

INSIDE THIS ISSUE:



- Page 1: 2009 - A YEAR IN REVIEW
- Page 2-3: PACT ACT
- Page 4: FDA WARNING RE ILLIEGAL CIGARETTES
- Page 5: DATES TO REMEMBER plus UPDATE ON SMOKING BAN
- Page 6: WHY TAXES HURT DISTRIBUTORS AND RETAILERS
- Page 7: CONSUMERS TEA-ING UP

NEXT IWDA BOARD MEETING

December 4, 2009
11:30 am

Sheraton Hotel & Suites
Keystone at the Crossing
Indianapolis, IN



IWDA UPDATE

FALL 2009

2009 - A YEAR IN REVIEW

LEGISLATION AND TAXES



INDIANA - Summary: *The Indiana legislative session ended for the year without passing a smokefree air law. A clean smokefree air bill HB 1213 was introduced into the House this year. While in committee the bill was weakened. The amended bill was successfully defeated.*

Another potential challenge that IWDA and the retail community were able to “snuff” out early was a **proposal to expand the prohibition of selling cigarettes through a self service display to other tobacco products including cigars, snuff, pipe tobacco and chewing tobacco.** This was not a new issue in 2009 and will likely be back in 2010 as well.

NO SMOKING IN
PUBLIC PLACES

BILL DEFEATED

“WILL BE BACK
IN 2010.”

Likewise, IWDA guarded against any attempts to **eliminate the wholesale tobacco minimum pricing law.** The bill was proposed during the 2008 session and we were very concerned that it would reappear during the regular session. However, **the bill was not introduced and there was no significant attempt to insert it during the conference committee period.**

Language appeared in the House Budget Bill requiring the Department of Revenue to conduct a study of tobacco stamp technologies and to adopt a version for Indiana. In IWDA’s opinion the language in the bill would predispose Revenue to select the California type stamps for Indiana. A move that would require IWDA members to purchase new stamping equipment and increase their expenses considerably. We developed alternative language that included compensating tobacco stamp wholesalers for the cost of new equipment if such a system were implemented. **Because of the issues raised by IWDA the language requiring the study was removed in the Senate.**

September 2009: *The Indiana Department of Revenue and the ATC met at Eby Brown in Plainfield to discuss industry concerns*





over tobacco stamp payment methods, stamp redesign, OTP tax collection enforcement, stamping allowance credits and bad debt credits. These issues are ongoing, however significant progress is being made. IWDA is protecting the membership's interests on a very proactive basis.

May 21, 2009: Introduced. Bill S 1147: *Prevent All Cigarette Trafficking Act of 2009 or PACT Act - Amends the Jenkins Act to:*

- (1) include smokeless tobacco as a regulated substance;
- (2) impose shipping and recordkeeping requirements on delivery sellers (sellers using the telephone, mails, or the Internet) of cigarettes and smokeless tobacco;
- (3) require common carriers of cigarette products to obtain age and identity verification upon delivery of such products;
- (4) require the Attorney General to compile and publish a list of delivery sellers of cigarettes or smokeless tobacco who have not complied with the registration or other requirements of such Act;
- (5) increase criminal penalties and impose new civil penalties for violations of this Act; and
- (6) grant jurisdiction to U.S. district courts to prevent and restrain violations of this Act and direct the Attorney General to administer and enforce this Act. Amends the federal criminal code to:
 - (1) treat cigarettes and smokeless tobacco as nonmailable and prohibit such items from being deposited in or carried through the U.S. mails (with specified exceptions, including for mailings for consumer testing); and
 - (2) authorize officers of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to enter the premises of certain cigarette shippers to inspect records and inventories. Prohibits a tobacco product manufacturer or importer from selling or delivering in states cigarettes not in compliance with model or qualifying state statutes. Limits the applicability of this Act with respect to Indian tribes and certain tribal matters. Directs the ATF Director to create regional contraband tobacco trafficking teams and a Tobacco Intelligence Center to monitor and coordinate tobacco diversion investigations. Expresses the sense of Congress with respect to the precedential effect of this Act.



MAIL - PHONE - EMAIL CONTACT INFORMATION FOR INDIANA'S SENATORS

SAMPLE PACT ACT LETTER

United State Senator Evan Bayh
131 Russell Senate Office Building
Washington, DC 20510
Fax: (202) 224-5623

United State Senator Dick Lugar
306 Hart Senate Office Building
Washington, DC 20510
Fax: (202) 228-0360

---Your Company Letterhead---

Date

The Honorable _____
United States Senate
Address
Washington, DC 20510

Fax: (202) 228-1377

Dear Senator :

I am writing to seek your support and co-sponsorship of a piece of legislation that is important to the Indiana Wholesale Distributors Association (IWDA). I am referring to the Prevent All Cigarette Trafficking Act of 2009, S. 1147 (PACT Act).

