



February 3, 2017

HOUSE BILL No. 1578

DIGEST OF HB 1578 (Updated February 1, 2017 7:24 pm - DI 77)

Citations Affected: IC 6-7; IC 7.1-3; IC 7.1-5; IC 7.1-6; IC 7.1-7; IC 22-5; IC 24-3; IC 35-43; IC 35-46; noncode.

Synopsis: Cigarette tax and smoking age. Increases the cigarette tax by \$1.50 to \$2.495 per pack of regular size cigarettes and a corresponding increase for larger cigarettes. Raises the age from 18 to 21 years of age for prohibitions and crimes concerning the sale, purchase, and possession of cigarettes and other tobacco products. Makes a corresponding change to the laws concerning e-cigarettes, tobacco retailer permits, and admission to establishments where smoking is permitted. Repeals employment protections for individuals who smoke cigarettes or use other tobacco products. Appropriates for each year of the 2017-2019 biennium \$35,000,000 from the tobacco master settlement agreement fund to the tobacco use prevention and cessation trust fund for the state department of health to implement the long range state plan for the prevention and reduction of the usage of tobacco and tobacco products in Indiana.

Effective: July 1, 2017.

Kirchhofer, Ziemke, Brown C

January 23, 2017, read first time and referred to Committee on Public Health.
February 2, 2017, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

HB 1578—LS 7103/DI 58



February 3, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1578

A BILL FOR AN ACT to amend the Indiana Code concerning health and to make an appropriation.

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

1 SECTION 1. IC 6-7-1-0.4, AS ADDED BY P.L.220-2011,
2 SECTION 161, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: Sec. 0.4. **(a)** Notwithstanding section 14
4 of this chapter, revenue stamps paid for before July 1, 2007, and in the
5 possession of a distributor may be used after June 30, 2007, only if the
6 full amount of the tax imposed by section 12 of this chapter, as
7 effective after June 30, 2007, and as amended by P.L.218-2007, is
8 remitted to the department under the procedures prescribed by the
9 department.

10 **(b) Notwithstanding section 14 of this chapter, revenue stamps**
11 **paid for before July 1, 2017, and in the possession of a distributor,**
12 **may be used after June 30, 2017, only if the full amount of the tax**
13 **imposed by section 12 of this chapter, as amended and effective**
14 **after June 30, 2017, is remitted to the department under the**
15 **procedures prescribed by the department.**

16 SECTION 2. IC 6-7-1-12, AS AMENDED BY P.L.191-2016,
17 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

HB 1578—LS 7103/DI 58



1 JULY 1, 2017]: Sec. 12. The following taxes are imposed, and shall be
 2 collected and paid as provided in this chapter, upon the sale, exchange,
 3 bartering, furnishing, giving away, or otherwise disposing of cigarettes
 4 within the state of Indiana:

5 (1) On cigarettes weighing not more than three (3) pounds per
 6 thousand (1,000), a tax at the rate of ~~four and nine hundred~~
 7 ~~seventy-five thousandths cents (\$0.04975)~~ **twelve and four**
 8 **hundred seventy-five thousandths cents (\$0.12475)** per
 9 individual cigarette.

10 (2) On cigarettes weighing more than three (3) pounds per
 11 thousand (1,000), a tax at the rate of ~~six and six hundred twelve~~
 12 ~~thousandths cents (\$0.06612)~~ **sixteen and fifty-eight hundredths**
 13 **cents (\$0.1658)** per individual cigarette, except that if any
 14 cigarettes weighing more than three (3) pounds per thousand
 15 (1,000) shall be more than six and one-half (6 1/2) inches in
 16 length, they shall be taxable at the rate provided in subdivision
 17 (1), counting each two and three-fourths (2 3/4) inches (or
 18 fraction thereof) as a separate cigarette.

19 SECTION 3. IC 7.1-3-18.5-2, AS AMENDED BY P.L.231-2015,
 20 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2017]: Sec. 2. (a) A person who desires a certificate must
 22 provide the following to the commission:

23 (1) The applicant's name and mailing address and the address of
 24 the premises for which the certificate is being issued.

25 (2) Except as provided in section 6(c) of this chapter, a fee of two
 26 hundred dollars (\$200).

27 (3) The name under which the applicant transacts or intends to
 28 transact business.

29 (4) The address of the applicant's principal place of business or
 30 headquarters, if any.

31 (5) The statement required under section 2.6 of this chapter.

32 (b) A separate certificate is required for each location where the
 33 tobacco products or electronic cigarettes are sold or distributed.

34 (c) A certificate holder shall conspicuously display the holder's
 35 certificate on the holder's premises where the tobacco products or
 36 electronic cigarettes are sold or distributed.

37 (d) Any intentional misstatement or suppression of a material fact
 38 in an application filed under this section constitutes grounds for denial
 39 of the certificate.

