



January 30, 2018

HOUSE BILL No. 1380

DIGEST OF HB 1380 (Updated January 29, 2018 12:39 pm - DI 77)

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

Synopsis: Tobacco products purchasing age. Raises the age from 18 years of age 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.

Effective: July 1, 2018.

Brown C, Kirchhofer, Bacon

January 16, 2018, read first time and referred to Committee on Public Health.
January 30, 2018, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

HB 1380—LS 6845/DI 120



January 30, 2018

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1380

A BILL FOR AN ACT to amend the Indiana Code concerning health.

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.231-2015,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: 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 (b) A separate certificate is required for each location where the
15 tobacco products or electronic cigarettes are sold or distributed.
16 (c) A certificate holder shall conspicuously display the holder's
17 certificate on the holder's premises where the tobacco products or

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1 electronic cigarettes are sold or distributed.

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

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

7 (1) If the person is an individual, the person must be at least
8 ~~eighteen (18)~~ **twenty-one (21)** years of age.

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

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

12 SECTION 2. IC 7.1-3-18.5-8, AS AMENDED BY P.L.214-2016,
13 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2018]: Sec. 8. The commission may mitigate civil penalties
15 imposed against a certificate holder for violating IC 35-46-1-10,
16 IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.5,
17 IC 35-46-1-11.7, IC 35-46-1-11.8, or any of the provisions of this
18 chapter if a certificate holder provides a training program for the
19 certificate holder's employees that includes at least the following
20 topics:

21 (1) Laws governing the sale of tobacco products and electronic
22 cigarettes.

23 (2) Methods of recognizing and handling customers who are less
24 than ~~eighteen (18)~~ **twenty-one (21)** years of age.

25 (3) Procedures for proper examination of identification cards to
26 verify that customers are under ~~eighteen (18)~~ **twenty-one (21)**
27 years of age.

28 SECTION 3. IC 7.1-5-12-5, AS AMENDED BY P.L.231-2015,
29 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2018]: Sec. 5. (a) Except as provided in subsection (c) and
31 subject to section 13 of this chapter, smoking may be allowed in the
32 following:

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

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

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

39 (B) located on land that is adjacent to:

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

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



- 1 (3) A facility that operates under a gambling game license under
 2 IC 4-35-5 and any other permanent structure on land owned or
 3 leased by the owner of the facility that is adjacent to the facility.
 4 (4) A satellite facility licensed under IC 4-31-5.5.
 5 (5) An establishment owned or leased by a business that meets the
 6 following requirements:
 7 (A) The business was in business and permitted smoking on
 8 December 31, 2012.
 9 (B) The business prohibits entry by an individual who is less
 10 than twenty-one (21) years of age.
 11 (C) The owner or operator of the business holds a beer, liquor,
 12 or wine retailer's permit.
 13 (D) The business limits smoking in the establishment to
 14 smoking with a waterpipe or hookah device.
 15 (E) During the preceding calendar year, at least ten percent
 16 (10%) of the business's annual gross income was from the sale
 17 of loose tobacco for use in a waterpipe or hookah device.
 18 (F) The person in charge of the business posts in the
 19 establishment conspicuous signs that display the message that
 20 cigarette smoking is prohibited.
 21 (6) An establishment owned or leased by a business that meets the
 22 following requirements:
 23 (A) The business prohibits entry by an individual who is less
 24 than twenty-one (21) years of age.
 25 (B) The owner or operator of the business holds a beer, liquor,
 26 or wine retailer's permit.
 27 (C) The business limits smoking in the establishment to cigar
 28 smoking.
 29 (D) During the preceding calendar year, at least ten percent
 30 (10%) of the business's annual gross income was from the sale
 31 of cigars and the rental of onsite humidors.
 32 (E) The person in charge of the business posts in the
 33 establishment conspicuous signs that display the message that
 34 cigarette smoking is prohibited.
 35 (7) A premises owned or leased by and regularly used for the
 36 activities of a business that meets all of the following:
 37 (A) The business is exempt from federal income taxation
 38 under 26 U.S.C. 501(c).
 39 (B) The business:
 40 (i) meets the requirements to be considered a club under
 41 IC 7.1-3-20-1; or
 42 (ii) is a fraternal club (as defined in IC 7.1-3-20-7).



