



February 27, 2024

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# ENGROSSED SENATE BILL No. 149

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DIGEST OF SB 149 (Updated February 27, 2024 11:41 am - DI 144)

**Citations Affected:** IC 7.1-3; IC 7.1-5; IC 35-46.

**Synopsis:** Tobacco. Prohibits a retail establishment from holding more than one active tobacco sales certificate (certificate) for a retail location at any time. Prohibits the alcohol and tobacco commission (commission) from issuing a certificate to certain persons. Provides that, if a majority interest in a business that holds a certificate is sold or transferred: (1) the new ownership must apply for a new certificate; and (2) the certificate and permit number held by the previous ownership are void 90 days after the sale or transfer of the ownership of the business. Specifies that an employee of a certificate holder (employee) must hold a valid: (1) driver's license issued by the state of Indiana or another state; or (2) identification card issued by the state of  
(Continued next page)

**Effective:** July 1, 2024.

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**Rogers, Freeman, Donato, Alexander**  
(HOUSE SPONSORS — KING, MCNAMARA, MELTZER, CRISWELL)

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January 9, 2024, read first time and referred to Committee on Corrections and Criminal Law.

January 30, 2024, amended, reported favorably — Do Pass.

February 1, 2024, read second time, ordered engrossed. Engrossed.

February 5, 2024, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 12, 2024, read first time and referred to Committee on Public Policy.

February 27, 2024, amended, reported — Do Pass.

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Digest Continued

Indiana, another state, or the United States; to sell tobacco products. Requires an employee to have the driver's license, identification card, or a copy of these documents readily available to show an excise officer or law enforcement when selling tobacco products. Allows an employee who is unable to show these documents to provide certain evidence within five days. Permits the commission to impose a civil penalty on the certificate holder if an employee fails to timely produce this evidence. Provides that a person who recklessly, knowingly, or intentionally sells a tobacco product without a valid certificate commits a Class C infraction. Makes it a Class C misdemeanor for a person to operate a tobacco and vaping business within 1,000 feet of school property. Specifies exceptions.



February 27, 2024

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 149

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 7.1-3-18.5-2, AS AMENDED BY P.L.49-2020,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2024]: Sec. 2. (a) A person who desires a certificate must  
4 provide the following to the commission:  
5 (1) The applicant's name and mailing address and the address of  
6 the premises for which the certificate is being issued.  
7 (2) Except as provided in section 6(c) of this chapter, a fee of two  
8 hundred dollars (\$200).  
9 (3) The name under which the applicant transacts or intends to  
10 transact business.  
11 (4) The address of the applicant's principal place of business or  
12 headquarters, if any.  
13 (5) The statement required under section 2.6 of this chapter.  
14 (6) **If the applicant is applying for a new certificate under**  
15 **section 3.2 of this chapter, a copy of each of the following:**  
16 (A) **If the new ownership of the business is a business**  
17 **entity, the articles of incorporation, articles of**

