

HOUSE BILL No. 1124

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-2-3-33; IC 7.1-3-18.5; IC 35-31.5-2; IC 35-46-1-11.9.

Synopsis: Ban on sale of flavored tobacco. Prohibits the sale of flavored tobacco products and their components, including: (1) cigarettes, electronic cigarettes, and smokeless tobacco; and (2) tobacco products that have a characterizing flavor. Defines "characterizing flavor". Provides that a person or entity that sells a flavored tobacco product commits a Class C misdemeanor and may have the person's tobacco sales certificate revoked by the alcohol and tobacco commission.

Effective: July 1, 2020.

Jackson

January 8, 2020, read first time and referred to Committee on Public Health.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1124

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 7.1-2-3-33, AS AMENDED BY P.L.214-2016,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 33. The commission is authorized to:
4 (1) investigate a violation of; and
5 (2) enforce a penalty for a violation of;
6 IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2,
7 IC 35-46-1-11.5, IC 35-46-1-11.7, ~~or~~ IC 35-46-1-11.8, **or**
8 **IC 35-46-1-11.9.**

9 SECTION 2. IC 7.1-3-18.5-5, AS AMENDED BY P.L.214-2016,
10 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2020]: Sec. 5. (a) Subject to subsection (b), the commission
12 may suspend the certificate of a person who fails to pay a civil penalty
13 imposed for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11,
14 IC 35-46-1-11.2, IC 35-46-1-11.5, IC 35-46-1-11.7, ~~or~~ IC 35-46-1-11.8,
15 **or IC 35-46-1-11.9.**

16 (b) Before enforcing the imposition of a civil penalty or suspending
17 or revoking a certificate under this chapter, the commission shall



1 provide written notice of the alleged violation to the certificate holder
 2 and conduct a hearing. The commission shall provide written notice of
 3 the civil penalty or suspension or revocation of a certificate to the
 4 certificate holder.

5 (c) Subject to subsection (b), the commission shall revoke the
 6 certificate of a person upon a finding by a preponderance of the
 7 evidence that the person:

8 (1) has violated IC 35-45-5-3, IC 35-45-5-3.5, IC 35-45-5-4,
 9 IC 35-46-1-11, IC 35-46-1-11.2, ~~or~~ IC 35-46-1-11.8, **or**
 10 **IC 35-46-1-11.9;**

11 (2) has committed habitual illegal sale of tobacco as established
 12 under IC 35-46-1-10.2(h); or

13 (3) has committed habitual illegal entrance by a minor as
 14 established under IC 35-46-1-11.7(f).

15 SECTION 3. IC 7.1-3-18.5-6, AS AMENDED BY P.L.214-2016,
 16 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2020]: Sec. 6. (a) If a certificate has:

18 (1) expired; or

19 (2) been suspended;

20 the commission may not reinstate or renew the certificate until all civil
 21 penalties imposed against the certificate holder for violating
 22 IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2,
 23 IC 35-46-1-11.5, IC 35-46-1-11.7, ~~or~~ IC 35-46-1-11.8, **or**
 24 **IC 35-46-1-11.9** have been paid.

25 (b) The failure to pay a civil penalty described in subsection (a) is
 26 a Class B infraction.

27 (c) If a certificate has been revoked, the commission may not
 28 reinstate or renew the certificate for at least one hundred eighty (180)
 29 days after the date of revocation. The commission may reinstate or
 30 renew the certificate only upon a reasonable showing by the applicant
 31 that the applicant shall:

32 (1) exercise due diligence in the sale of tobacco products or
 33 electronic cigarettes on the applicant's premises where the
 34 tobacco products or electronic cigarettes are sold or distributed;
 35 and

36 (2) properly supervise and train the applicant's employees or
 37 agents in the handling and sale of tobacco products or electronic
 38 cigarettes.

39 If a certificate is reinstated or renewed, the applicant of the certificate
 40 shall pay an application fee of one thousand dollars (\$1,000).

41 (d) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
 42 this section must be deposited in the youth tobacco education and



1 enforcement fund established under IC 7.1-6-2-6.

2 SECTION 4. IC 7.1-3-18.5-8, AS AMENDED BY P.L.214-2016,
3 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2020]: Sec. 8. The commission may mitigate civil penalties
5 imposed against a certificate holder for violating IC 35-46-1-10,
6 IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.5,
7 IC 35-46-1-11.7, IC 35-46-1-11.8, **IC 35-46-1-11.9**, or any of the
8 provisions of this chapter if a certificate holder provides a training
9 program for the certificate holder's employees that includes at least the
10 following topics:

11 (1) Laws governing the sale of tobacco products and electronic
12 cigarettes.

13 (2) Methods of recognizing and handling customers who are less
14 than eighteen (18) years of age.

15 (3) Procedures for proper examination of identification cards to
16 verify that customers are under eighteen (18) years of age.