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



- 1 (11) A premises of a cigar specialty store to which all of the
 2 following apply:
 3 (A) The owner or operator of the store holds a valid tobacco
 4 sales certificate issued under IC 7.1-3-18.5.
 5 (B) The sale of tobacco products and tobacco accessories
 6 account for at least fifty percent (50%) of the store's annual
 7 gross sales.
 8 (C) The store has a separate, enclosed, designated smoking
 9 room that is adequately ventilated to prevent migration of
 10 smoke to nonsmoking areas.
 11 (D) Smoking is allowed only in the room described in clause
 12 (C).
 13 (E) Individuals who are less than ~~eighteen (18)~~ **twenty-one**
 14 **(21)** years of age are prohibited from entering into the room
 15 described in clause (C).
 16 (F) Cigarette smoking is not allowed on the premises of the
 17 store.
 18 (G) The owner or operator of the store posts a conspicuous
 19 sign on the premises of the store that displays the message that
 20 cigarette smoking is prohibited.
 21 (H) The store does not prepare any food or beverage that
 22 would require a certified food handler under IC 16-42-5.2.
- 23 (12) The premises of a business that is located in the business
 24 owner's private residence (as defined in IC 3-5-2-42.5) if the only
 25 employees of the business who work in the residence are the
 26 owner and other individuals who reside in the residence.
- 27 (b) The owner, operator, manager, or official in charge of an
 28 establishment or premises in which smoking is allowed under this
 29 section shall post conspicuous signs in the establishment that read
 30 "WARNING: Smoking Is Allowed In This Establishment" or other
 31 similar language.
- 32 (c) This section does not allow smoking in the following enclosed
 33 areas of an establishment or premises described in subsection (a)(1)
 34 through (a)(11):
- 35 (1) Any hallway, elevator, or other common area where an
 36 individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years
 37 of age is permitted.
- 38 (2) Any room that is intended for use by an individual who is less
 39 than ~~eighteen (18)~~ **twenty-one (21)** years of age.
- 40 (d) The owner, operator, or manager of an establishment or premises
 41 that is listed under subsection (a) and that allows smoking shall provide
 42 a verified statement to the commission that states that the establishment



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

5 SECTION 4. IC 7.1-6-2-4, AS AMENDED BY P.L.20-2013,
 6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2018]: Sec. 4. (a) An enforcement officer vested with full
 8 police powers and duties may engage a person less than ~~eighteen (18)~~
 9 **twenty-one (21)** years of age as part of an enforcement action under
 10 this article if the initial or contemporaneous receipt or purchase of a
 11 tobacco product or electronic cigarette by a person less than ~~eighteen~~
 12 ~~(18)~~ **twenty-one (21)** years of age occurs under the direction of an
 13 enforcement officer vested with full police powers and duties and is
 14 part of the enforcement action.

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

17 (1) recruit or attempt to recruit a person less than ~~eighteen (18)~~
 18 **twenty-one (21)** years of age to participate in an enforcement
 19 action under subsection (a) at the scene of a violation of section
 20 2 of this chapter; or

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

26 SECTION 5. IC 7.1-7-2-17, AS ADDED BY P.L.176-2015,
 27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2018]: Sec. 17. "Minor" means an individual who is less than
 29 ~~eighteen (18)~~ **twenty-one (21)** years of age.

30 SECTION 6. IC 7.1-7-5.5-5, AS ADDED BY P.L.206-2017,
 31 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2018]: Sec. 5. A retailer who ships e-liquids from a delivery
 33 sale order shall include as part of the shipping documents a document
 34 with the following statement: "E-LIQUIDS: Indiana law prohibits the
 35 sale of this product to a person who is less than ~~18~~ **21** years of age."

