



Reprinted
April 14, 2009

ENGROSSED HOUSE BILL No. 1271

DIGEST OF HB 1271 (Updated April 13, 2009 7:11 pm - DI 106)

Citations Affected: IC 6-2.5; IC 24-4.

Synopsis: Retail consignment sales. Provides that if a person delivers an item with a value of at least \$50 to a retail merchant for exhibition or sale on commission, the item is considered to be for sale on consignment unless the person is paid in full upon delivery. Provides that the item and the proceeds due the consignor from the sale of the item are property held in trust for the consignor by the retail merchant and are not subject to seizure or encumbrance by a creditor of the retail merchant. Permits a retail merchant to accept an item for consignment only if a written contract containing certain provisions is executed. Specifically exempts items sold at auction from the non-tax provisions of this act, and specifies that if a provision of this act conflicts with the Uniform Commercial Code (UCC), the UCC controls. Requires a retail merchant that is a consignee to collect and remit the state gross retail tax on the gross retail income received in a consignment sale. Requires the retail merchant to provide a consignor customer an invoice that shows that the state gross retail tax was paid to the consignee retail merchant with a clear notation on the invoice that the item was a consignment sale by the retail merchant on behalf of the seller to the purchaser.

Effective: July 1, 2009.

Pelath, Koch, Reske, Foley
(SENATE SPONSORS — BUCK, LUBBERS, SIMPSON)

January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.
January 22, 2009, reported — Do Pass.
January 26, 2009, read second time, ordered engrossed. Engrossed.
January 27, 2009, read third time, passed. Yeas 97, nays 0.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
April 9, 2009, amended, reported favorably — Do Pass.
April 13, 2009, read second time, amended, ordered engrossed.

EH 1271—LS 6353/DI 44+



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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1271

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 6-2.5-6-17 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 17. (a) A retail merchant that is a consignee in a retail
4 transaction shall collect and remit the state gross retail tax on the
5 gross retail income received in a consignment sale.**

6 **(b) The retail merchant shall provide the consignor purchaser
7 an invoice that shows that the state gross retail tax was paid to the
8 retail merchant with a clear notation on the invoice that the item
9 was a consignment sale by the retail merchant on behalf of (insert
10 the name of the seller) to (insert the name of the purchaser).**

11 SECTION 2. IC 24-4-17 IS ADDED TO THE INDIANA CODE AS
12 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2009]:

14 **Chapter 17. Retail Consignment Sales**

15 **Sec. 1. (a) Except as provided in subsections (b) through (d), this
16 chapter applies to an item delivered to a retail merchant after June
17 30, 2009.**

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1 (b) This chapter does not apply to an item that has a value less
2 than fifty dollars (\$50).

3 (c) This chapter does not apply to an item offered at auction, or
4 held by an auctioneer before or after being offered at auction.

5 (d) If a provision of this chapter conflicts with the Uniform
6 Commercial Code (IC 26-1), the Uniform Commercial Code
7 controls with respect to that provision.

8 Sec. 2. As used in this chapter, "bona fide purchaser" means a
9 person who in good faith makes a purchase without notice of any
10 outstanding rights of others.

11 Sec. 3. As used in this chapter, "claim" means a right to
12 payment, whether or not the right is reduced to judgment,
13 liquidated, fixed, matured, disputed, secured, legal, or equitable.
14 The term includes costs of collection and attorney's fees only to the
15 extent that the laws of Indiana permit the holder of the claim to
16 recover them in an action against the obligor.

17 Sec. 4. As used in this chapter, "commission" means the fee that
18 a consignor and a retail merchant have agreed that the retail
19 merchant may retain after the sale of the consignor's item to a
20 third party. The term includes any form of compensation,
21 including a percentage of the actual selling price of an item.

22 Sec. 5. As used in this chapter, "creditor" means a person who
23 has a claim.

24 Sec. 6. As used in this chapter, "on consignment" means that no:

- 25 (1) title to;
- 26 (2) estate in; or
- 27 (3) right to possession of;

28 an item superior to that of the consignor vests in the consignee,
29 even if the consignee has the authority to transfer the consignor's
30 right, title, and interest in the work of art to a third party.