17 SECTION 5. IC 35-31.5-2-36.5 IS ADDED TO THE INDIANA
18 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
19 **[EFFECTIVE JULY 1, 2020]: Sec. 36.5. "Characterizing flavor", for**
20 **purposes of IC 35-46-1-11.9, has the meaning set forth in**
21 **IC 35-46-1-11.9(a).**

22 SECTION 6. IC 35-31.5-2-52.5 IS ADDED TO THE INDIANA
23 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
24 **[EFFECTIVE JULY 1, 2020]: Sec. 52.5. "Component part", for**
25 **purposes of IC 35-46-1-11.9, has the meaning set forth in**
26 **IC 35-46-1-11.9(b).**

27 SECTION 7. IC 35-31.5-2-61.5 IS ADDED TO THE INDIANA
28 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
29 **[EFFECTIVE JULY 1, 2020]: Sec. 61.5. "Constituent", for purposes**
30 **of IC 35-46-1-11.9, has the meaning set forth in IC 35-46-1-11.9(c).**

31 SECTION 8. IC 35-31.5-2-99.5 IS ADDED TO THE INDIANA
32 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
33 **[EFFECTIVE JULY 1, 2020]: Sec. 99.5. "Distinguishable", for**
34 **purposes of IC 35-46-1-11.9, has the meaning set forth in**
35 **IC 35-46-1-11.9(d).**

36 SECTION 9. IC 35-31.5-2-136.5 IS ADDED TO THE INDIANA
37 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
38 **[EFFECTIVE JULY 1, 2020]: Sec. 136.5. "Flavored tobacco**
39 **product", for purposes of IC 35-46-1-11.9, has the meaning set**
40 **forth in IC 35-46-1-11.9(e).**

41 SECTION 10. IC 35-31.5-2-306.5 IS ADDED TO THE INDIANA
42 CODE AS A **NEW SECTION TO READ AS FOLLOWS**



1 [EFFECTIVE JULY 1, 2020]: **Sec. 306.5. "Smoke constituent", for**
 2 **purposes of IC 35-46-1-11.9, has the meaning set forth in**
 3 **IC 35-46-1-11.9(f).**

4 SECTION 11. IC 35-31.5-2-334.5 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2020]: **Sec. 334.5. "Tobacco product", for**
 7 **purposes of IC 35-46-1-11.9, has the meaning set forth in**
 8 **IC 35-46-1-11.9(g).**

9 SECTION 12. IC 35-46-1-11.9 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2020]: **Sec. 11.9. (a) As used in this section,**
 12 **"characterizing flavor" means a distinguishable taste or aroma:**

13 (1) **other than the taste or aroma of tobacco; and**

14 (2) **that is imparted or detectable before or during**
 15 **consumption of a tobacco product or component part;**
 16 **including a taste or aroma relating to any fruit, chocolate, vanilla,**
 17 **honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint,**
 18 **wintergreen, herb, or spice. The term does not include ingredients,**
 19 **additives, or flavorings in a tobacco product that do not contribute**
 20 **to the distinguishable taste or aroma of the tobacco product.**

21 (b) **As used in this section, "component part" means any**
 22 **element of a tobacco product, including the tobacco, filter, and**
 23 **paper. The term does not include any constituent.**

24 (c) **As used in this section, "constituent" means any ingredient,**
 25 **substance, chemical, or compound, excluding tobacco, water, or**
 26 **reconstituted tobacco sheet, that is added by the manufacturer to**
 27 **a tobacco product during the processing, manufacturing, or**
 28 **packaging of the tobacco product. The term includes a smoke**
 29 **constituent.**

30 (d) **As used in this section, "distinguishable" means perceivable**
 31 **by the sense of smell or taste.**

32 (e) **As used in this section, "flavored tobacco product" means**
 33 **any tobacco product or component part that contains a constituent**
 34 **that has or produces a characterizing flavor.**

35 (f) **As used in this section, "smoke constituent" means any**
 36 **chemical or chemical compound in mainstream or sidestream**
 37 **tobacco smoke:**

38 (1) **that transfers from any component part of the tobacco**
 39 **product to the smoke; or**

40 (2) **that is formed by the combustion or heating of tobacco,**
 41 **additives, or other component part of the tobacco product.**

42 (g) **As used in this section, "tobacco product" means:**



- 1 **(1) any product containing, made from, or derived from**
 2 **tobacco or nicotine that is intended for human consumption,**
 3 **whether smoked, chewed, absorbed, dissolved, inhaled,**
 4 **snorted, sniffed, or ingested by any other means, including:**
 5 **(A) cigarettes, cigars, little cigars, chewing tobacco, pipe**
 6 **tobacco, or snuff; or**
 7 **(B) electronic cigarettes, electronic cigars, electronic pipes,**
 8 **electronic hookah, or similar products, regardless of**
 9 **nicotine content, that rely on vaporization or**
 10 **aerosolization; and**
 11 **(2) any component part of a tobacco product.**
 12 **The term does not include any product that has been approved by**
 13 **the federal Food and Drug Administration either as a tobacco use**
 14 **cessation product or for other medical purposes and that is being**
 15 **marketed and sold or prescribed solely for the approved purpose.**
 16 **(h) A public statement, claim, or indicia made or disseminated**
 17 **by:**
 18 **(1) the manufacturer of a tobacco product; or**
 19 **(2) any person authorized or permitted by the manufacturer**
 20 **to make or disseminate public statements concerning a**
 21 **tobacco product;**
 22 **that a tobacco product has or produces a characterizing flavor**
 23 **constitutes presumptive evidence that the tobacco product is a**
 24 **flavored tobacco product.**
 25 **(i) A person or entity may not:**
 26 **(1) sell or distribute;**
 27 **(2) cause to be sold or distributed; or**
 28 **(3) offer for sale;**
 29 **any flavored tobacco product to a consumer.**
 30 **(j) A person or entity that violates this section commits a Class**
 31 **C misdemeanor.**

