

HOUSE BILL No. 1235

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-2; IC 7.1-1-3-47.5; IC 7.1-3-18.5; IC 7.1-5-12; IC 22-5-4; IC 24-3-7; IC 25-26-13-33.

Synopsis: Tobacco and smoking. Imposes a tax on electronic cigarettes. Deposits the tax into the tobacco use prevention and cessation trust fund. Prohibits a tobacco sales certificate if the premises contains a pharmacy. Increases the fee for a tobacco sales certificate. Adds the use of an electronic cigarette to the definition of "smoking" for the purpose of the laws that prohibit smoking in certain places. Prohibits smoking on property owned by the state. Adds, removes, and amends exemptions to the places where smoking is allowed. Removes the prohibition against an employer requiring, as a condition of employment, that a prospective employee refrain from using tobacco products outside the course of the prospective employee's employment. Removes the civil cause of action that a prospective employee could have brought against an employer for requiring the prospective employee, as a condition of employment, to refrain from using tobacco products outside the course of the prospective employee's employment. Provides that a person may not manufacture, sell, or distribute a liquid or gel substance containing nicotine, or a nicotine liquid container, unless the product is contained in child resistant packaging. Establishes penalties for violations. Prohibits the sale of certain tobacco products at the premises where a pharmacy is located.

Effective: July 1, 2015.

Clere, Brown C, Bacon

January 22, 2015, read first time and referred to Committee on Public Policy.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1235

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

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

- 1 SECTION 1. IC 6-7-2-5, AS AMENDED BY P.L.172-2011,
2 SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 5. As used in this chapter, "tobacco product"
4 means:
5 (1) any product made from tobacco, other than a cigarette (as
6 defined in IC 6-7-1-2), that is made for smoking, chewing, or
7 both; ~~or~~
8 (2) snuff, including moist snuff; ~~or~~
9 **(3) an electronic cigarette (as defined in IC 35-46-1-1.5).**
10 SECTION 2. IC 6-7-2-7, AS AMENDED BY P.L.205-2013,
11 SECTION 129, IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) A tax is imposed on the
13 distribution of tobacco products in Indiana at the rate of:
14 (1) twenty-four percent (24%) of the wholesale price of tobacco
15 products other than moist snuff or **electronic cigarettes;**



1 (2) for moist snuff, forty cents (\$0.40) per ounce, and a
 2 proportionate tax at the same rate on all fractional parts of an
 3 ounce. If the tax calculated for a fractional part of an ounce
 4 carried to the third decimal place results in the numeral in the
 5 third decimal place being greater than four (4), the amount of the
 6 tax shall be rounded to the next additional cent; or

7 **(3) for electronic cigarettes, twenty-four percent (24%) of the**
 8 **wholesale price of the electronic cigarette, including the**
 9 **components, cartridges, and solution intended for use in an**
 10 **electronic cigarette.**

11 (b) The distributor of the tobacco products, including a person that
 12 sells tobacco products through an Internet web site, is liable for the tax
 13 imposed under subsection (a). The tax is imposed at the time the
 14 distributor:

15 (1) brings or causes tobacco products to be brought into Indiana
 16 for distribution;

17 (2) manufactures tobacco products in Indiana for distribution; or

18 (3) transports tobacco products to retail dealers in Indiana for
 19 resale by those retail dealers.

20 (c) The Indiana general assembly finds that the tax rate on
 21 smokeless tobacco should reflect the relative risk between such
 22 products and cigarettes.

23 SECTION 3. IC 6-7-2-17, AS AMENDED BY P.L.234-2007,
 24 SECTION 202, IS AMENDED TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2015]: Sec. 17. **(a) Except as provided in**
 26 **subsection (b)**, the department shall deposit twenty-five percent (25%)
 27 of the taxes, registration fees, fines, or penalties collected under this
 28 chapter in the affordable housing and community development fund
 29 established by IC 5-20-4-7. The remainder of the taxes, registration
 30 fees, fines, or penalties collected under this chapter shall be deposited
 31 as provided in IC 6-7-1-28.1.