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1 organization, or any other formation documents of the  
 2 business entity.  
 3 **(B) If the new ownership of the business is an individual,**  
 4 **either:**  
 5 **(i) the sales or purchase agreement; or**  
 6 **(ii) an affidavit signed by the applicant concerning the**  
 7 **sale or purchase, on a form prescribed by the**  
 8 **commission, that includes the name and address of the**  
 9 **seller and purchaser.**  
 10 **(C) The certificate held by the previous ownership of the**  
 11 **business.**  
 12 (b) A separate certificate is required for each location where the  
 13 tobacco products or electronic cigarettes are sold or distributed. **A**  
 14 **retail establishment may not hold more than one (1) active tobacco**  
 15 **sales certificate for a retail location at any time.**  
 16 (c) A certificate holder shall conspicuously display the holder's  
 17 certificate on the holder's premises where the tobacco products or  
 18 electronic cigarettes are sold or distributed.  
 19 (d) Any intentional misstatement or suppression of a material fact  
 20 in an application filed under this section constitutes grounds for denial  
 21 of the certificate.  
 22 (e) A certificate may be issued only to a person who meets the  
 23 following requirements:  
 24 (1) If the person is an individual, the person must be at least  
 25 twenty-one (21) years of age.  
 26 (2) The person must be authorized to do business in Indiana.  
 27 (3) The person has not had an interest in a certificate revoked by  
 28 the commission for that business location within the preceding  
 29 one (1) year.  
 30 (f) The fees collected under this section shall be deposited in the  
 31 enforcement and administration fund under IC 7.1-4-10.  
 32 SECTION 2. IC 7.1-3-18.5-2.4 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2024]: **Sec. 2.4. (a) Subject to available**  
 35 **resources, the commission shall not issue a tobacco sales certificate,**  
 36 **except as otherwise authorized in this title and subject to the other**  
 37 **restrictions contained in this title, to the following persons:**  
 38 **(1) A person who does not have lawful status (as defined in**  
 39 **IC 9-13-2-92.3).**  
 40 **(2) A person who has been convicted within five (5) years**  
 41 **before the date of application of:**  
 42 **(A) a federal crime having a sentence of at least one (1)**



- 1           year;  
 2           **(B) a Level 1, Level 2, Level 3, Level 4, or Level 5 felony;**  
 3           or  
 4           **(C) a crime in a state other than Indiana having a penalty**  
 5           **equal to the penalty for an Indiana Level 1, Level 2, Level**  
 6           **3, Level 4, or Level 5 felony.**  
 7       **However, this subdivision does not apply to a conviction that**  
 8       **has been expunged under IC 35-38-9.**  
 9       **(3) A person who does not meet at least one (1) of the**  
 10       **following descriptions:**  
 11           **(A) The person owns the premises to which the certificate**  
 12           **will be applicable.**  
 13           **(B) The person has a valid lease on the premises:**  
 14               **(i) at the time of the application for a certificate; and**  
 15               **(ii) for the duration of the period in which the person**  
 16               **sells or distributes in the manner described in section 1**  
 17               **of this chapter.**  
 18           **(C) The person has a franchise agreement with a**  
 19           **franchisor:**  
 20               **(i) that owns the premises to which the certificate will be**  
 21               **applicable; or**  
 22               **(ii) that has a bona fide lease on the premises for the full**  
 23               **period for which the certificate is to be issued.**  
 24       **(4) A person whose place of business is conducted by a**  
 25       **manager or agent, unless the manager or agent possesses the**  
 26       **same qualifications required for the issuance of a tobacco**  
 27       **sales certificate to the person.**  
 28       **(5) A minor.**  
 29       **(6) A person non compos mentis.**  
 30       **(7) A person who has held a permit or certificate under this**  
 31       **title and who has had that permit or certificate revoked**  
 32       **within one (1) year prior to the date of application for a**  
 33       **tobacco sales certificate.**  
 34       **(8) A person who has made an application for a permit or**  
 35       **certificate of any type under this title which has been denied**  
 36       **less than one (1) year prior to the person's application for a**  
 37       **tobacco sales certificate unless the first application was denied**  
 38       **by reason of a procedural or technical defect.**  
 39       **(b) Subsection (a)(5) does not prevent a minor from being a**  
 40       **stockholder in a corporation.**  
 41       SECTION 3. IC 7.1-3-18.5-3.2 IS ADDED TO THE INDIANA  
 42       CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2024]: Sec. 3.2. If the majority of the  
2 ownership of a business that is a certificate holder is sold or  
3 transferred:

4 (1) the new ownership of the business must apply for a new  
5 certificate under section 2 of this chapter; and

6 (2) the certificate and the permit number held by the previous  
7 ownership of the business are void ninety (90) days after the  
8 date of the sale or transfer of the ownership of the business.