Illegal sales of tobacco products are costing our nation and states billions in lost revenue. Increases in federal and state government excise taxes has resulted in an explosion of illegal tobacco product sales over the Internet and such purchases are evading federal, state and local taxes.

Here's an example of how serious the problem has become. In 2000 there were only about 40 domestic Internet sellers of cigarettes, but by 2006 there were more than 770 websites selling cigarettes to U.S. smokers and nearly half of these sites were based outside the United States. Additionally, there has been a huge expansion in the area of Native American tribal Internet retailers, to the point that they are now considered to be a majority of the Internet sellers in operation today. Most, if not all of these sales, are avoiding state and local taxes.

Fortunately, the PACT Act closes a number of gaps in the federal law The Jenkins Act, regulating remote or delivery sales of cigarettes and smokeless tobacco products.

The IWDA is a statewide trade association which has served the wholesale tobacco distributors and vendors of Indiana for over half a century. Our members represent the legitimate channels of distribution for cigarettes and smokeless tobacco. Therefore, we seek your support and co-sponsorship of the PACT Act of 2009 to further protect our legitimate channels of distribution.

Sincerely,

Your Name
Title

November 7, 2009: *Gov. Mitch Daniels had two words Friday for Indiana casinos seeking tax breaks to ward off new competitors in Ohio: Forget it.*

November 9, 2009: *FDA Warns Companies Against Marketing Illegal Flavored Cigarettes*

The U.S. Food and Drug Administration is enforcing the flavored cigarette ban provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) by issuing several warning letters to companies continuing to sell illegal flavored cigarettes to consumers in the United States through their Web sites.

The warning letters directed the companies to cease the marketing and sale of these products immediately or to take other appropriate action to bring the products into compliance with the law. Failure to do so may result in additional regulatory actions such as seizure or injunction. In addition, FDA requested a written response from each of the companies within 15 days outlining the corrective actions taken.

Enforcement of the flavored cigarette ban is FDA's effort to remove cigarettes that contain certain candy or fruit flavors from the marketplace. Removal of these products from the market will assist in the prevention of children and adolescents from starting to smoke and in the reduction in death and disease caused by smoking.

"FDA takes the enforcement of this flavored cigarette ban seriously," said Lawrence R. Deyton, M.S.P.H, M.D., director of FDA's Center for Tobacco Products. These actions should send a clear message to those who continue to break the law that FDA will take necessary actions to protect our children from initiating tobacco use."

The Tobacco Control Act, which was passed by Congress and signed by the President in June 2009, specifically called for a ban on cigarettes containing certain characterizing flavors. On Sept. 14, 2009, FDA sent a letter to regulated industry reminding them that the ban would go into effect on Sept. 22, 2009. FDA also stated in the letter that any company who continued to sell such products after the Sept. 22, 2009, effective date may be subject to FDA enforcement actions.

Since the effective date of the ban, FDA has examined products offered for import and searched the Internet to identify illegal products. As a result, FDA issued several warning letters to companies and Web sites that continued to market and sell these illegal products over the Internet to consumers in the United States. The warning letters were the result of Internet searches conducted by FDA's Office of Enforcement and the Center for Tobacco Products.

FDA posted the warning letters that detail the offending websites and flavored cigarette products on the agency's Web site. Review warning letters issued by FDA.

Report possible violations of the flavored cigarette ban.

Source: **U.S. Food and Drug Administration**

UPDATE ON STATEWIDE SMOKING BANS - WHERE INDIANA FITS IN

November 12, 2009: Mayor Greg Ballard appeared on Eyewitness News Sunrise saying he'll veto a ban if it's passed by the City-County Council.

When asked if he would veto the ban, Ballard responded, "Depending on what the version is, but any version that I think they're currently contemplating right now, yes."

Ballard says he's concerned an expanded smoking ban could hurt some small businesses. He says he doesn't like any of the current proposals.