40 (e) A certificate may be issued only to a person who meets the
 41 following requirements:

42 (1) If the person is an individual, the person must be at least



- 1 ~~eighteen~~ **(18) twenty-one (21)** years of age.
- 2 (2) The person must be authorized to do business in Indiana.
- 3 (f) The fees collected under this section shall be deposited in the
- 4 enforcement and administration fund under IC 7.1-4-10.
- 5 SECTION 4. IC 7.1-3-18.5-8, AS AMENDED BY P.L.214-2016,
- 6 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2017]: Sec. 8. The commission may mitigate civil penalties
- 8 imposed against a certificate holder for violating IC 35-46-1-10,
- 9 IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.5,
- 10 IC 35-46-1-11.7, IC 35-46-1-11.8, or any of the provisions of this
- 11 chapter if a certificate holder provides a training program for the
- 12 certificate holder's employees that includes at least the following
- 13 topics:
- 14 (1) Laws governing the sale of tobacco products and electronic
- 15 cigarettes.
- 16 (2) Methods of recognizing and handling customers who are less
- 17 than ~~eighteen~~ **(18) twenty-one (21)** years of age.
- 18 (3) Procedures for proper examination of identification cards to
- 19 verify that customers are under ~~eighteen~~ **(18) twenty-one (21)**
- 20 years of age.
- 21 SECTION 5. IC 7.1-5-12-5, AS AMENDED BY P.L.231-2015,
- 22 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23 JULY 1, 2017]: Sec. 5. (a) Except as provided in subsection (c) and
- 24 subject to section 13 of this chapter, smoking may be allowed in the
- 25 following:
- 26 (1) A horse racing facility operated under a permit under
- 27 IC 4-31-5 and any other permanent structure on land owned or
- 28 leased by the owner of the facility that is adjacent to the facility.
- 29 (2) A riverboat (as defined in IC 4-33-2-17) and any other
- 30 permanent structure that is:
- 31 (A) owned or leased by the owner of the riverboat; and
- 32 (B) located on land that is adjacent to:
- 33 (i) the dock to which the riverboat is moored; or
- 34 (ii) the land on which the riverboat is situated in the case of
- 35 a riverboat described in IC 4-33-2-17(2).
- 36 (3) A facility that operates under a gambling game license under
- 37 IC 4-35-5 and any other permanent structure on land owned or
- 38 leased by the owner of the facility that is adjacent to the facility.
- 39 (4) A satellite facility licensed under IC 4-31-5.5.
- 40 (5) An establishment owned or leased by a business that meets the
- 41 following requirements:
- 42 (A) The business was in business and permitted smoking on



- 1 December 31, 2012.
- 2 (B) The business prohibits entry by an individual who is less
- 3 than twenty-one (21) years of age.
- 4 (C) The owner or operator of the business holds a beer, liquor,
- 5 or wine retailer's permit.
- 6 (D) The business limits smoking in the establishment to
- 7 smoking with a waterpipe or hookah device.
- 8 (E) During the preceding calendar year, at least ten percent
- 9 (10%) of the business's annual gross income was from the sale
- 10 of loose tobacco for use in a waterpipe or hookah device.
- 11 (F) The person in charge of the business posts in the
- 12 establishment conspicuous signs that display the message that
- 13 cigarette smoking is prohibited.
- 14 (6) An establishment owned or leased by a business that meets the
- 15 following requirements:
- 16 (A) The business prohibits entry by an individual who is less
- 17 than twenty-one (21) years of age.
- 18 (B) The owner or operator of the business holds a beer, liquor,
- 19 or wine retailer's permit.
- 20 (C) The business limits smoking in the establishment to cigar
- 21 smoking.
- 22 (D) During the preceding calendar year, at least ten percent
- 23 (10%) of the business's annual gross income was from the sale
- 24 of cigars and the rental of onsite humidors.
- 25 (E) The person in charge of the business posts in the
- 26 establishment conspicuous signs that display the message that
- 27 cigarette smoking is prohibited.
- 28 (7) A premises owned or leased by and regularly used for the
- 29 activities of a business that meets all of the following:
- 30 (A) The business is exempt from federal income taxation
- 31 under 26 U.S.C. 501(c).
- 32 (B) The business:
- 33 (i) meets the requirements to be considered a club under
- 34 IC 7.1-3-20-1; or
- 35 (ii) is a fraternal club (as defined in IC 7.1-3-20-7).
- 36 (C) The business provides food or alcoholic beverages only to
- 37 its bona fide members and their guests.
- 38 (D) The business:
- 39 (i) provides a separate, enclosed, designated smoking room
- 40 or area that is adequately ventilated to prevent migration of
- 41 smoke to nonsmoking areas of the premises;
- 42 (ii) allows smoking only in the room or area described in



- 1 item (i);
 2 (iii) does not allow an individual who is less than ~~eighteen~~
 3 **(18) twenty-one (21)** years of age to enter into the room or
 4 area described in item (i); and
 5 (iv) allows a guest in the smoking room or area described in
 6 item (i) only when accompanied by a bona fide member of
 7 the business.
- 8 (8) A retail tobacco store used primarily for the sale of tobacco
 9 products and tobacco accessories that meets the following
 10 requirements:
 11 (A) The owner or operator of the store holds a valid tobacco
 12 sales certificate issued under IC 7.1-3-18.5.
 13 (B) The store prohibits entry by an individual who is less than
 14 ~~eighteen (18)~~ **twenty-one (21)** years of age.
 15 (C) The sale of products other than tobacco products and
 16 tobacco accessories is merely incidental.
 17 (D) The sale of tobacco products accounts for at least
 18 eighty-five percent (85%) of the store's annual gross sales.
 19 (E) Food or beverages are not sold in a manner that requires
 20 consumption on the premises, and there is not an area set aside
 21 for customers to consume food or beverages on the premises.
- 22 (9) A bar or tavern:
 23 (A) for which a permittee holds:
 24 (i) a beer retailer's permit under IC 7.1-3-4;
 25 (ii) a liquor retailer's permit under IC 7.1-3-9; or
 26 (iii) a wine retailer's permit under IC 7.1-3-14;
 27 (B) that does not employ an individual who is less than
 28 eighteen (18) years of age;
 29 (C) that does not allow an individual who:
 30 (i) is less than twenty-one (21) years of age; and
 31 (ii) is not an employee of the bar or tavern;
 32 to enter any area of the bar or tavern; and
 33 (D) that is not located in a business that would otherwise be
 34 subject to this chapter.
- 35 (10) A cigar manufacturing facility that does not offer retail sales.
 36 (11) A premises of a cigar specialty store to which all of the
 37 following apply:
 38 (A) The owner or operator of the store holds a valid tobacco
 39 sales certificate issued under IC 7.1-3-18.5.
 40 (B) The sale of tobacco products and tobacco accessories
 41 account for at least fifty percent (50%) of the store's annual
 42 gross sales.