31 Sec. 7. As used in this chapter, "retail merchant" means a retail
32 merchant making a retail transaction as described in IC 6-2.5-4-1.

33 Sec. 8. (a) When a person delivers an item to a retail merchant
34 for the purpose of:

- 35 (1) sale;
- 36 (2) exhibition; or
- 37 (3) sale and exhibition;

38 for a commission, the delivery to and acceptance of the item by the
39 retail merchant places the item on consignment, unless the delivery
40 is under an outright sale for which the person receives full
41 compensation for the item upon delivery.

42 (b) A retail merchant described in subsection (a) is the agent of

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1 the person with respect to an item described in subsection (a).
 2 (c) An item described in subsection (a) is trust property and the
 3 retail merchant is trustee for the benefit of the person until the
 4 item is sold to a bona fide purchaser or returned to the person.
 5 (d) Except as provided in subsection (e), this subsection does not
 6 apply to a deposit placed by a customer on an item. The proceeds
 7 of the sale of an item described in subsection (a) are trust property.
 8 The retail merchant is trustee for the benefit of the person until the
 9 amount due the person from the sale is paid in full. Unless the
 10 retail merchant and the person expressly agree otherwise in
 11 writing:
 12 (1) a retail merchant shall pay the person the proceeds of the
 13 sale of an item not later than thirty (30) days after the retail
 14 merchant receives the payment; and
 15 (2) if the sale of the item is on installment, the retail merchant
 16 shall first apply funds from an installment to pay any balance
 17 due to the person on the sale.
 18 The terms of an express written agreement that alters a provision
 19 set forth in subdivision (1) or (2) must be clear and conspicuous.
 20 (e) If:
 21 (1) a customer who has placed a deposit on an item purchases
 22 the item; and
 23 (2) the customer's deposit is used in whole or in part to pay
 24 for the item;
 25 the deposit shall be treated in accordance with subsection (d).
 26 (f) Except as provided in subsection (g), if an item is lost or
 27 damaged while in the possession of a retail merchant, the retail
 28 merchant is strictly liable for the loss or damage in an amount
 29 equal to the value of the item as set forth in section 11(a)(1) of this
 30 chapter.
 31 (g) A retail merchant is not liable for the loss of or damage to an
 32 item in the retail merchant's possession if:
 33 (1) the loss or damage occurs more than thirty (30) days after:
 34 (A) the date by which the person must remove the item, as
 35 specified in a written agreement between the retail
 36 merchant and the person; or
 37 (B) the date on which the retail merchant sends written
 38 notice to the person by registered mail at the person's last
 39 known address that the person must remove the item, if a
 40 written agreement described in clause (A) does not exist;
 41 and
 42 (2) the item was in the retail merchant's possession at the time

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1 of the loss or damage because the person failed to remove the
2 item.

3 Sec. 9. (a) If a item is trust property under section 8 of this
4 chapter when a retail merchant initially receives it, the item
5 remains trust property until the balance due the consignor from
6 the sale of the item is paid in full, even if the retail merchant
7 directly or indirectly purchases the item for the retail merchant's
8 own account.

9 (b) If an retail merchant resells an item described in subsection
10 (a) to a bona fide purchaser before the consignor has been paid in
11 full, the item ceases to be trust property and the proceeds of the
12 resale are trust funds in the hands of the retail merchant for the
13 benefit of the consignor to the extent necessary to pay any balance
14 due the consignor. The trusteeship of the proceeds continues until
15 the fiduciary obligation of the retail merchant with respect to the
16 transaction is discharged in full.

17 Sec. 10. Trust property under section 10 or 11 of this chapter is
18 not subject to a claim, lien, or security interest of a creditor of the
19 retail merchant.

20 Sec. 11. (a) A retail merchant may accept an item for
21 commission on consignment from a person only if, not later than
22 seven (7) days after accepting the item, the retail merchant enters
23 into a written contract with the person that specifies the following:

- 24 (1) The value of the item.
- 25 (2) The time within which the proceeds from the sale must be
- 26 paid to the consignor if the item is sold.
- 27 (3) The commission the retail merchant is to receive if the
- 28 item is sold.
- 29 (4) The minimum price for the sale of the item.
- 30 (5) Any discounts ordinarily given by the retail merchant in
- 31 the regular course of business.

