

HOUSE BILL No. 1394

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1; IC 24-3-2-2; IC 35-46-1.

Synopsis: Tobacco products and advertising. Includes cigarillos within the definition of "cigarette" for purposes of cigarette tax and tobacco products laws. Provides that the quit smoking signs that are required to be posted in establishments that sell tobacco products must include the quit smoking web site information. Provides that a retail establishment selling tobacco may not advertise tobacco products or cause to be advertised tobacco products: (1) in the window or on the exterior of a business property or establishment; or (2) any place within the retail establishment. Provides an exception for retail establishments that primarily sell tobacco products and do not allow individuals who are less than 18 years of age to enter.

Effective: July 1, 2014.

Morris

January 16, 2014, read first time and referred to Committee on Public Policy.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1394

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

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, 2014]: Sec. 2. Unless the context requires
3 otherwise, "cigarette" shall mean and include any roll for smoking
4 made wholly or in part of tobacco, irrespective of size or shape and
5 irrespective of ~~the~~ tobacco being flavored, adulterated, or mixed with
6 any other ingredient, where such roll has a wrapper or cover made of
7 paper or any other material. ~~Provided the definition in this section~~ **The**
8 **term includes cigarillos but** shall not be construed to include **any**
9 **other** cigars. Excepting where context clearly shows that cigarettes
10 alone are intended, the term "cigarettes" shall mean and include
11 cigarettes, cigarette papers or wrappers, and tubes upon which a tax is
12 imposed by sections 12 and 13 of this chapter.

13 SECTION 2. IC 6-7-1-2.5 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2014]: **Sec. 2.5. As used in this chapter, "cigarillo" means any**
16 **roll for smoking made wholly or in part of tobacco, irrespective of**



1 **the tobacco being flavored, adulterated, or mixed with any other**
 2 **ingredient, where the roll has a wrapper or cover made of tobacco**
 3 **or containing tobacco and any of the following apply:**

4 **(1) The roll has a length of less than one hundred twenty-five**
 5 **(125) millimeters, excluding any filter.**

6 **(2) The roll contains three (3) grams or less of tobacco.**

7 **(3) The roll has a diameter of ten (10) millimeters or less.**

8 SECTION 3. IC 24-3-2-2, AS AMENDED BY P.L.172-2011,
 9 SECTION 130, IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2014]: Sec. 2. Unless the context in this chapter
 11 requires otherwise, the term:

12 (a) "Cigarette" shall mean and include any roll for smoking made
 13 wholly or in part of tobacco, irrespective of size or shape and
 14 irrespective of **the** tobacco being flavored, adulterated, or mixed with
 15 any other ingredient, where such roll has a wrapper or cover made of
 16 paper or any other material. ~~provided the definition in this paragraph~~
 17 **The term includes cigarillos but** shall not be construed to include **any**
 18 **other** cigars.

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

30 (c) "Distributor" shall mean and include every person who sells,
 31 barter, exchanges, or distributes cigarettes in the state of Indiana to
 32 retail dealers for the purpose of resale, or who purchases for resale
 33 cigarettes from a manufacturer of cigarettes or from a wholesaler,
 34 jobber, or distributor outside the state of Indiana who is not a
 35 distributor holding a registration certificate issued under the provisions
 36 of IC 6-7-1.

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

41 (e) "Sell at retail", "sale at retail", and "retail sales" shall mean and
 42 include any transfer of title to cigarettes for a valuable consideration



1 made in the ordinary course of trade or usual conduct of the seller's
2 business to the purchaser for consummation or use.

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

7 (g) "Basic cost of cigarettes" shall mean the invoice cost of
8 cigarettes to the retailer or distributor, as the case may be, or the
9 replacement cost of cigarettes to the retailer or distributor, as the case
10 may be, within thirty (30) days prior to the date of sale, in the quantity
11 last purchased, whichever is the lower, less all trade discounts and
12 customary discounts for cash, plus the cost at full face value of any
13 stamps which may be required by IC 6-7-1, if not included by the
14 manufacturer in ~~his~~ **the manufacturer's** selling price to the distributor.