32 **(b) The department shall deposit one hundred percent (100%)**
 33 **of the taxes collected from electronic cigarettes under this chapter**
 34 **in the Indiana tobacco use prevention and cessation trust fund**
 35 **established by IC 4-12-4-10.**

36 SECTION 4. IC 7.1-1-3-47.5 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 47.5. **(a) "Tobacco**
 38 **product", except as provided in subsection (b)**, has the meaning set
 39 forth in IC 7.1-6-1-3.

40 **(b) "Tobacco product", for purposes of IC 7.1-3-18.5, has the**
 41 **meaning set forth in IC 7.1-3-18.5-0.5.**

42 SECTION 5. IC 7.1-3-18.5-0.5 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. As used in this chapter,**
 3 **"tobacco product" means a product that contains tobacco,**
 4 **including an electronic cigarette, and is intended for human**
 5 **consumption.**

6 SECTION 6. IC 7.1-3-18.5-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) A person may not
 8 sell or otherwise distribute in exchange for consideration a tobacco
 9 product at retail without a valid tobacco sales certificate issued by the
 10 commission.

11 (b) **Except as provided in subsection (c),** a certificate may be
 12 issued only to a person who owns or operates at least one (1) of the
 13 following:

14 (1) A premises consisting of a permanent building or structure
 15 where the tobacco product is sold or distributed.

16 (2) A premises upon which a cigarette vending machine (as
 17 defined by IC 35-43-4-7) is located.

18 (c) **The commission may not issue a tobacco sales certificate to**
 19 **a person if the premises where the tobacco product is to be sold or**
 20 **distributed contains a pharmacy that has been issued a pharmacy**
 21 **permit under IC 25-26-13.**

22 SECTION 7. IC 7.1-3-18.5-2, AS AMENDED BY P.L.94-2008,
 23 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2015]: Sec. 2. (a) A person who desires a certificate must
 25 provide the following to the commission:

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

28 (2) Except as provided in section 6(c) of this chapter, a fee of ~~two~~
 29 **five hundred dollars (\$200): (\$500).**

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

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

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

35 (b) A separate certificate is required for each location where the
 36 tobacco products are sold or distributed.

37 (c) A certificate holder shall conspicuously display the holder's
 38 certificate on the holder's premises where the tobacco products are sold
 39 or distributed.

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



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

3 (1) If the person is an individual, the person must be at least
4 eighteen (18) years of age.

5 (2) The person must be authorized to do business in Indiana.

6 (f) The fees collected under this section shall be deposited in the
7 enforcement and administration fund under IC 7.1-4-10.

8 SECTION 8. IC 7.1-5-12-3, AS ADDED BY P.L.141-2012,
9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2015]: Sec. 3. As used in this chapter, "smoking" means the:

11 (1) carrying or holding of a lighted cigarette, cigar, or pipe or any
12 other lighted tobacco smoking equipment; ~~or~~

13 (2) inhalation or exhalation of smoke from lighted tobacco
14 smoking equipment; ~~or~~

15 **(3) inhalation or exhalation of vapors from an electronic
16 cigarette.**

17 SECTION 9. IC 7.1-5-12-4, AS AMENDED BY P.L.70-2014,
18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2015]: Sec. 4. (a) Except as provided in section 5 of this
20 chapter, smoking is prohibited in the following:

21 (1) A public place.

22 (2) A place of employment.

23 (3) A vehicle owned, leased, or operated by the state if the vehicle
24 is being used for a governmental function.

25 (4) The area within eight (8) feet of a public entrance to:

26 (A) a public place; or

27 (B) a place of employment.

28 **(5) Property owned by the state.**

29 (b) An employer shall inform each of the employer's employees and
30 prospective employees of the smoking prohibition applying to the place
31 of employment.

32 (c) An owner, operator, manager, or official in charge of a public
33 place or place of employment shall remove ashtrays or other smoking
34 paraphernalia from areas of the public place or place of employment
35 where smoking is prohibited under this chapter. However, this
36 subsection does not prohibit the display of ashtrays or other smoking
37 paraphernalia that are intended only for retail sale.

