a)** The department
 21 and the commission shall disclose to the attorney general any
 22 information received under this chapter and requested by the attorney
 23 general for purposes of determining compliance with and enforcing this
 24 chapter. The department, the commission, and the attorney general:

25 **(1) shall share with each other the information received under this**
 26 **chapter; and**

27 **(2) may share the information received under this chapter with**
 28 **other federal, state, or local agencies only for purposes of**
 29 **enforcing this chapter or a corresponding law in another state.**

30 **(b) Notwithstanding any other law:**

31 **(1) the department, the commission, or the attorney general**
 32 **may provide information received under section 17 of this**
 33 **chapter to a court, an arbitrator, or a data clearinghouse or**
 34 **similar entity:**

35 **(A) for the purposes of making calculations required by the**
 36 **master settlement agreement and related settlement**
 37 **agreements; and**

38 **(B) with counsel for the parties;**

39 **upon the execution of a protective order approved by the**
 40 **attorney general; and**

41 **(2) any tobacco sales data provided from an outside party and**
 42 **received under the master settlement agreement must be**



- 1 **treated as confidential under IC 5-14-3-4(a)(4) and**
 2 **IC 5-14-3-4(a)(5).**
 3 SECTION 4. IC 24-3-7 IS ADDED TO THE INDIANA CODE AS
 4 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2015]:
 6 **Chapter 7. Nicotine Liquid Container Packaging**
 7 **Sec. 1. This chapter does not apply to any product that:**
 8 **(1) has been approved or certified by the United States Food**
 9 **and Drug Administration for sale:**
 10 **(A) as a tobacco cessation product;**
 11 **(B) as a tobacco dependence product; or**
 12 **(C) for another medical purpose; and**
 13 **(2) is marketed and sold for an approved purpose referred to**
 14 **in subdivision (1)(A) through (1)(C).**
 15 **Sec. 2. As used in this chapter, "child resistant packaging"**
 16 **means packaging that:**
 17 **(1) is designed or constructed so that it is significantly difficult**
 18 **for children less than five (5) years of age to:**
 19 **(A) open the package; or**
 20 **(B) obtain a toxic or harmful amount of substance from**
 21 **within the package;**
 22 **within a reasonable time; but**
 23 **(2) is not difficult for adults to use properly.**
 24 **Sec. 3. As used in this chapter, "commission" refers to the**
 25 **alcohol and tobacco commission created by IC 7.1-2-1-1.**
 26 **Sec. 4. As used in this chapter, "electronic cigarette" means a**
 27 **device that is capable of providing an inhalable dose of nicotine by**
 28 **delivering a vaporized solution. The term includes the components**
 29 **and cartridges of an electronic cigarette.**
 30 **Sec. 5. (a) As used in this chapter, "electronic delivery device"**
 31 **means any product that:**
 32 **(1) contains or delivers nicotine, lobelia, or any other**
 33 **substance intended for human consumption; and**
 34 **(2) can be used by a person to simulate smoking in the**
 35 **delivery of nicotine, lobelia, or any other substance through**
 36 **inhalation of vapor from the product.**
 37 **(b) The term includes any component part of a product**
 38 **described in subsection (a), whether or not the component part is**
 39 **marketed or sold separately.**
 40 **Sec. 6. (a) As used in this chapter, "nicotine liquid container"**
 41 **means a bottle or other container that:**
 42 **(1) contains a nicotine liquid or another substance containing**



1 nicotine; and
2 (2) is sold, marketed, or intended for use with an electronic
3 cigarette or other electronic delivery device.
4 (b) The term does not include a container containing nicotine in
5 a cartridge that is sold, marketed, or intended for use with an
6 electronic cigarette if the cartridge:
7 (1) is prefilled and sealed by the manufacturer; and
8 (2) is not intended to be opened by the consumer.
9 Sec. 7. A person may not manufacture, sell, or distribute:
10 (1) a liquid or gel substance containing nicotine; or
11 (2) a nicotine liquid container;
12 unless the product is contained in child resistant packaging.
13 Sec. 8. (a) If the commission discovers any product sold or
14 distributed in violation of this chapter, the commission may seize
15 and take possession of the product. The commission shall destroy
16 products seized under this subsection.
17 (b) The commission may impose a civil penalty on any person
18 who sells or distributes a product in violation of this chapter.
19 However, the civil penalty may not exceed the greater of:
20 (1) five hundred percent (500%) of the retail value of the
21 product sold or distributed in violation of this chapter; or
22 (2) five thousand dollars (\$5,000).