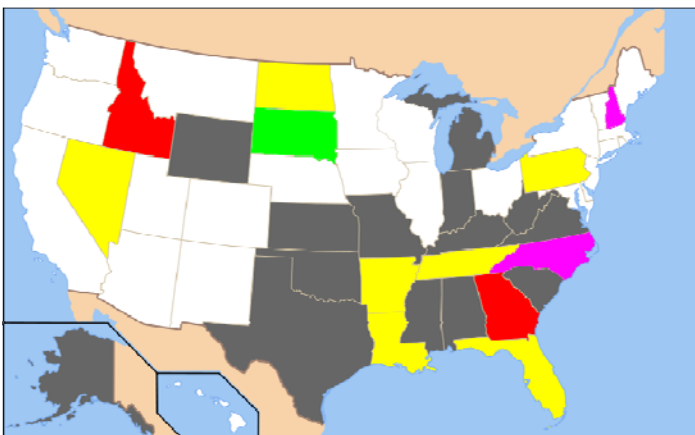
The City-County Council did not have the votes to pass an expanded smoking ban last month. The expanded ban would have prohibited smoking in bowling alleys, bars and private clubs. The proposal sparked a fiery debate from both sides.

The council voted to table the ban. Two councilors abstained from voting, citing conflicts of interest.

The ban could be brought up for a vote again or sent back to committee.



WHERE INDIANA FITS IN...



INDIANA: No statewide smoking ban. Instead, Indiana's 1993 statewide smoking law, the Clean Indoor Air Law, generally prohibits smoking in state government buildings, schools, healthcare facilities, fire and police stations, childcare and daycare facilities, healthcare provider offices, retail areas of grocery and drug stores designated as nonsmoking, dining areas of restaurants designated as nonsmoking, and school buses during school hours or when transporting children.^[63] In state government buildings, schools, healthcare facilities, fire and police stations, childcare and daycare facilities, and healthcare provider offices, the proprietor may designate a smoking area, but does not have to, and in either case must post warning signage as appropriate. The law covers no other places, and the state is empowered to grant waivers from this law.¹ Local governments may regulate smoking more strictly than the state law. Attempts in the [Indiana General Assembly](#) to ban smoking statewide have failed three times, first in April 2007 when the [Indiana Senate](#) removed a smoking ban from a health care funding bill which had been passed by the [Indiana House of Representatives](#), again in January 2008, when a proposed statewide smoking ban introduced by State Rep. [Charlie Brown](#) died in a House committee without a vote or debate,¹ and then again in April 2009 when another proposed statewide smoking ban introduced by Rep. Brown was passed by the House by a vote of 70-26 after being amended to exempt restaurants, bars, and casinos, and then did not receive a committee hearing in the Senate.

WHY STATE EXCISE TAXES HURT RETAILERS AND WHOLESALERS

- Retail and wholesale employees' safety could be in jeopardy

A truckload of cigarettes could be worth up to \$2 million. And a tobacco tax increase means cigarettes will become even more valuable, making cigarette theft and burglary more common at every stage of distribution. From convenience store robberies to warehouse break-ins to truck hijackings, cigarette crime is expected to increase - putting the men and women who work with cigarettes in danger on the job.

- Retail/Wholesale jobs and paychecks threatened

State excise tax increases on cigarettes can bring about disastrous financial results for retailers, wholesalers and their employees. For instance, a year following a hike of \$1 per pack in Iowa cigarette taxes, there was a 36% drop in that state's tobacco sales. In convenience stores, which depend on tobacco for one-third of all sales volume, employment is definitely threatened. When a state legislature raises cigarette taxes, sales declines generally lead to job cutbacks at many local convenience stores and for wholesaler sales and delivery jobs.

- Higher cigarette taxes increase gang and other organized crime

An increase in tobacco taxes will escalate an already-thriving underground market, making it more lucrative for gangs and other organized crime outfits to steal, smuggle and funnel black market cigarettes to consumers. In fact, the higher the tax increase, the more lucrative are the illicit profits made by criminals and the less legal profit is made by retailers and wholesalers. Illegal sales also cut into revenue projections by state government. An increase in illegal tobacco sales also take up the time and resources of law enforcement officers and results in further demands from the public that the state spend more on protection issues.

- Smokers may go out of their way to purchase less expensive cigarettes

Studies show that revenues from increased state cigarette taxes often fall short of projections, partially because smokers will go out of their way to purchase less expensive cigarettes via untaxed channels: international web sites, Native-American reservations, and even the black market. In addition, revenue and sales for in-state merchants are lost when smokers travel across borders into states with cheaper cigarette taxes. And local store owners don't lose just their tobacco sales. When customers travel to other stores, they will also make food, gas and beverage purchases at the same place they buy cigarettes. Retailer associations estimate the loss from these extra sales alone is about 20%. This tax avoidance often leads to state revenue projection losses for both cigarette excise taxes and sales taxes—making tobacco tax increases and inefficient means of creating revenue.