- 1 (C) The store has a separate, enclosed, designated smoking
 2 room that is adequately ventilated to prevent migration of
 3 smoke to nonsmoking areas.
 4 (D) Smoking is allowed only in the room described in clause
 5 (C).
 6 (E) Individuals who are less than ~~eighteen (18)~~ **twenty-one**
 7 **(21)** years of age are prohibited from entering into the room
 8 described in clause (C).
 9 (F) Cigarette smoking is not allowed on the premises of the
 10 store.
 11 (G) The owner or operator of the store posts a conspicuous
 12 sign on the premises of the store that displays the message that
 13 cigarette smoking is prohibited.
 14 (H) The store does not prepare any food or beverage that
 15 would require a certified food handler under IC 16-42-5.2.
 16 (12) The premises of a business that is located in the business
 17 owner's private residence (as defined in IC 3-5-2-42.5) if the only
 18 employees of the business who work in the residence are the
 19 owner and other individuals who reside in the residence.
 20 (b) The owner, operator, manager, or official in charge of an
 21 establishment or premises in which smoking is allowed under this
 22 section shall post conspicuous signs in the establishment that read
 23 "WARNING: Smoking Is Allowed In This Establishment" or other
 24 similar language.
 25 (c) This section does not allow smoking in the following enclosed
 26 areas of an establishment or premises described in subsection (a)(1)
 27 through (a)(11):
 28 (1) Any hallway, elevator, or other common area where a
 29 individual who is less than eighteen (18) years of age is permitted.
 30 (2) Any room that is intended for use by an individual who is less
 31 than eighteen (18) years of age.
 32 (d) The owner, operator, or manager of an establishment or premises
 33 that is listed under subsection (a) and that allows smoking shall provide
 34 a verified statement to the commission that states that the establishment
 35 or premises qualifies for the exemption. The commission may require
 36 the owner, operator, or manager of an establishment or premises to
 37 provide documentation or additional information concerning the
 38 exemption of the establishment or premises.
 39 SECTION 6. IC 7.1-6-2-4, AS AMENDED BY P.L.20-2013,
 40 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2017]: Sec. 4. (a) An enforcement officer vested with full
 42 police powers and duties may engage a person less than ~~eighteen (18)~~



1 **twenty-one (21)** years of age as part of an enforcement action under
 2 this article if the initial or contemporaneous receipt or purchase of a
 3 tobacco product or electronic cigarette by a person less than ~~eighteen~~
 4 **(18) twenty-one (21)** years of age occurs under the direction of an
 5 enforcement officer vested with full police powers and duties and is
 6 part of the enforcement action.

7 (b) An enforcement officer vested with full police powers and duties
 8 shall not:

9 (1) recruit or attempt to recruit a person less than ~~eighteen (18)~~
 10 **twenty-one (21)** years of age to participate in an enforcement
 11 action under subsection (a) at the scene of a violation of section
 12 2 of this chapter; or

13 (2) allow a person less than ~~eighteen (18)~~ **twenty-one (21)** years
 14 of age to purchase or receive a tobacco product or electronic
 15 cigarette as part of an enforcement action under subsection (a)
 16 without the written permission of the person's parents or legal
 17 guardians.

18 SECTION 7. IC 7.1-7-2-17, AS ADDED BY P.L.176-2015,
 19 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2017]: Sec. 17. "Minor" means an individual who is less than
 21 ~~eighteen (18)~~ **twenty-one (21)** years of age.

22 SECTION 8. IC 7.1-7-6-2, AS ADDED BY P.L.176-2015,
 23 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2017]: Sec. 2. (a) If a retailer knowingly sells e-liquid:

- 25 (1) to a minor;
 26 (2) purchased from a manufacturer that does not have a permit; or
 27 (3) that has been altered or tampered with;

28 the retailer commits a Class C infraction. For a sale to take place under
 29 this section, the buyer must pay the retail establishment for the e-liquid.

30 (b) Notwithstanding IC 34-28-5-4(c), a civil judgment for an
 31 infraction committed under this section must be imposed as follows:

32 (1) If the retail establishment at that specific business location has
 33 not been issued a citation or summons for a violation of this
 34 section in the previous one hundred eighty (180) days, a civil
 35 penalty of up to two hundred dollars (\$200).

36 (2) If the retail establishment at that specific business location has
 37 had one (1) citation or summons issued for a violation of this
 38 section in the previous one hundred eighty (180) days, a civil
 39 penalty of up to four hundred dollars (\$400).

40 (3) If the retail establishment at that specific business location has
 41 had two (2) citations or summonses issued for a violation of this
 42 section in the previous one hundred eighty (180) days, a civil



1 penalty of up to seven hundred dollars (\$700).

2 (4) If the retail establishment at that specific business location has
3 had three (3) or more citations or summonses issued for a
4 violation of this section in the previous one hundred eighty (180)
5 days, a civil penalty of up to one thousand dollars (\$1,000).

6 A retail establishment may not be issued a citation or summons for a
7 violation of this section more than once every twenty-four (24) hours
8 for each specific business location.