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

17 (i) "Cost to the retailer" shall mean the basic cost of cigarettes to the
18 retailer, plus the cost of doing business by the retailer as evidenced by
19 the standards and methods of accounting regularly employed by ~~him~~
20 **the retailer** in ~~his~~ **the retailer's** allocation of overhead costs and
21 expenses paid or incurred and must include without limitation labor
22 (including salaries of executives and officers), rent, depreciation,
23 selling costs, maintenance of equipment, delivery costs, all types of
24 licenses, taxes, insurance, and advertising; however, any retailer who,
25 in connection with the retailer's purchase, receives not only the
26 discounts ordinarily allowed upon purchases by a retailer, but also, in
27 whole or in part, discounts ordinarily allowed on purchases by a
28 distributor shall, in determining costs to the retailer pursuant to this
29 section, add the cost to the distributor, as defined in paragraph (j), to
30 the basic cost of cigarettes to said retailer as well as the cost of doing
31 business by the retailer. In the absence of proof of a lesser or higher
32 cost of doing business by the retailer making the sale, the cost of doing
33 business by the retailer shall be presumed to be ten percent (10%) of
34 the basic cost of cigarettes to the retailer. In the absence of proof of a
35 lesser or higher cost of doing business, the cost of doing business by
36 the retailer, who in connection with the retailer's purchase receives not
37 only the discounts ordinarily allowed upon purchases by a retailer, but
38 also, in whole or in part, the discounts ordinarily allowed upon
39 purchases by a distributor, shall be presumed to be ten percent (10%)
40 of the sum of the basic cost of cigarettes plus the cost of doing business
41 by the distributor.

42 (j) "Cost to the distributor" shall mean the basic cost of cigarettes to



1 the distributor, plus the cost of doing business by the distributor as
 2 evidenced by the standards and methods of accounting regularly
 3 employed by ~~him~~ **the distributor** in ~~his~~ **the distributor's** allocation of
 4 overhead costs and expenses, paid or incurred, and must include
 5 without limitation labor costs (including salaries of executives and
 6 officers), rent, depreciation, selling costs, maintenance of equipment,
 7 delivery costs, all types of licenses, taxes, insurance, and advertising.
 8 In the absence of proof of a lesser or higher cost of doing business by
 9 the distributor making the sale, the cost of doing business by the
 10 wholesaler shall be presumed to be four percent (4%) of the basic cost
 11 of cigarettes to the distributor, plus cartage to the retail outlet, if
 12 performed or paid for by the distributor, which cartage cost, in the
 13 absence of proof of a lesser or higher cost, shall be deemed to be
 14 one-half of one percent (0.5%) of the basic cost of cigarettes to the
 15 distributor.

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

19 (l) **"Cigarillo" means any roll for smoking made wholly or in**
 20 **part of tobacco, irrespective of the tobacco being flavored,**
 21 **adulterated, or mixed with any other ingredient, where the roll has**
 22 **a wrapper or cover made of tobacco or containing tobacco and any**
 23 **of the following apply:**

24 (1) **The roll has a length of less than one hundred twenty-five**
 25 **(125) millimeters, excluding any filter.**

26 (2) **The roll contains three (3) grams or less of tobacco.**

27 (3) **The roll has a diameter of ten (10) millimeters or less.**

28 SECTION 4. IC 35-46-1-11, AS AMENDED BY P.L.20-2013,
 29 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2014]: Sec. 11. (a) A tobacco or electronic cigarette vending
 31 machine that is located in a public place must bear the following
 32 conspicuous notices:

33 (1) A notice:

34 (A) that reads as follows, with the capitalization indicated: "If
 35 you are under 18 years of age, YOU ARE FORBIDDEN by
 36 Indiana law to buy tobacco or electronic cigarettes from this
 37 machine."; or

38 (B) that:

39 (i) conveys a message substantially similar to the message
 40 described in clause (A); and

41 (ii) is formatted with words and in a form authorized under
 42 the rules adopted by the alcohol and tobacco commission.