9 SECTION 4. IC 7.1-3-18.5-9.2 IS ADDED TO THE INDIANA  
10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2024]: Sec. 9.2. (a) An employee of a  
12 certificate holder must hold a valid:

13 (1) driver's license issued by the state of Indiana or another  
14 state; or

15 (2) identification card issued by the state of Indiana, another  
16 state, or the United States;

17 to sell tobacco products.

18 (b) An employee must have the employee's driver's license or  
19 identification card or a copy of the employee's driver's license or  
20 identification card:

21 (1) either:

22 (A) in the employee's possession; or

23 (B) on file with the employee's employer; and

24 (2) upon request, readily available to show to an excise officer  
25 or law enforcement;

26 when selling tobacco products.

27 (c) If an employee holds a valid license or identification card as  
28 described in subsection (a) but is unable to show the license,  
29 identification card, or a copy to an excise officer under subsection  
30 (b) because:

31 (1) the employee has left the license, identification card, or  
32 copy in another location; or

33 (2) the license, identification card, or copy has otherwise been  
34 lost or mislaid;

35 the employee may, within five (5) days of the employee's inability  
36 to show the license, identification card, or copy to the excise officer,  
37 produce to the excise officer or to the office of the commission  
38 satisfactory evidence of a license or identification card issued to the  
39 individual that was valid at the time the individual was unable to  
40 show the license, identification card, or copy.

41 (d) If an employee who is unable to show a license, identification  
42 card, or copy to an excise officer fails to produce satisfactory



1 **evidence within five (5) days in the manner described in subsection**  
 2 **(c), the commission may impose a civil penalty on the certificate**  
 3 **holder under IC 7.1-3-23-3.**

4 SECTION 5. IC 7.1-5-10-26 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 6 1, 2024]: **Sec. 26. A person who recklessly, knowingly, or**  
 7 **intentionally sells a tobacco product without a valid tobacco sales**  
 8 **certificate commits a Class C infraction.**

9 SECTION 6. IC 35-46-1-11.4, AS ADDED BY P.L.49-2020,  
 10 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2024]: Sec. 11.4. (a) ~~This section~~ **Subsection (b)** does not  
 12 apply to a tobacco and vaping business:

13 (1) operating as a tobacco and vaping business before July 1,  
 14 2020; or

15 (2) that began operating as a tobacco and vaping business after  
 16 June 30, 2020, **and before July 1, 2024**, if at the time the tobacco  
 17 and vaping business began operating the tobacco and vaping  
 18 business was not located in an area prohibited under this section.

19 (b) A person may not operate a tobacco and vaping business within  
 20 one thousand (1,000) feet of a public or private elementary or  
 21 secondary school, as measured between the nearest point of the  
 22 premises occupied by the tobacco and vaping business and the nearest  
 23 point of a building used by the school for instructional purposes.

24 **(c) Subsection (d) does not apply to a tobacco and vaping**  
 25 **business:**

26 **(1) operating as a tobacco and vaping business before July 1,**  
 27 **2024; or**

28 **(2) that began operating as a tobacco and vaping business**  
 29 **after June 30, 2024, if at the time the tobacco and vaping**  
 30 **business began operating the tobacco and vaping business was**  
 31 **not located in an area prohibited under this section.**

32 **(d) A person may not operate a tobacco and vaping business**  
 33 **within one thousand (1,000) feet of school property, measured from**  
 34 **the nearest point of the premises occupied by the tobacco and**  
 35 **vaping business.**

36 ~~(e)~~ **(e)** A person who violates this section commits a Class C  
 37 misdemeanor.



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 149, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 7, delete "the".

Page 1, delete lines 8 through 9.

Page 1, line 10, delete "2024,".

Page 1, run in lines 7 through 10.

Page 1, delete lines 11 through 12.

Page 2, line 33, delete "The" and insert "**Subject to available resources, the**".