9 (c) It is not a defense that the person to whom e-liquid was sold or
10 distributed did not inhale or otherwise consume e-liquid.

11 (d) The following defenses are available to a retail establishment
12 accused of selling or distributing e-liquid to a person who is less than
13 ~~eighteen (18)~~ **twenty-one (21)** years of age:

14 (1) The buyer or recipient produced a driver's license bearing the
15 purchaser's or recipient's photograph showing that the purchaser
16 or recipient was of legal age to make the purchase.

17 (2) The buyer or recipient produced a photographic identification
18 card issued under IC 9-24-16-1 or a similar card issued under the
19 laws of another state or the federal government showing that the
20 purchaser or recipient was of legal age to make the purchase.

21 (3) The appearance of the purchaser or recipient was such that an
22 ordinary prudent person would believe that the purchaser or
23 recipient was not less than the age that complies with regulations
24 promulgated by the federal Food and Drug Administration.

25 (e) It is a defense that the accused retail establishment sold or
26 delivered e-liquid to a person who acted in the ordinary course of
27 employment or a business concerning e-liquid:

28 (1) agriculture;

29 (2) processing;

30 (3) transporting;

31 (4) wholesaling; or

32 (5) retailing.

33 (f) As used in this section, "distribute" means to give e-liquid to
34 another person as a means of promoting, advertising, or marketing
35 e-liquid to the general public.

36 (g) Unless a person buys or receives e-liquid under the direction of
37 a law enforcement officer as part of an enforcement action, a retail
38 establishment that sells or distributes e-liquid is not liable for a
39 violation of this section unless the person less than ~~eighteen (18)~~
40 **twenty-one (21)** years of age who bought or received the e-liquid is
41 issued a citation or summons in violation of this article.

42 (h) Notwithstanding IC 34-28-5-5(c), civil penalties collected under



1 this section must be deposited in the Richard D. Doyle youth tobacco
2 education and enforcement fund (IC 7.1-6-2-6).

3 (i) A person who violates subsection (a) at least six (6) times in any
4 one hundred eighty (180) day period commits habitual illegal sale of
5 e-liquid, a Class B infraction.

6 SECTION 9. IC 22-5-4 IS REPEALED [EFFECTIVE JULY 1,
7 2017]. (Off Duty Use of Tobacco by Employee).

8 SECTION 10. IC 24-3-5-4, AS AMENDED BY P.L.160-2005,
9 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2017]: Sec. 4. Subject to section 4.5 of this chapter, a
11 merchant may not mail or ship cigarettes as part of a delivery sale
12 unless, before mailing or shipping the cigarettes, the merchant:

13 (1) obtains from the prospective customer a written statement
14 signed by the prospective customer under penalty of perjury:

15 (A) providing the prospective customer's address and date of
16 birth;

17 (B) advising the prospective customer that:

18 (i) signing another person's name to the statement required
19 under this subdivision may subject the person to a civil
20 monetary penalty of not more than one thousand dollars
21 (\$1,000); and

22 (ii) purchasing cigarettes by a person less than ~~eighteen (18)~~
23 **twenty-one (21)** years of age is a Class C infraction under
24 IC 35-46-1-10.5;

25 (C) confirming that the cigarette order was placed by the
26 prospective customer;

27 (D) providing a warning under 15 U.S.C. 1333(a)(1); and

28 (E) stating the sale of cigarettes by delivery sale is a taxable
29 event for purposes of IC 6-7-1;

30 (2) makes a good faith effort to verify the information in the
31 written statement obtained under subdivision (1) by using a
32 federal or commercially available data base; and

33 (3) receives payment for the delivery sale by a credit or debit card
34 issued in the name of the prospective purchaser.

35 SECTION 11. IC 24-3-5-5, AS AMENDED BY P.L.160-2005,
36 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2017]: Sec. 5. (a) A merchant who mails or ships cigarettes as
38 part of a delivery sale shall:

39 (1) use a mailing or shipping service that requires the customer or
40 a person at least ~~eighteen (18)~~ **twenty-one (21)** years of age who
41 is designated by the customer to:

42 (A) sign to accept delivery of the cigarettes; and



- 1 (B) present a valid operator's license issued under IC 9-24-3 or
- 2 an identification card issued under IC 9-24-16 if the customer
- 3 or the customer's designee, in the opinion of the delivery agent
- 4 or employee of the mailing or shipping service, appears to be
- 5 less than twenty-seven (27) years of age;
- 6 (2) provide to the mailing or shipping service used under
- 7 subdivision (1) proof of compliance with section 6(a) of this
- 8 chapter; and
- 9 (3) include the following statement in bold type or capital letters
- 10 on an invoice or shipping document:
- 11 INDIANA LAW PROHIBITS THE MAILING OR SHIPPING
- 12 OF CIGARETTES TO A PERSON LESS THAN ~~EIGHTEEN~~
- 13 **(+8) TWENTY-ONE (21)** YEARS OF AGE AND
- 14 REQUIRES PAYMENT OF ALL APPLICABLE TAXES.
- 15 (b) The commission may impose a civil penalty of not more than
- 16 one thousand dollars (\$1,000) if a mailing or shipping service:
- 17 (1) delivers cigarettes as part of a delivery sale without first
- 18 receiving proof from the merchant of compliance with section
- 19 6(a) of this chapter; or
- 20 (2) fails to obtain a signature and proof of identification of the
- 21 customer or the customer's designee under subsection (a)(1).
- 22 The commission shall deposit amounts collected under this subsection
- 23 into the **Richard D. Doyle** youth tobacco education and enforcement
- 24 fund established by IC 7.1-6-2-6.
- 25 (c) The following apply to a merchant that mails or ships cigarettes
- 26 as part of a delivery sale without using a third party service as required
- 27 by subsection (a)(1):
- 28 (1) The merchant shall require the customer or a person at least
- 29 ~~eighteen (+8)~~ **twenty-one (21)** years of age who is designated by
- 30 the customer to:
- 31 (A) sign to accept delivery of the cigarettes; and
- 32 (B) present a valid operator's license issued under IC 9-24-3 or
- 33 identification card issued under IC 9-24-16 if the customer or
- 34 the customer's designee, in the opinion of the merchant or the
- 35 merchant's employee making the delivery, appears to be less
- 36 than twenty-seven (27) years of age.
- 37 (2) The commission may impose a civil penalty of not more than
- 38 one thousand dollars (\$1,000) if the merchant:
- 39 (A) delivers the cigarettes without first complying with section
- 40 6(a) of this chapter; or
- 41 (B) fails to obtain a signature and proof of identification of the
- 42 customer or the customer's designee under subdivision (1).