38 (d) This subsection does not apply to an owner, an operator, a
39 manager, or an official in charge of a public place or place of
40 employment in which smoking is allowed under section 5 of this
41 chapter. An owner, operator, manager, or official in charge of a public
42 place or place of employment shall post conspicuous signs at each



1 public entrance that read "State Law Prohibits Smoking Within 8 Feet
 2 of this Entrance" or other similar language. **An owner, an operator,
 3 a manager, or an official in charge of property owned by the state
 4 shall post conspicuous signs at each public entrance to the property
 5 that read "State Law Prohibits Smoking on this Property" or other
 6 similar language.**

7 SECTION 10. IC 7.1-5-12-5, AS AMENDED BY P.L.70-2014,
 8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2015]: Sec. 5. (a) Except as provided in subsection (c) and
 10 subject to section 13 of this chapter, smoking may be allowed in the
 11 following:

12 ~~(1) A horse racing facility operated under a permit under
 13 IC 4-31-5 and any other permanent structure on land owned or
 14 leased by the owner of the facility that is adjacent to the facility.~~

15 ~~(2) A riverboat (as defined in IC 4-33-2-17) and any other
 16 permanent structure that is:~~

17 ~~(A) owned or leased by the owner of the riverboat; and~~

18 ~~(B) located on land that is adjacent to:~~

19 ~~(i) the dock to which the riverboat is moored; or~~

20 ~~(ii) the land on which the riverboat is situated in the case of
 21 a riverboat described in IC 4-33-2-17(2).~~

22 ~~(3) A facility that operates under a gambling game license under
 23 IC 4-35-5 and any other permanent structure on land owned or
 24 leased by the owner of the facility that is adjacent to the facility.~~

25 ~~(4) A satellite facility licensed under IC 4-31-5.5.~~

26 ~~(5) (1) An establishment owned or leased by a business that meets
 27 the following requirements:~~

28 ~~(A) The business was in business and permitted smoking on
 29 December 31, 2012.~~

30 ~~(B) The business prohibits entry by an individual who is less
 31 than twenty-one (21) years of age.~~

32 ~~(C) The owner or operator of the business holds a beer, liquor,
 33 or wine retailer's permit.~~

34 ~~(D) The business limits smoking in the establishment to ~~either:~~~~

35 ~~(i) cigar smoking; or~~

36 ~~(ii) smoking with a waterpipe or hookah device.~~

37 ~~(E) During the preceding calendar year, at least ten percent
 38 (10%) of the business's annual gross income was from~~

39 ~~(i) the sale of cigars and the rental of onsite humidors; or~~

40 ~~(ii) the sale of loose tobacco for use in a waterpipe or
 41 hookah device.~~

42 ~~(F) The person in charge of the business posts in the~~



- 1 establishment conspicuous signs that display the message that
 2 cigarette **smoking and electronic cigarette** smoking **is** ~~are~~
 3 prohibited.
- 4 **(2) An establishment owned or leased by a business that meets**
 5 **the following requirements:**
- 6 **(A) The business prohibits entry by an individual who is**
 7 **less than twenty-one (21) years of age.**
- 8 **(B) The owner or operator of the business holds a beer,**
 9 **liquor, or wine retailer's permit.**
- 10 **(C) The business limits smoking in the establishment to**
 11 **cigar smoking.**
- 12 **(D) During the preceding calendar year, at least ten**
 13 **percent (10%) of the business's annual gross income was**
 14 **from the sale of cigars and the rental of onsite humidors.**
- 15 **(E) The person in charge of the business posts in the**
 16 **establishment conspicuous signs that display the message**
 17 **that cigarette smoking and electronic cigarette smoking**
 18 **are prohibited.**
- 19 ~~(3)~~ **(3) A premises owned or leased by and regularly used for the**
 20 **activities of a business that meets all of the following:**
- 21 **(A) The business is exempt from federal income taxation**
 22 **under 26 U.S.C. 501(c).**
- 23 **(B) The business:**
- 24 **(i) meets the requirements to be considered a club under**
 25 **IC 7.1-3-20-1; or**
- 26 **(ii) is a fraternal club (as defined in IC 7.1-3-20-7).**
- 27 **(C) The business provides food or alcoholic beverages only to**
 28 **its bona fide members and their guests.**
- 29 **(D) The business, during a meeting of the business's members,**
 30 **voted within the previous two (2) years to allow smoking on**
 31 **the premises.**
- 32 **(E) The business:**
- 33 **(i) provides a separate, enclosed, designated smoking room**
 34 **or area that is adequately ventilated to prevent migration of**
 35 **smoke to nonsmoking areas of the premises;**
- 36 **(ii) allows smoking only in the room or area described in**
 37 **item (i); and**
- 38 **(iii) does not allow an individual who is less than eighteen**
 39 **(18) years of age to enter into the room or area described in**
 40 **item (i).**
- 41 ~~(4)~~ **(4) A retail tobacco store used primarily for the sale of tobacco**
 42 **products and tobacco accessories that meets the following**



