

SENATE BILL No. 180

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1-2; IC 24-3-2-2.

Synopsis: Taxation of brown cigarettes. Amends the definition of "cigarettes" for purposes of the cigarette tax and cigarette minimum pricing to include tobacco products commonly known as brown cigarettes or little cigars.

Effective: July 1, 2016.

Miller Pete

January 6, 2016, read first time and referred to Committee on Commerce & Technology.



Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 180

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

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

1 SECTION 1. IC 6-7-1-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2016]: Sec. 2. Unless the context requires
3 otherwise, "cigarette" shall mean and include any roll for smoking:
4 (1) made wholly or in part of tobacco, irrespective of size or shape
5 and irrespective of tobacco being flavored, adulterated, or mixed
6 with any other ingredient, where such roll has a wrapper or cover
7 made of paper or any other material; **or**
8 (2) **wrapped in a substance containing tobacco, and weighing**
9 **not more than four and one-half (4.5) pounds per thousand**
10 **(1,000), which, because of:**
11 (A) **its appearance;**
12 (B) **the type of tobacco used in its filler; or**
13 (C) **its packaging, pricing, marketing, or labeling;**
14 **is likely to be offered to, or purchased by, consumers as a**
15 **cigarette. The term does not include a roll for smoking that is**
16 **wrapped in whole tobacco leaf and does not have a cellulose**
17 **acetate or other cigarette-like filter.**



1 ~~Provided~~ The definition in this section shall not be construed to include
 2 cigars, **except for items that meet the definition set forth in**
 3 **subdivision (2)**. Excepting where context clearly shows that cigarettes
 4 alone are intended, the term "cigarettes" shall mean and include
 5 cigarettes, cigarette papers or wrappers, and tubes upon which a tax is
 6 imposed by sections 12 and 13 of this chapter.

7 SECTION 2. IC 24-3-2-2, AS AMENDED BY P.L.213-2015,
 8 SECTION 251, IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2016]: Sec. 2. Unless the context in this chapter
 10 requires otherwise, the term:

11 (a) "Cigarette" shall mean and include any roll for smoking:

12 (1) made wholly or in part of tobacco, irrespective of size or shape
 13 and irrespective of tobacco being flavored, adulterated, or mixed
 14 with any other ingredient, where such roll has a wrapper or cover
 15 made of paper or any other material; or

16 (2) **wrapped in a substance containing tobacco, and weighing**
 17 **not more than four and one-half (4.5) pounds per thousand**
 18 **(1,000), which, because of:**

19 (A) its appearance;

20 (B) the type of tobacco used in its filler; or

21 (C) its packaging, pricing, marketing, or labeling;

22 **is likely to be offered to, or purchased by, consumers as a**
 23 **cigarette. The term does not include a roll for smoking that is**
 24 **wrapped in whole tobacco leaf and does not have a cellulose**
 25 **acetate or other cigarette-like filter.**

26 ~~provided~~ The definition in this paragraph shall not be construed to
 27 include cigars, **except for items that meet the definition set forth in**
 28 **subdivision (2)**.

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

40 (c) "Distributor" shall mean and include every person who sells,
 41 barterers, exchanges, or distributes cigarettes in the state of Indiana to
 42 retail dealers for the purpose of resale, or who purchases for resale



1 cigarettes from a manufacturer of cigarettes or from a wholesaler,
2 jobber, or distributor outside the state of Indiana who is not a
3 distributor holding a registration certificate issued under the provisions
4 of IC 6-7-1.

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

9 (e) "Sell at retail", "sale at retail", and "retail sales" shall mean and
10 include any transfer of title to cigarettes for a valuable consideration
11 made in the ordinary course of trade or usual conduct of the seller's
12 business to the purchaser for consummation or use.

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

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

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

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



1 percent (12%) of the basic cost of cigarettes to the retailer. In the
2 absence of proof of a lesser or higher cost of doing business, the cost
3 of doing business by the retailer, who in connection with the retailer's
4 purchase receives not only the discounts ordinarily allowed upon
5 purchases by a retailer, but also, in whole or in part, the discounts
6 ordinarily allowed upon purchases by a distributor, shall be presumed
7 to be twelve percent (12%) of the sum of the basic cost of cigarettes
8 plus the cost of doing business by the distributor.

9 (j) "Cost to the distributor" shall mean the basic cost of cigarettes to
10 the distributor, plus the cost of doing business by the distributor as
11 evidenced by the standards and methods of accounting regularly
12 employed by him in his allocation of overhead costs and expenses, paid
13 or incurred, and must include without limitation labor costs (including
14 salaries of executives and officers), rent, depreciation, selling costs,
15 maintenance of equipment, delivery costs, all types of licenses, taxes,
16 insurance, and advertising. In the absence of proof of a lesser or higher
17 cost of doing business by the distributor making the sale, the cost of
18 doing business by the wholesaler shall be presumed to be four percent
19 (4%) of the basic cost of cigarettes to the distributor, plus cartage to the
20 retail outlet, if performed or paid for by the distributor, which cartage
21 cost, in the absence of proof of a lesser or higher cost, shall be deemed
22 to be one-half of one percent (0.5%) of the basic cost of cigarettes to
23 the distributor.

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