SOURCE: WWW.NOCIGTAX.COM

IWDA MEMBERSHIP RENEWALS and RECRUIT A MEMBER!



IWDA MEMBERSHIP RENEWALS WILL BE SENT OUT IN DECEMBER FOR THE 2010 MEMBERSHIP YEAR.

RECRUIT A NEW DISTRIBUTOR MEMBER AND RECEIVE DINNER FOR 2 AT ST. ELMOS

RECRUIT A NEW AFFILIATE MEMBER AND RECEIVE A COUPON FOR OVER-NIGHT LODGING AT THE SHERATON HOTEL & SUITES/KEYSTONE AT THE CROSSING PLUS BREAKFAST FOR TWO.

CONSUMERS TEA-ING UP (from Convenience Store News)

November 9, 2009: As a group, the c-store industry has done an excellent job of positioning coffee programs as high-quality alternatives to much-more-expensive coffee houses. Few, though, have given the same thought to their hot tea offer.



But, according to a recent study by Packaged Facts, tea's image as an innovative - but accessible -- beverage that is good tasting, good for you, and budget friendly has kept tea profitable, with 2-percent annual gains in 2008 and 2009, according to "Tea and Ready-to-Drink Tea in the U.S.: Retail, Foodservice and Consumer Trends," by market research publisher Packaged Facts.

Over the next several years, the research firm predicts, tea sales will return to the double-digit gains experienced prior to the recession, particularly as additional research solidifies tea's healthy and functional properties.

Packaged Facts estimates the U.S. market for tea sold through retail and foodservice channels will reach \$9 billion this year and forecasts a 5-percent increase in 2010. Steadily rising annual percentage gains are projected through 2014, when growth will reach 10 percent and sales will exceed \$12 billion.

Among the many new product introductions in the tea category: exotic flavored teas, tea and fruit infusions, and premium loose tea bags, which are at the forefront of innovations in both the retail and foodservice arenas.

"Tea's healthfulness is still, of course, the beverage's primary appeal, but in the current market environment consumers are increasingly recognizing good quality, customized tea as a comforting, affordable premium beverage splurge," notes Don Montuori, publisher of Packaged Facts.

Other factors driving the market, especially relevant to c-store operators: the greater involvement of the country's mega beverage companies; a greater emphasis on tea in the foodservice channel with the expansion of specialty brews; hybrid tea beverages crossing over into sparkling water, energy drinks and superfruit juices and the additional penetration of RTD teas in the c-store channel.

To someone who gets through the work day alternating Diet Pepsi with hot green tea, this study is spot-on.

-- Barbara Grondin Francella



IWDA UPDATE

1829 Cunningham Road - PO Box 24167
Indianapolis, IN 46224-0167
Phone: 317-610-5997 - Fax: 317-481-1825
www.iwdanet.org

INSIDE THIS ISSUE:

Page 1: 2009 - LEGISLATION: A YEAR IN REVIEW

Page 2-3: PACT ACT

Page 4: FDA WARNING RE ILLIEGAL CIGARETTES

Page 5: DATES TO REMEMBER plus UPDATE ON SMOKING BAN

Page 6: WHY TAXES HURT DISTRIBUTORS AND RETAILERS

Page 7: MEMBERSHIP RENEWALS, MEMBER RECRUIT A MEMBER AND CONSUMERS ARE TEA-ING UP

PLUS - CHECK OUT THIS YEAR'S TRI-STATE CONVENTION PICTURES at www.iwdanet.org

TRI STATE 2009 - CHECK OUT THE VIDEO HIGHLIGHTS AT www.iwdanet.org

Check out the pictures from this year's TRI-STATE Convention at www.iwdanet.org. Just go to video and hit PLAY.

INDUSTRY DATES TO REMEMBER

January 26-28, 2010: 2010 NAW Executive Summit: "Where Are We Headed?"—Washington, DC

October 5-8, 2010: NACS Show: Georgia World Congress Center - Atlanta, GA

February 9-11, 2010: NACS Leadership Forum - The Westin St. Francis - San Francisco, CA

Mar. 9-11, 2010: The AWMA Show, Las Vegas Hilton, Las Vegas, Nevada, USA. AWMA

May 25-27, 2010: SWEETS & SNACKS EXPO - McCormick Place, Chicago, IL

LATE JULY - or AUGUST: Tri State 2010 - EXACT DATE TBD

Sep. 13-16, 2010: AWMA Summit & Business Exchange (ABX), The Ritz-Carlton, Key Biscayne, Florida