- 1 requirements:
- 2 (A) The owner or operator of the store ~~held~~ **holds** a valid
- 3 tobacco sales certificate issued under IC 7.1-3-18.5. ~~on June~~
- 4 ~~30, 2012.~~
- 5 (B) The store prohibits entry by an individual who is less than
- 6 eighteen (18) years of age.
- 7 (C) The sale of products other than tobacco products and
- 8 tobacco accessories is merely incidental.
- 9 (D) The sale of tobacco products accounts for at least
- 10 eighty-five percent (85%) of the store's annual gross sales.
- 11 ~~(E) Food or beverages are not sold in a manner that requires~~
- 12 ~~consumption on the premises; and there is not an area set aside~~
- 13 ~~for customers to consume food or beverages on the premises.~~
- 14 **(E) The store may not prepare any food or beverage that**
- 15 **would require a certified food handler under IC 16-42-5.2.**
- 16 ~~(8)~~ **(5)** A bar or tavern:
- 17 (A) for which a permittee holds:
- 18 (i) a beer retailer's permit under IC 7.1-3-4;
- 19 (ii) a liquor retailer's permit under IC 7.1-3-9; or
- 20 (iii) a wine retailer's permit under IC 7.1-3-14;
- 21 (B) that does not employ an individual who is less than
- 22 eighteen (18) years of age;
- 23 (C) that:
- 24 (i) does not allow an individual who
- 25 ~~(i)~~ is less than twenty-one (21) years of age and
- 26 ~~(ii)~~ is not an employee of the bar or tavern
- 27 to enter any area of the bar or tavern; ~~and or~~
- 28 **(ii) allows an individual who is less than twenty-one (21)**
- 29 **years of age to enter only the nonsmoking rooms or areas**
- 30 **of a bar or tavern that meet the requirements under**
- 31 **section 5.5 of this chapter; and**
- 32 (D) that is not located in a business that would otherwise be
- 33 subject to this chapter.
- 34 ~~(9)~~ **(6)** A cigar manufacturing facility that does not offer retail
- 35 sales.
- 36 ~~(10)~~ **(7)** A premises of a cigar specialty store to which all of the
- 37 following apply:
- 38 (A) The owner or operator of the store ~~held~~ **holds** a valid
- 39 tobacco sales certificate issued under IC 7.1-3-18.5. ~~on June~~
- 40 ~~30, 2012.~~
- 41 (B) The sale of tobacco products and tobacco accessories
- 42 account for at least fifty percent (50%) of the store's annual



- 1 gross sales.
- 2 (C) The store has a separate, enclosed, designated smoking
- 3 room that is adequately ventilated to prevent migration of
- 4 smoke to nonsmoking areas.
- 5 (D) Smoking is allowed only in the room described in clause
- 6 (C).
- 7 (E) Individuals who are less than eighteen (18) years of age are
- 8 prohibited from entering into the room described in clause (C).
- 9 (F) Cigarette **smoking and electronic cigarette** smoking **is**
- 10 **are** not allowed on the premises of the 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 and electronic cigarette** smoking **is are**
- 14 prohibited.
- 15 (H) Food or beverages are not sold in a manner that requires
- 16 consumption on the premises, and there is not an area set aside
- 17 for customers to consume food or beverages on the premises.
- 18 **The store may not prepare any food or beverage that**
- 19 **would require a certified food handler under IC 16-42-5.2.**
- 20 ~~(H)~~ **(8)** The premises of a business that is located in the business
- 21 owner's private residence (as defined in IC 3-5-2-42.5) if the only
- 22 employees of the business who work in the residence are the
- 23 owner and other individuals who reside in the residence.
- 24 **(9) Property owned by the state that is:**
- 25 **(A) being used exclusively by an individual as the**
- 26 **individual's permanent residence; or**
- 27 **(B) a designated smoking area designated by the**
- 28 **superintendent of the Indiana Veterans' Home.**
- 29 (b) The owner, operator, manager, or official in charge of an
- 30 establishment or premises in which smoking is allowed under this
- 31 section shall post conspicuous signs in the establishment that read
- 32 "WARNING: Smoking Is Allowed In This Establishment" or other
- 33 similar language.
- 34 (c) This section does not allow smoking in the following enclosed
- 35 areas of an establishment or premises described in subsection (a)(1)
- 36 through ~~(a)(10)~~: **(a)(9)**:
- 37 (1) Any hallway, elevator, or other common area where a
- 38 individual who is less than eighteen (18) years of age is permitted.
- 39 (2) Any room that is intended for use by an individual who is less
- 40 than eighteen (18) years of age.
- 41 (d) The owner, operator, or manager of an establishment or premises
- 42 that is listed under subsection (a) and that allows smoking shall provide