- 1 (2) A notice that reads as follows, "Smoking by Pregnant Women
2 May Result in Fetal Injury, Premature Birth, and Low Birth
3 Weight."
4 (3) A notice printed in letters and numbers at least one-half (1/2)
5 inch high that displays a toll free phone number for assistance to
6 callers in quitting smoking, as determined by the state department
7 of health.
8 (b) A person who owns or has control over a tobacco or electronic
9 cigarette vending machine in a public place and who:
10 (1) fails to post a notice required by subsection (a) on the vending
11 machine; or
12 (2) fails to replace a notice within one (1) month after it is
13 removed or defaced;
14 commits a Class C infraction.
15 (c) An establishment selling tobacco or electronic cigarettes at retail
16 shall post and maintain in a conspicuous place, at the point of sale, the
17 following:
18 (1) Signs printed in letters at least one-half (1/2) inch high,
19 reading as follows:
20 (A) "The sale of tobacco or electronic cigarettes to persons
21 under 18 years of age is forbidden by Indiana law."
22 (B) "Smoking by Pregnant Women May Result in Fetal Injury,
23 Premature Birth, and Low Birth Weight."
24 (2) A sign printed in letters and numbers at least one-half (1/2)
25 inch high that displays a **web site and** toll free phone number for
26 assistance to callers in quitting smoking, as determined by the
27 state department of health.
28 (d) A person who:
29 (1) owns or has control over an establishment selling tobacco or
30 electronic cigarettes at retail; and
31 (2) fails to post and maintain the sign required by subsection (c);
32 commits a Class C infraction.
33 SECTION 5. IC 35-46-1-11.7, AS AMENDED BY P.L.94-2008,
34 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2014]: Sec. 11.7. (a) A retail establishment that has as its
36 primary purpose the sale of tobacco products may not allow an
37 individual who is less than eighteen (18) years of age to enter the retail
38 establishment.
39 (b) An individual who is less than eighteen (18) years of age may
40 not enter a retail establishment described in subsection (a).
41 (c) A retail establishment described in subsection (a) must
42 conspicuously post on all entrances to the retail establishment **and at**



- 1 **the point of sale** the following:
- 2 (1) A sign in boldface type that states "NOTICE: It is unlawful for
- 3 a person less than 18 years old to enter this store."
- 4 (2) A sign printed in letters and numbers at least one-half (1/2)
- 5 inch high that displays a **web site and** toll free phone number for
- 6 assistance to callers in quitting smoking, as determined by the
- 7 state department of health.
- 8 (d) A person who violates this section commits a Class C infraction.
- 9 Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction
- 10 committed under this section must be imposed as follows:
- 11 (1) If the person has not been cited for a violation of this section
- 12 in the previous one hundred eighty (180) days, a civil penalty of
- 13 up to two hundred dollars (\$200).
- 14 (2) If the person has had one (1) violation in the previous one
- 15 hundred eighty (180) days, a civil penalty of up to four hundred
- 16 dollars (\$400).
- 17 (3) If the person has had two (2) violations in the previous one
- 18 hundred eighty (180) days, a civil penalty of up to seven hundred
- 19 dollars (\$700).
- 20 (4) If the person has had three (3) or more violations in the
- 21 previous one hundred eighty (180) days, a civil penalty of up to
- 22 one thousand dollars (\$1,000).
- 23 A person may not be cited more than once every twenty-four (24)
- 24 hours.
- 25 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
- 26 this section must be deposited in the Richard D. Doyle youth tobacco
- 27 education and enforcement fund established under IC 7.1-6-2-6.
- 28 (f) A person who violates subsection (a) at least six (6) times in any
- 29 one hundred eighty (180) day period commits habitual illegal entrance
- 30 by a minor, a Class B infraction.
- 31 SECTION 6. IC 35-46-1-12.5 IS ADDED TO THE INDIANA
- 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 33 [EFFECTIVE JULY 1, 2014]: **Sec. 12.5. (a) A retail establishment**
- 34 **selling tobacco may not advertise tobacco products, including**
- 35 **promotional pricing of tobacco products, or cause to be advertised**
- 36 **tobacco products:**
- 37 (1) **in the window or on the exterior of a business property or**
- 38 **establishment; or**
- 39 (2) **any place within the retail establishment, including behind**
- 40 **the counter at the point of sale.**
- 41 (b) **Subsection (a)(2) does not apply to a retail establishment**
- 42 **that has as its primary purpose the sale of tobacco products and**



1 does not allow an individual who is less than eighteen (18) years of
2 age to enter the retail establishment.

3 (c) A person who violates this section commits a Class C
4 infraction.

5 (d) Notwithstanding IC 34-28-5-5(c), civil penalties collected
6 under this section must be deposited in the Richard D. Doyle youth
7 tobacco education and enforcement fund established by
8 IC 7.1-6-2-6.

