

#### **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"**

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"**

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"**

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"**

Sec. 5. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-31.5-2-185.

*As added by P.L.21-2000, SEC.10. Amended by P.L.114-2012, SEC.47.*

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

**"Manufacturer"**

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"**

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 Version a**

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

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

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 24-3-4-17 Version b**

**Penalty**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

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 Level 6 felony.

*As added by P.L.21-2000, SEC.10. Amended by P.L.1-2001, SEC.29; P.L.158-2013, SEC.271.*