

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.

## HOUSE ENROLLED ACT No. 1271

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AN ACT to amend the Indiana Code concerning trade regulation.

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

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).**

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

**Chapter 17. Retail Consignment Sales**

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

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

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

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(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.

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

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

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

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

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

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

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

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.

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;

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.

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**(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 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.**

**Sec. 9. (a) If a item is trust property under section 8 of this chapter when a retail merchant initially receives it, the item**

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remains trust property until the balance due the consignor from the sale of the item is paid in full, even if the retail merchant directly or indirectly purchases the item for the retail merchant's own account.

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

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

(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.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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