1 a verified statement to the commission that states that the establishment
 2 or premises qualifies for the exemption. The commission may require
 3 the owner, operator, or manager of an establishment or premises to
 4 provide documentation or additional information concerning the
 5 exemption of the establishment or premises.

6 SECTION 11. IC 7.1-5-12-5.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2015]: **Sec. 5.5. (a) A bar or tavern in which
 9 smoking is allowed under section 5(5) of this chapter may allow an
 10 individual who is less than twenty-one (21) years of age to enter
 11 into an area of the bar or tavern if all the following apply:**

12 **(1) The area in which smoking is allowed in the bar or tavern
 13 is a separate, enclosed, designated smoking room or area.**

14 **(2) All the following must have a ventilation system that is
 15 separate from the ventilation system for a smoking room or
 16 area in the bar or tavern:**

17 **(A) A nonsmoking room or area.**

18 **(B) Any areas of common entry into the bar or tavern.**

19 **(C) Restrooms located in the bar or tavern.**

20 **The rooms or areas listed in clauses (A) through (C) may
 21 share a ventilation system if the ventilation system is separate
 22 from the ventilation system for a smoking room or area.**

23 **(3) An individual who is less than twenty-one (21) years of age
 24 is not allowed to enter a smoking room or area in the bar or
 25 tavern.**

26 **(4) An individual is not required to pass through a smoking
 27 room or area to enter the nonsmoking room or area in the bar
 28 or tavern.**

29 **(5) Any entrance to a nonsmoking room or area is at least
 30 eight (8) feet from any entrance to a smoking room or area in
 31 the bar or tavern.**

32 **(6) Any entrance to a:**

33 **(A) smoking room or area; or**

34 **(B) nonsmoking room or area;**

35 **must have a door that remains closed during all hours of
 36 operation of the bar or tavern and that is opened only when
 37 a patron or employee of the bar or tavern is entering or
 38 leaving the room or area.**

39 **(7) If a smoking room or area and a nonsmoking room or area
 40 in the bar or tavern share a common wall, the wall must
 41 extend up to the next floor or the roof so that the rooms or
 42 areas are completely separated from each other by the wall.**