Page 2, delete line 37, begin a new line block indented and insert:

**"(1) A person who does not have lawful status (as defined in IC 9-13-2-92.3)."**

Page 2, delete lines 38 through 39.

Page 2, line 40, delete "(3)" and insert "(2)".

Page 2, line 40, delete "ten (10)" and insert "**five (5)**".

Page 3, delete lines 9 through 12, begin a new line block indented and insert:

**"(3) A person who:**

**(A) does not own the premises to which the certificate will be applicable;**

**(B) does not have a bona fide lease on the premises for the full period for which the certificate is to be issued; or**

**(C) does not have a franchise agreement with a franchisor:**

**(i) that owns the premises to which the certificate will be applicable; or**

**(ii) that has a bona fide lease on the premises for the full period for which the certificate is to be issued."**

Page 3, line 13, delete "(5)" and insert "(4)".

Page 3, line 17, delete "(6)" and insert "(5)".

Page 3, line 23, delete "(7)" and insert "(6)".

Page 3, line 27, delete "(8)" and insert "(7)".

Page 3, line 28, delete "(9)" and insert "(8)".

Page 3, line 29, delete "(10)" and insert "(9)".

Page 3, line 33, delete "(11)" and insert "(10)".

Page 3, line 38, delete "(a)(8)" and insert "**(a)(7)**".

Page 3, delete lines 40 through 42.

Page 4, delete lines 1 through 14.





Page 4, line 29, delete "under IC 9-24-3; or" and insert "**by a governmental entity; or**".

Page 4, line 30, delete "under IC 9-24-16;" and insert "**by a governmental entity;**".

Page 4, delete lines 38 through 42, begin a new paragraph and insert:

**"(c) If an employee holds a valid license or identification card as described in subsection (a) but is unable to show the license or identification card to an excise officer because the employee has left the license or identification card in another location, or because the license or identification card has otherwise been lost or mislaid, the employee may sign a document:**

- (1) certifying that the employee holds a valid license or identification card as required by subsection (a);**
- (2) explaining the reason that the employee does not have the license or identification card in the employee's possession, and what steps the employee is taking to retrieve the license or identification card, or to apply for a replacement license or identification card; and**
- (3) promising to provide an excise officer with a copy of the license or identification card within a reasonable time period, as determined by the excise officer."**

Page 5, delete lines 1 through 3, begin a new paragraph and insert:  
**"SECTION 6. IC 7.1-5-7-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1.5. (a) The commission may impose a civil penalty on a minor who, for the purpose of obtaining a tobacco product, knowingly or intentionally:**

- (1) makes a false statement of age; or**
  - (2) presents false evidence of age.**
- (b) The civil penalty may not exceed:**
- (1) two hundred fifty dollars (\$250) for a first violation; or**
  - (2) five hundred dollars (\$500) for a second or subsequent violation.**

**In addition, the commission shall require the minor to attend a smoking cessation class approved by the commission. The minor shall pay the costs of the class. If the minor fails to complete a smoking cessation class within a time period established by the commission, the commission may impose an additional civil penalty equal to the civil penalty imposed for a violation of this section.**

**(c) The civil penalty shall be deposited in the Richard D. Doyle youth tobacco education and enforcement fund established by**



**IC 7.1-6-2-6."**

Page 5, delete lines 9 through 30, begin a new paragraph and insert:

"SECTION 8. IC 35-46-1-11.4, AS ADDED BY P.L.49-2020, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 11.4. (a) ~~This section~~ **Subsection (b)** does not apply to a tobacco and vaping business:

(1) operating as a tobacco and vaping business before July 1, 2020; or

(2) that began operating as a tobacco and vaping business after June 30, 2020, **and before July 1, 2024**, if at the time the tobacco and vaping business began operating the tobacco and vaping business was not located in an area prohibited under this section.

(b) A person may not operate a tobacco and vaping business within one thousand (1,000) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco and vaping business and the nearest point of a building used by the school for instructional purposes.