1 The commission shall deposit amounts collected under this
2 subdivision into the **Richard D. Doyle** youth tobacco education
3 and enforcement fund established by IC 7.1-6-2-6.

4 SECTION 12. IC 24-3-5-8, AS AMENDED BY P.L.160-2005,
5 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2017]: Sec. 8. The commission may impose a civil penalty of
7 not more one thousand dollars (\$1,000) on a:

- 8 (1) customer who signs another person's name to a statement
9 required under section 4(1) of this chapter; or
10 (2) merchant who sells cigarettes by delivery sale to a person less
11 than ~~eighteen (18)~~ **twenty-one (21)** years of age.

12 The commission shall deposit amounts collected under this section into
13 the **Richard D. Doyle** youth tobacco education and enforcement fund
14 established by IC 7.1-6-2-6.

15 SECTION 13. IC 35-43-5-3.8, AS AMENDED BY P.L.158-2013,
16 SECTION 473, IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2017]: Sec. 3.8. (a) A person who knowingly or
18 intentionally obtains, possesses, transfers, or uses the synthetic
19 identifying information:

- 20 (1) with intent to harm or defraud another person;
21 (2) with intent to assume another person's identity; or
22 (3) with intent to profess to be another person;
23 commits synthetic identity deception, a Level 6 felony.
24 (b) The offense under subsection (a) is a Level 5 felony if:
25 (1) a person obtains, possesses, transfers, or uses the synthetic
26 identifying information of more than one hundred (100) persons;
27 or
28 (2) the fair market value of the fraud or harm caused by the
29 offense is at least fifty thousand dollars (\$50,000).

30 (c) The conduct prohibited in subsections (a) and (b) does not apply
31 to:

- 32 (1) a person less than twenty-one (21) years of age who uses the
33 synthetic identifying information of another person to acquire:
34 (A) an alcoholic beverage (as defined in IC 7.1-1-3-5); or
35 **(B) a cigarette or tobacco product (as defined in**
36 **IC 6-7-2-5); or**
37 (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic
38 identifying information of another person to acquire:
39 ~~(A) a cigarette or tobacco product (as defined in IC 6-7-2-5);~~
40 ~~(B)~~ **(A)** a periodical, a videotape, or other communication
41 medium that contains or depicts nudity (as defined in
42 IC 35-49-1-5);



- 1 ~~(B)~~ (B) admittance to a performance (live or on film) that
 2 prohibits the attendance of the minor based on age; or
 3 ~~(C)~~ (C) an item that is prohibited by law for use or
 4 consumption by a minor.
- 5 (d) It is not a defense in a prosecution under subsection (a) or (b)
 6 that no person was harmed or defrauded.
- 7 SECTION 14. IC 35-46-1-10, AS AMENDED BY P.L.20-2013,
 8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2017]: Sec. 10. (a) A person who knowingly:
 10 (1) sells or distributes tobacco or an electronic cigarette to a
 11 person less than ~~eighteen (18)~~ **twenty-one (21)** years of age; or
 12 (2) purchases tobacco or an electronic cigarette for delivery to
 13 another person who is less than ~~eighteen (18)~~ **twenty-one (21)**
 14 years of age;
 15 commits a Class C infraction. For a sale to take place under this
 16 section, the buyer must pay the seller for the tobacco product or the
 17 electronic cigarette.
- 18 (b) It is not a defense that the person to whom the tobacco or
 19 electronic cigarette was sold or distributed did not smoke, chew, inhale,
 20 or otherwise consume the tobacco or the electronic cigarette.
- 21 (c) The following defenses are available to a person accused of
 22 selling or distributing tobacco or an electronic cigarette to a person
 23 who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:
 24 (1) The buyer or recipient produced a driver's license bearing the
 25 purchaser's or recipient's photograph, showing that the purchaser
 26 or recipient was of legal age to make the purchase.
 27 (2) The buyer or recipient produced a photographic identification
 28 card issued under IC 9-24-16-1, or a similar card issued under the
 29 laws of another state or the federal government, showing that the
 30 purchaser or recipient was of legal age to make the purchase.
 31 (3) The appearance of the purchaser or recipient was such that an
 32 ordinary prudent person would believe that the purchaser or
 33 recipient was not less than the age that complies with regulations
 34 promulgated by the federal Food and Drug Administration.
- 35 (d) It is a defense that the accused person sold or delivered the
 36 tobacco or electronic cigarette to a person who acted in the ordinary
 37 course of employment or a business concerning tobacco or electronic
 38 cigarettes:
 39 (1) agriculture;
 40 (2) processing;
 41 (3) transporting;
 42 (4) wholesaling; or