32 (b) If a consignor violates this section, the consignor may bring
33 an action in a court with jurisdiction to void the consignor's
34 contractual obligations to the retail merchant. A retail merchant
35 who violates this section is liable to the consignor in an amount
36 equal to:

- 37 (1) fifty dollars (\$50);
- 38 (2) any actual, consequential, or incidental damages sustained
- 39 by the consignor because of the violation of this section; and
- 40 (3) reasonable attorney's fees.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1271, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

VANDENBURGH, Chair

Committee Vote: yeas 12, nays 0.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1271, 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 6-2.5-6-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 17. (a) A retail merchant that is a consignee in a retail transaction shall collect and remit the state gross retail tax on the gross retail income received in a consignment sale.**

(b) The retail merchant shall provide the consignor purchaser an invoice that shows that the state gross retail tax was paid to the retail merchant with a clear notation on the invoice that the item was a consignment sale by the retail merchant on behalf of (insert the name of the seller) to (insert the name of the purchaser)."

Page 1, line 5, delete "This" and insert "**(a) Except as provided in subsection (b), this**".

Page 1, between lines 6 and 7, begin a new paragraph and insert:

"(b) This chapter does not apply to a work of art that has a value less than fifty dollars (\$50)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1271 as printed January 23, 2009.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 1.

EH 1271—LS 6353/DI 44+

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1271 be amended to read as follows:

Page 1, line 14, delete "Art Dealers and Consignment of Art" and insert "**Retail Consignment Sales**".

Page 1, line 15, delete "subsection" and insert "**subsections**".

Page 1, line 15, after "(b)" insert "**through (d)**".

Page 1, line 16, delete "works of art" and insert "**an item**".

Page 1, line 16, delete "an art dealer" and insert "**a retail merchant**".

Page 2, line 1, delete "a work of art" and insert "**an item**".

Page 2, delete lines 3 through 9, begin a new paragraph, and insert: "**(c) This chapter does not apply to an item offered at auction, or held by an auctioneer before or after being offered at auction.**

(d) If a provision of this chapter conflicts with the Uniform Commercial Code (IC 26-1), the Uniform Commercial Code controls with respect to that provision.

Page 2, line 10, delete "Sec. 4." and insert "**Sec. 2.**".

Page 2, line 13, delete "Sec. 5." and insert "**Sec. 3.**".

Page 2, line 19, delete "Sec. 6." and insert "**Sec. 4.**".

Page 2, line 20, delete "an artist and an art dealer" and insert "**a consignor and a retail merchant**".

Page 2, line 20, delete "the art dealer" and insert "**the retail merchant**".

Page 2, line 21, delete "artist's work of art" and insert "**consignor's item**".

Page 2, line 23, delete "a work of art" and insert "**an item**".

Page 2, line 24, delete "Sec. 7." and insert "**Sec. 5.**".

Page 2, line 26, delete "Sec. 8." and insert "**Sec. 6.**".

Page 2, line 30, delete "a work of art" and insert "**an item**".

Page 2, delete lines 34 through 42, begin a new paragraph, and insert:

"Sec. 7. As used in this chapter, "retail merchant" means a retail merchant making a retail transaction as described in IC 6-2.5-4-1."

Delete page 3, begin a new paragraph, and insert:

"Sec. 8. (a) When a person delivers an item to a retail merchant for the purpose of:

- (1) sale;**
- (2) exhibition; or**
- (3) sale and exhibition;**

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for a commission, the delivery to and acceptance of the item by the retail merchant places the item on consignment, unless the delivery is under an outright sale for which the person receives full compensation for the item upon delivery.

(b) A retail merchant described in subsection (a) is the agent of the person with respect to an item described in subsection (a).

(c) An item described in subsection (a) is trust property and the retail merchant is trustee for the benefit of the person until the item is sold to a bona fide purchaser or returned to the person.