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 463, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

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

"SECTION 1. IC 7.1-3-18.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) A person may not sell or otherwise distribute in exchange for consideration a tobacco product **or electronic cigarette** at retail without a valid tobacco sales certificate issued by the commission.

(b) A certificate may be issued only to a person who owns or operates at least one (1) of the following:

(1) A premises consisting of a permanent building or structure where the tobacco product **or electronic cigarette** is sold or distributed.

(2) A premises upon which a cigarette vending machine (as defined by IC 35-43-4-7) is located."

Page 1, line 6, delete "question," and insert "question."

Page 1, line 8, reset in roman "The department".

Page 1, reset in roman line 9.

Page 1, line 10, reset in roman "that are necessary to ascertain the".

Page 1, line 11, after "cigarettes" insert "**number of units sold**".

Page 1, line 11, reset in roman "of such tobacco product manufacturer for each year."

Page 1, line 11, delete "year." and insert "year".

Page 2, line 19, delete "IC 24-3-5.4-17" and insert "**section 17 of this chapter**".

Page 2, line 22, delete "agreement;" and insert "**agreement and related settlement agreements;**".

Page 2, after line 29, begin a new paragraph and insert:

"SECTION 4. IC 24-3-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 7. Nicotine Liquid Container Packaging

Sec. 1. This chapter does not apply to any product that:

(1) has been approved or certified by the United States Food and Drug Administration for sale:

(A) as a tobacco cessation product;



- (B) as a tobacco dependence product; or
 - (C) for another medical purpose; and
- (2) is marketed and sold for an approved purpose referred to in subdivision (1)(A) through (1)(C).

Sec. 2. As used in this chapter, "child resistant packaging" means packaging that:

- (1) is designed or constructed so that it is significantly difficult for children less than five (5) years of age to:
 - (A) open the package; or
 - (B) obtain a toxic or harmful amount of substance from within the package;within a reasonable time; but
- (2) is not difficult for adults to use properly.

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

Sec. 4. As used in this chapter, "electronic cigarette" means a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution. The term includes the components and cartridges of an electronic cigarette.

Sec. 5. (a) As used in this chapter, "electronic delivery device" means any product that:

- (1) contains or delivers nicotine, lobelia, or any other substance intended for human consumption; and
- (2) can be used by a person to simulate smoking in the delivery of nicotine, lobelia, or any other substance through inhalation of vapor from the product.

(b) The term includes any component part of a product described in subsection (a), whether or not the component part is marketed or sold separately.

Sec. 6. (a) As used in this chapter, "nicotine liquid container" means a bottle or other container that:

- (1) contains a nicotine liquid or another substance containing nicotine; and
- (2) is sold, marketed, or intended for use with an electronic cigarette or other electronic delivery device.

(b) The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use with an electronic cigarette if the cartridge:

- (1) is prefilled and sealed by the manufacturer; and
- (2) is not intended to be opened by the consumer.

Sec. 7. A person may not manufacture, sell, or distribute:

- (1) a liquid or gel substance containing nicotine; or



(2) a nicotine liquid container;
unless the product is contained in child resistant packaging.

Sec. 8. (a) If the commission discovers any product sold or distributed in violation of this chapter, the commission may seize and take possession of the product. The commission shall destroy products seized under this subsection.

(b) The commission may impose a civil penalty on any person who sells or distributes a product in violation of this chapter. However, the civil penalty may not exceed the greater of:

- (1) five hundred percent (500%) of the retail value of the product sold or distributed in violation of this chapter; or**
- (2) five thousand dollars (\$5,000)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 463 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 8, Nays 2.