- 1 (5) retailing.
- 2 (e) As used in this section, "distribute" means to give tobacco or an
3 electronic cigarette to another person as a means of promoting,
4 advertising, or marketing the tobacco or electronic cigarette to the
5 general public.
- 6 (f) Unless the person buys or receives tobacco or an electronic
7 cigarette under the direction of a law enforcement officer as part of an
8 enforcement action, a person who sells or distributes tobacco or an
9 electronic cigarette is not liable for a violation of this section unless the
10 person less than ~~eighteen~~ **(+8) twenty-one (21)** years of age who
11 bought or received the tobacco or electronic cigarette is issued a
12 citation or summons under section 10.5 of this chapter.
- 13 (g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
14 this section must be deposited in the Richard D. Doyle youth tobacco
15 education and enforcement fund (IC 7.1-6-2-6).
- 16 SECTION 15. IC 35-46-1-10.2, AS AMENDED BY P.L.20-2013,
17 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2017]: Sec. 10.2. (a) A retail establishment that sells or
19 distributes tobacco or an electronic cigarette to a person less than
20 ~~eighteen~~ **(+8) twenty-one (21)** years of age commits a Class C
21 infraction. For a sale to take place under this section, the buyer must
22 pay the retail establishment for the tobacco product or electronic
23 cigarette. Notwithstanding IC 34-28-5-4(c), a civil judgment for an
24 infraction committed under this section must be imposed as follows:
- 25 (1) If the retail establishment at that specific business location has
26 not been issued a citation or summons for a violation of this
27 section in the previous one hundred eighty (180) days, a civil
28 penalty of up to two hundred dollars (\$200).
- 29 (2) If the retail establishment at that specific business location has
30 had one (1) citation or summons issued for a violation of this
31 section in the previous one hundred eighty (180) days, a civil
32 penalty of up to four hundred dollars (\$400).
- 33 (3) If the retail establishment at that specific business location has
34 had two (2) citations or summonses issued for a violation of this
35 section in the previous one hundred eighty (180) days, a civil
36 penalty of up to seven hundred dollars (\$700).
- 37 (4) If the retail establishment at that specific business location has
38 had three (3) or more citations or summonses issued for a
39 violation of this section in the previous one hundred eighty (180)
40 days, a civil penalty of up to one thousand dollars (\$1,000).
- 41 A retail establishment may not be issued a citation or summons for a
42 violation of this section more than once every twenty-four (24) hours



- 1 for each specific business location.
- 2 (b) It is not a defense that the person to whom the tobacco or
3 electronic cigarette was sold or distributed did not smoke, chew, inhale,
4 or otherwise consume the tobacco or electronic cigarette.
- 5 (c) The following defenses are available to a retail establishment
6 accused of selling or distributing tobacco or an electronic cigarette to
7 a person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:
- 8 (1) The buyer or recipient produced a driver's license bearing the
9 purchaser's or recipient's photograph showing that the purchaser
10 or recipient was of legal age to make the purchase.
- 11 (2) The buyer or recipient produced a photographic identification
12 card issued under IC 9-24-16-1 or a similar card issued under the
13 laws of another state or the federal government showing that the
14 purchaser or recipient was of legal age to make the purchase.
- 15 (3) The appearance of the purchaser or recipient was such that an
16 ordinary prudent person would believe that the purchaser or
17 recipient was not less than the age that complies with regulations
18 promulgated by the federal Food and Drug Administration.
- 19 (d) It is a defense that the accused retail establishment sold or
20 delivered the tobacco or electronic cigarette to a person who acted in
21 the ordinary course of employment or a business concerning tobacco
22 or electronic cigarettes:
- 23 (1) agriculture;
24 (2) processing;
25 (3) transporting;
26 (4) wholesaling; or
27 (5) retailing.
- 28 (e) As used in this section, "distribute" means to give tobacco or an
29 electronic cigarette to another person as a means of promoting,
30 advertising, or marketing the tobacco or electronic cigarette to the
31 general public.
- 32 (f) Unless a person buys or receives tobacco or an electronic
33 cigarette under the direction of a law enforcement officer as part of an
34 enforcement action, a retail establishment that sells or distributes
35 tobacco or an electronic cigarette is not liable for a violation of this
36 section unless the person less than ~~eighteen (18)~~ **twenty-one (21)** years
37 of age who bought or received the tobacco or electronic cigarette is
38 issued a citation or summons under section 10.5 of this chapter.
- 39 (g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
40 this section must be deposited in the Richard D. Doyle youth tobacco
41 education and enforcement fund (IC 7.1-6-2-6).
- 42 (h) A person who violates subsection (a) at least six (6) times in any



1 one hundred eighty (180) day period commits habitual illegal sale of
2 tobacco, a Class B infraction.

3 SECTION 16. IC 35-46-1-10.5, AS AMENDED BY P.L.20-2013,
4 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2017]: Sec. 10.5. (a) A person less than ~~eighteen (18)~~
6 **twenty-one (21)** years of age who:

- 7 (1) purchases tobacco or an electronic cigarette;
- 8 (2) accepts tobacco or an electronic cigarette for personal use; or
- 9 (3) possesses tobacco or an electronic cigarette on ~~his the~~
10 **person's** person;

11 commits a Class C infraction.

12 (b) It is a defense under subsection (a) that the accused person acted
13 in the ordinary course of employment in a business concerning tobacco
14 or electronic cigarettes:

- 15 (1) agriculture;
- 16 (2) processing;
- 17 (3) transporting;
- 18 (4) wholesaling; or
- 19 (5) retailing.