**(c) Subsection (d) does not apply to a tobacco and vaping business:**

**(1) operating as a tobacco and vaping business before July 1, 2024; or**

**(2) that began operating as a tobacco and vaping business after June 30, 2024, if at the time the tobacco and vaping business began operating the tobacco and vaping business was not located in an area prohibited under this section.**

**(d) A person may not operate a tobacco and vaping business within one thousand (1,000) feet of school property, measured from the nearest point of the premises occupied by the tobacco and vaping business.**

~~(e)~~ **(e) A person who violates this section commits a Class C misdemeanor and, if the person holds a tobacco sales certificate, the certificate is permanently revoked."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 149 as introduced.)

FREEMAN, Chairperson

Committee Vote: Yeas 5, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 149, 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 2, line 3, after "individual," insert "**either:**

- (i) the sales or purchase agreement; or**
- (ii) an affidavit signed by the applicant concerning the sale or purchase, on a form prescribed by the commission, that includes the name and address of the seller and purchaser."**

Page 2, delete line 4.

Page 2, line 10, after "certificate" insert "**for a retail location**".

Page 3, line 4, delete "who:" and insert "**who does not meet at least one (1) of the following descriptions:**

- (A) The person owns the premises to which the certificate will be applicable.**
- (B) The person has a valid lease on the premises:**
  - (i) at the time of the application for a certificate; and**
  - (ii) for the duration of the period in which the person sells or distributes in the manner described in section 1 of this chapter.**
- (C) The person has a franchise agreement with a franchisor:**
  - (i) that owns the premises to which the certificate will be applicable; or**
  - (ii) that has a bona fide lease on the premises for the full period for which the certificate is to be issued."**

Page 3, delete lines 5 through 23.

Page 3, line 24, delete "(6)" and insert "**(4)**".

Page 3, line 28, delete "(7)" and insert "**(5)**".

Page 3, line 29, delete "(8)" and insert "**(6)**".

Page 3, line 30, delete "(9)" and insert "**(7)**".

Page 3, line 34, delete "(10)" and insert "**(8)**".

Page 3, line 39, delete "(a)(7)" and insert "**(a)(5)**".

Page 4, line 7, delete "as of" and insert "**ninety (90) days after**".

Page 4, delete lines 9 through 42, begin a new paragraph and insert:  
 "SECTION 4. IC 7.1-3-18.5-9.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 9.2. (a) An employee of a certificate holder must hold a valid:**

- (1) driver's license issued by the state of Indiana or another**



state; or

(2) identification card issued by the state of Indiana, another state, or the United States;

to sell tobacco products.

(b) An employee must have the employee's driver's license or identification card or a copy of the employee's driver's license or identification card:

(1) either:

(A) in the employee's possession; or

(B) on file with the employee's employer; and

(2) upon request, readily available to show to an excise officer or law enforcement;

when selling tobacco products.

(c) If an employee holds a valid license or identification card as described in subsection (a) but is unable to show the license, identification card, or a copy to an excise officer under subsection

(b) because:

(1) the employee has left the license, identification card, or copy in another location; or

(2) the license, identification card, or copy has otherwise been lost or mislaid;

the employee may, within five (5) days of the employee's inability to show the license, identification card, or copy to the excise officer, produce to the excise officer or to the office of the commission satisfactory evidence of a license or identification card issued to the individual that was valid at the time the individual was unable to show the license, identification card, or copy.

(d) If an employee who is unable to show a license, identification card, or copy to an excise officer fails to produce satisfactory evidence within five (5) days in the manner described in subsection (c), the commission may impose a civil penalty on the certificate holder under IC 7.1-3-23-3."

Page 5, delete lines 1 through 15.

Page 6, line 7, delete "and, if the person holds a tobacco sales certificate, the" and insert ".".

Page 6, delete line 8.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 149 as printed January 31, 2024.)



MANNING

Committee Vote: yeas 9, nays 0.