(d) Except as provided in subsection (e), this subsection does not apply to a deposit placed by a customer on an item. The proceeds of the sale of an item described in subsection (a) are trust property. The retail merchant is trustee for the benefit of the person until the amount due the person from the sale is paid in full. Unless the retail merchant and the person expressly agree otherwise in writing:

- (1) a retail merchant shall pay the person the proceeds of the sale of an item not later than thirty (30) days after the retail merchant receives the payment; and
- (2) if the sale of the item is on installment, the retail merchant shall first apply funds from an installment to pay any balance due to the person on the sale.

The terms of an express written agreement that alters a provision set forth in subdivision (1) or (2) must be clear and conspicuous.

(e) If:

- (1) a customer who has placed a deposit on an item purchases the item; and
- (2) the customer's deposit is used in whole or in part to pay for the item;

the deposit shall be treated in accordance with subsection (d).

(f) Except as provided in subsection (g), if an item is lost or damaged while in the possession of a retail merchant, the retail merchant is strictly liable for the loss or damage in an amount equal to the value of the item as set forth in section 11(a)(1) of this chapter.

(g) A retail merchant is not liable for the loss of or damage to an item in the retail merchant's possession if:

- (1) the loss or damage occurs more than thirty (30) days after:
 - (A) the date by which the person must remove the item, as specified in a written agreement between the retail merchant and the person; or
 - (B) the date on which the retail merchant sends written

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notice to the person by registered mail at the person's last known address that the person must remove the item, if a written agreement described in clause (A) does not exist; and

(2) the item was in the retail merchant's possession at the time of the loss or damage because the person failed to remove the item."

Page 4, delete lines 1 through 32.

Page 4, line 33, delete "Sec. 11." and insert "**Sec. 9.**"

Page 4, line 33, delete "work of art" and insert "**item**".

Page 4, line 33, delete "10" and insert "**8**".

Page 4, line 34, delete "an art dealer" and insert "**a retail merchant**".

Page 4, line 34, delete "work of art" and insert "**item**".

Page 4, line 35, delete "artist" and insert "**consignor**".

Page 4, line 36, delete "work of art" and insert "**item**".

Page 4, line 36, delete "art dealer" and insert "**retail merchant**".

Page 4, line 37, delete "work of art" and insert "**item**".

Page 4, line 37, delete "art dealer's" and insert "**retail merchant's**".

Page 4, line 39, delete "art dealer" and insert "**retail merchant**".

Page 4, line 39, delete "a work of art" and insert "**an item**".

Page 4, line 40, delete "artist" and insert "**consignor**".

Page 4, line 41, delete "work of art" and insert "**item**".

Page 4, line 42, delete "art dealer" and insert "**retail merchant**".

Page 5, line 1, delete "artist" and insert "**consignor**".

Page 5, line 2, delete "artist." and insert "**consignor.**".

Page 5, line 3, delete "art dealer" and insert "**retail merchant**".

Page 5, line 5, delete "Sec. 12." and insert "**Sec. 10.**".

Page 5, delete lines 7 through 41 and insert:

"retail merchant.

Sec. 11. (a) A retail merchant may accept an item for commission on consignment from a person only if, not later than seven (7) days after accepting the item, the retail merchant enters into a written contract with the person that specifies the following:

- (1) The value of the item.**
- (2) The time within which the proceeds from the sale must be paid to the consignor if the item is sold.**
- (3) The commission the retail merchant is to receive if the item is sold.**
- (4) The minimum price for the sale of the item.**
- (5) Any discounts ordinarily given by the retail merchant in the regular course of business.**

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(b) If a consignor violates this section, the consignor may bring an action in a court with jurisdiction to void the consignor's contractual obligations to the retail merchant. A retail merchant who violates this section is liable to the consignor in an amount equal to:

- (1) fifty dollars (\$50);**
- (2) any actual, consequential, or incidental damages sustained by the consignor because of the violation of this section; and**
- (3) reasonable attorney's fees."**

(Reference is to EHB 1271 as printed April 10, 2009.)

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