20 SECTION 17. IC 35-46-1-11, AS AMENDED BY P.L.20-2013,
21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2017]: Sec. 11. (a) A tobacco or electronic cigarette vending
23 machine that is located in a public place must bear the following
24 conspicuous notices:

- 25 (1) A notice:
 - 26 (A) that reads as follows, with the capitalization indicated: "If
 - 27 you are under ~~18~~ **21** years of age, YOU ARE FORBIDDEN by
 - 28 Indiana law to buy tobacco or electronic cigarettes from this
 - 29 machine."; or
 - 30 (B) that:
 - 31 (i) conveys a message substantially similar to the message
 - 32 described in clause (A); and
 - 33 (ii) is formatted with words and in a form authorized under
 - 34 the rules adopted by the alcohol and tobacco commission.
- 35 (2) A notice that reads as follows, "Smoking by Pregnant Women
- 36 May Result in Fetal Injury, Premature Birth, and Low Birth
- 37 Weight."
- 38 (3) A notice printed in letters and numbers at least one-half (1/2)
- 39 inch high that displays a toll free phone number for assistance to
- 40 callers in quitting smoking, as determined by the state department
- 41 of health.

42 (b) A person who owns or has control over a tobacco or electronic



- 1 cigarette vending machine in a public place and who:
- 2 (1) fails to post a notice required by subsection (a) on the vending
- 3 machine; or
- 4 (2) fails to replace a notice within one (1) month after it is
- 5 removed or defaced;
- 6 commits a Class C infraction.
- 7 (c) An establishment selling tobacco or electronic cigarettes at retail
- 8 shall post and maintain in a conspicuous place, at the point of sale, the
- 9 following:
- 10 (1) Signs printed in letters at least one-half (1/2) inch high,
- 11 reading as follows:
- 12 (A) "The sale of tobacco or electronic cigarettes to persons
- 13 under ~~18~~ **21** years of age is forbidden by Indiana law."
- 14 (B) "Smoking by Pregnant Women May Result in Fetal Injury,
- 15 Premature Birth, and Low Birth Weight."
- 16 (2) A sign printed in letters and numbers at least one-half (1/2)
- 17 inch high that displays a toll free phone number for assistance to
- 18 callers in quitting smoking, as determined by the state department
- 19 of health.
- 20 (d) A person who:
- 21 (1) owns or has control over an establishment selling tobacco or
- 22 electronic cigarettes at retail; and
- 23 (2) fails to post and maintain the sign required by subsection (c);
- 24 commits a Class C infraction.
- 25 SECTION 18. IC 35-46-1-11.5, AS AMENDED BY P.L.20-2013,
- 26 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2017]: Sec. 11.5. (a) Except for a coin machine that is placed
- 28 in or directly adjacent to an entranceway or an exit, or placed in a
- 29 hallway, a restroom, or another common area that is accessible to
- 30 persons who are less than ~~eighteen (18)~~ **twenty-one (21)** years of age,
- 31 this section does not apply to a coin machine that is located in the
- 32 following:
- 33 (1) That part of a licensed premises (as defined in IC 7.1-1-3-20)
- 34 where entry is limited to persons who are at least ~~eighteen (18)~~
- 35 **twenty-one (21)** years of age.
- 36 (2) Private industrial or office locations that are customarily
- 37 accessible only to persons who are at least ~~eighteen (18)~~
- 38 **twenty-one (21)** years of age.
- 39 (3) Private clubs if the membership is limited to persons who are
- 40 at least ~~eighteen (18)~~ **twenty-one (21)** years of age.
- 41 (4) Riverboats where entry is limited to persons who are at least
- 42 twenty-one (21) years of age and on which lawful gambling is



- 1 authorized.
- 2 (b) As used in this section, "coin machine" has the meaning set forth
3 in IC 35-43-5-1.
- 4 (c) Except as provided in subsection (a), an owner of a retail
5 establishment may not:
- 6 (1) distribute or sell tobacco or electronic cigarettes by use of a
7 coin machine; or
- 8 (2) install or maintain a coin machine that is intended to be used
9 for the sale or distribution of tobacco or electronic cigarettes.
- 10 (d) An owner of a retail establishment who violates this section
11 commits a Class C infraction. A citation or summons issued under this
12 section must provide notice that the coin machine must be moved
13 within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil
14 judgment for an infraction committed under this section must be
15 imposed as follows:
- 16 (1) If the owner of the retail establishment has not been issued a
17 citation or summons for a violation of this section in the previous
18 ninety (90) days, a civil penalty of fifty dollars (\$50).
- 19 (2) If the owner of the retail establishment has had one (1) citation
20 or summons issued for a violation of this section in the previous
21 ninety (90) days, a civil penalty of two hundred fifty dollars
22 (\$250).
- 23 (3) If the owner of the retail establishment has had two (2)
24 citations or summonses issued for a violation of this section in the
25 previous ninety (90) days for the same machine, the coin machine
26 shall be removed or impounded by a law enforcement officer
27 having jurisdiction where the violation occurs.
- 28 An owner of a retail establishment may not be issued a citation or
29 summons for a violation of this section more than once every two (2)
30 business days for each business location.
- 31 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
32 this section must be deposited in the Richard D. Doyle youth tobacco
33 education and enforcement fund established under IC 7.1-6-2-6.
- 34 SECTION 19. IC 35-46-1-11.7, AS AMENDED BY P.L.94-2008,
35 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2017]: Sec. 11.7. (a) A retail establishment that has as its
37 primary purpose the sale of tobacco products may not allow an
38 individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age
39 to enter the retail establishment.
- 40 (b) An individual who is less than ~~eighteen (18)~~ **twenty-one (21)**
41 years of age may not enter a retail establishment described in
42 subsection (a).