1 **(8) Any entrance to a common restroom must be at least eight**
 2 **(8) feet from any entrance to a smoking area or room in the**
 3 **bar or tavern.**
 4 **(b) A bar or tavern that has a smoking room or area and a**
 5 **nonsmoking room or area may use one (1) or more common**
 6 **kitchens to prepare food for patrons in both the smoking and**
 7 **nonsmoking rooms and areas if:**
 8 **(1) smoking is not allowed in the kitchen; and**
 9 **(2) any entrance to the kitchen is at least eight (8) feet from**
 10 **any entrance to a smoking room or area in the bar or tavern.**
 11 SECTION 12. IC 22-5-4-1, AS AMENDED BY P.L.136-2006,
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2015]: Sec. 1. (a) Except as provided in subsection (b), an
 14 employer may not:
 15 (1) require, as a condition of employment, an employee ~~or~~
 16 ~~prospective employee~~ to refrain from using; or
 17 (2) discriminate against an employee with respect to:
 18 (A) the employee's compensation and benefits; or
 19 (B) terms and conditions of employment;
 20 based on the employee's use of;
 21 tobacco products outside the course of the employee's ~~or prospective~~
 22 ~~employee's~~ employment.
 23 (b) An employer may implement financial incentives:
 24 (1) intended to reduce tobacco use; and
 25 (2) related to employee health benefits provided by the employer.
 26 SECTION 13. IC 22-5-4-2 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) An employee ~~or~~
 28 ~~prospective employee~~ may bring a civil action against an employer to
 29 enforce section 1 of this chapter.
 30 (b) If an employer violates section 1 of this chapter, the court may
 31 do the following:
 32 (1) Award:
 33 (A) actual damages; and
 34 (B) court costs and reasonable attorney's fees;
 35 to the prevailing employee. ~~or prospective employee.~~
 36 (2) Enjoin further violation of this chapter.
 37 SECTION 14. IC 24-3-7 IS ADDED TO THE INDIANA CODE AS
 38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2015]:
 40 **Chapter 7. Nicotine Liquid Container Packaging**
 41 **Sec. 1. This chapter does not apply to any product that has been**
 42 **approved or certified by the United States Food and Drug**



1 Administration for sale as a tobacco cessation product, as a
2 tobacco dependence product, or for other medical purposes, and is
3 marketed and sold for this approved purpose.

4 Sec. 2. As used in this chapter, "child resistant packaging"
5 means packaging that:

6 (1) is designed or constructed to be significantly difficult for
7 children less than five (5) years of age to open or obtain a
8 toxic or harmful amount of the substance contained in the
9 package within a reasonable time while not difficult for adults
10 to use properly; and

11 (2) complies with the poison prevention standards under 16
12 CFR 1700.15.

13 Sec. 3. As used in this chapter, "commission" refers to the
14 alcohol and tobacco commission created by IC 7.1-2-1-1.

15 Sec. 4. As used in this chapter, "electronic cigarette" has the
16 meaning set forth in IC 35-46-1-1.5.

17 Sec. 5. As used in this chapter, "electronic delivery device"
18 means any product containing or delivering nicotine or any other
19 substance intended for human consumption that can be used by a
20 person to simulate smoking in the delivery of nicotine or any other
21 substance through inhalation of vapor from the product. The term
22 includes any component part of a product, whether or not
23 marketed or sold separately.

24 Sec. 6. (a) As used in this chapter, "nicotine liquid container"
25 means a bottle or other container of a nicotine liquid or other
26 substance containing nicotine that is sold, marketed, or intended
27 for use with an electronic cigarette or other electronic delivery
28 device.

29 (b) The term does not include a container containing nicotine in
30 a cartridge that is sold, marketed, or intended for use with an
31 electronic cigarette if the cartridge is prefilled and sealed by the
32 manufacturer and is not intended to be opened by the consumer.

33 Sec. 7. A person may not manufacture, sell, or distribute:

34 (1) a liquid or gel substance containing nicotine; or

35 (2) a nicotine liquid container;

36 unless the product is contained in child resistant packaging.

37 Sec. 8. (a) If the commission discovers any product sold in
38 violation of this chapter, the commission may seize and take
39 possession of the product. The commission shall destroy the seized
40 product.

41 (b) The commission may impose a civil penalty on any person
42 who sells or distributes a product in violation of this chapter.



1 **However, the civil penalty may not exceed the greater of:**
2 **(1) five hundred percent (500%) of the retail value of the**
3 **product in violation of this chapter; or**
4 **(2) five thousand dollars (\$5,000).**
5 SECTION 15. IC 25-26-13-33 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2015]: **Sec. 33. (a) This section does not apply**
8 **to any product that requires a prescription or drug order and is**
9 **regulated by the United States Food and Drug Administration**
10 **under Chapter V of the federal Food, Drug, and Cosmetic Act.**
11 **(b) A person may not sell:**
12 **(1) a cigarette (as defined by IC 6-7-1-2);**
13 **(2) a tobacco product (as defined by IC 6-7-2-5); or**
14 **(3) an electronic cigarette (as defined by IC 35-46-1-1.5);**
15 **in the premises that contains a pharmacy.**

