

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 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.