1 (c) A retail establishment described in subsection (a) must
 2 conspicuously post on all entrances to the retail establishment the
 3 following:

4 (1) A sign in boldface type that states "NOTICE: It is unlawful for
 5 a person less than ~~18~~ **21** years ~~old~~ **of age** to enter this store."

6 (2) A sign printed in letters and numbers at least one-half (1/2)
 7 inch high that displays a toll free phone number for assistance to
 8 callers in quitting smoking, as determined by the state department
 9 of health.

10 (d) A person who violates this section commits a Class C infraction.
 11 Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction
 12 committed under this section must be imposed as follows:

13 (1) If the person has not been cited for a violation of this section
 14 in the previous one hundred eighty (180) days, a civil penalty of
 15 up to two hundred dollars (\$200).

16 (2) If the person has had one (1) violation in the previous one
 17 hundred eighty (180) days, a civil penalty of up to four hundred
 18 dollars (\$400).

19 (3) If the person has had two (2) violations in the previous one
 20 hundred eighty (180) days, a civil penalty of up to seven hundred
 21 dollars (\$700).

22 (4) If the person has had three (3) or more violations in the
 23 previous one hundred eighty (180) days, a civil penalty of up to
 24 one thousand dollars (\$1,000).

25 A person may not be cited more than once every twenty-four (24)
 26 hours.

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

30 (f) A person who violates subsection (a) at least six (6) times in any
 31 one hundred eighty (180) day period commits habitual illegal entrance
 32 by a minor, a Class B infraction.

33 SECTION 20. IC 35-46-1-11.8, AS AMENDED BY P.L.20-2013,
 34 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2017]: Sec. 11.8. (a) As used in this section, "self-service
 36 display" means a display that contains tobacco or electronic cigarettes
 37 in an area where a customer:

38 (1) is permitted; and

39 (2) has access to the tobacco or electronic cigarettes without
 40 assistance from a sales person.

41 (b) This section does not apply to a self-service display located in
 42 a retail establishment that:



1 (1) has a primary purpose to sell tobacco or electronic cigarettes;
2 and

3 (2) prohibits entry by persons who are less than ~~eighteen (18)~~
4 **twenty-one (21)** years of age.

5 (c) The owner of a retail establishment that sells or distributes
6 tobacco or electronic cigarettes through a self-service display, other
7 than a coin operated machine operated under IC 35-46-1-11 or
8 IC 35-46-1-11.5, commits a Class C infraction.

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

12 **SECTION 21. [EFFECTIVE JULY 1, 2017] (a) There is**
13 **appropriated from the tobacco master settlement agreement fund**
14 **(IC 4-12-1-14.3) to the tobacco use prevention and cessation trust**
15 **fund (IC 4-12-4-10) thirty-five million dollars (\$35,000,000) for**
16 **each state fiscal year of the biennium beginning July 1, 2017, and**
17 **ending June 30, 2019. The appropriation is for the state**
18 **department of health to implement the long range state plan**
19 **established under IC 4-12-4 and to make grants under IC 4-12-4.**

20 (b) **It is recommended that the revenue generated from this act**
21 **be dedicated to health related matters.**

22 (c) **This SECTION expires June 30, 2019.**

23 **SECTION 22. [EFFECTIVE JULY 1, 2017] (a) As used in this**
24 **SECTION, "distribute" means to give a tobacco product to**
25 **another person as a means of promoting, advertising, or marketing**
26 **the tobacco product to the general public.**

27 (b) **As used in this SECTION, "tobacco products" has the**
28 **meaning set forth in IC 7.1-6-1-3.**

29 (c) **Notwithstanding IC 7.1-3-18.5-2 and IC 7.1-3-18.5-8, both as**
30 **amended by this act, a valid certificate held on June 30, 2017, by an**
31 **individual who is less than twenty-one (21) years of age remains**
32 **valid until its expiration.**

33 (d) **Notwithstanding IC 24-3-5-4(1)(B)(ii), IC 24-3-5-5, and**
34 **IC 24-3-5-8, all as amended by this act, the notice, mailing,**
35 **shipping, customer designation, and penalty requirements that**
36 **apply to a person who is less than twenty-one (21) years of age**
37 **apply to a person who on June 30, 2017, is less than eighteen (18)**
38 **years of age.**

39 (e) **Notwithstanding IC 35-46-1-10, IC 35-46-1-10.2,**
40 **IC 35-46-1-10.5, IC 35-46-1-11.7, and IC 35-46-1-11.8, all as**
41 **amended by this act:**

42 (1) **a person who on June 30, 2017, is at least eighteen (18)**



1 years of age may purchase and possess tobacco products; and
2 **(2) a merchant or retailer may:**
3 **(A) sell or distribute tobacco products;**
4 **(B) allow entry into a retail establishment that has as its**
5 **primary purpose the sale of tobacco products; and**
6 **(C) allow access to a self-service cigarette display;**
7 to a person who on June 30, 2017, is at least eighteen (18)
8 years of age.
9 **(f) This SECTION expires June 30, 2020.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1578, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 19, between lines 19 and 20, begin a new paragraph and insert:

"(b) It is recommended that the revenue generated from this act be dedicated to health related matters."

Page 19, line 20, delete "(b)" and insert "(c)".

and when so amended that said bill do pass.

(Reference is to HB 1578 as introduced.)

KIRCHHOFER

Committee Vote: yeas 11, nays 0.