36 SECTION 7. IC 7.1-7-6-2, AS AMENDED BY P.L.206-2017,
 37 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2018]: Sec. 2. (a) This subsection does not apply to a delivery
 39 sale as defined in IC 7.1-7-2-6.3. If a retailer:

40 (1) knowingly and intentionally sells e-liquid to a minor; or
 41 (2) knowingly, intentionally, or negligently fails to verify the age
 42 of a person who appears to be less than twenty-seven (27) years



- 1 of age by checking a government issued identification and sells
 2 the person e-liquid;
 3 the retailer commits a Class C infraction. For a sale to take place under
 4 this section, the buyer must pay the retail establishment for the e-liquid.
- 5 (b) Notwithstanding IC 34-28-5-4(c), a civil judgment for an
 6 infraction committed under this section must be imposed as follows:
- 7 (1) If the retail establishment at that specific business location has
 8 not been issued a citation or summons for a violation of this
 9 section in the previous one hundred eighty (180) days, a civil
 10 penalty of up to two hundred dollars (\$200).
 11 (2) If the retail establishment at that specific business location has
 12 had one (1) citation or summons issued for a violation of this
 13 section in the previous one hundred eighty (180) days, a civil
 14 penalty of up to four hundred dollars (\$400).
 15 (3) If the retail establishment at that specific business location has
 16 had two (2) citations or summonses issued for a violation of this
 17 section in the previous one hundred eighty (180) days, a civil
 18 penalty of up to seven hundred dollars (\$700).
 19 (4) If the retail establishment at that specific business location has
 20 had three (3) or more citations or summonses issued for a
 21 violation of this section in the previous one hundred eighty (180)
 22 days, a civil penalty of up to one thousand dollars (\$1,000).
 23 A retail establishment may not be issued a citation or summons for a
 24 violation of this section more than once every twenty-four (24) hours
 25 for each specific business location.
- 26 (c) It is not a defense that the person to whom e-liquid was sold or
 27 distributed did not inhale or otherwise consume e-liquid.
- 28 (d) The following defenses are available to a retail establishment
 29 accused of selling or distributing e-liquid to a person who is less than
 30 ~~eighteen (18)~~ **twenty-one (21)** years of age:
- 31 (1) The buyer or recipient produced a driver's license bearing the
 32 purchaser's or recipient's photograph showing that the purchaser
 33 or recipient was of legal age to make the purchase.
 34 (2) The buyer or recipient produced a photographic identification
 35 card issued under IC 9-24-16-1 or a similar card issued under the
 36 laws of another state or the federal government showing that the
 37 purchaser or recipient was of legal age to make the purchase.
 38 (3) The appearance of the purchaser or recipient was such that an
 39 ordinary prudent person would believe that the purchaser or
 40 recipient was not less than the age that complies with regulations
 41 promulgated by the federal Food and Drug Administration.
 42 (e) It is a defense that the accused retail establishment sold or



1 delivered e-liquid to a person who acted in the ordinary course of
2 employment or a business concerning e-liquid:

- 3 (1) agriculture;
4 (2) processing;
5 (3) transporting;
6 (4) wholesaling; or
7 (5) retailing.

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

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

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

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

23 SECTION 8. IC 24-3-5-4, AS AMENDED BY P.L.160-2005,
24 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2018]: Sec. 4. Subject to section 4.5 of this chapter, a
26 merchant may not mail or ship cigarettes as part of a delivery sale
27 unless, before mailing or shipping the cigarettes, the merchant:

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

30 (A) providing the prospective customer's address and date of
31 birth;

32 (B) advising the prospective customer that:

33 (i) signing another person's name to the statement required
34 under this subdivision may subject the person to a civil
35 monetary penalty of not more than one thousand dollars
36 (\$1,000); and

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

40 (C) confirming that the cigarette order was placed by the
41 prospective customer;

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



- 1 (E) stating the sale of cigarettes by delivery sale is a taxable
 2 event for purposes of IC 6-7-1;
 3 (2) makes a good faith effort to verify the information in the
 4 written statement obtained under subdivision (1) by using a
 5 federal or commercially available data base; and
 6 (3) receives payment for the delivery sale by a credit or debit card
 7 issued in the name of the prospective purchaser.
- 8 SECTION 9. IC 24-3-5-5, AS AMENDED BY P.L.160-2005,
 9 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2018]: Sec. 5. (a) A merchant who mails or ships cigarettes as
 11 part of a delivery sale shall:
 12 (1) use a mailing or shipping service that requires the customer or
 13 a person at least ~~eighteen (18)~~ **twenty-one (21)** years of age who
 14 is designated by the customer to:
 15 (A) sign to accept delivery of the cigarettes; and
 16 (B) present a valid operator's license issued under IC 9-24-3 or
 17 an identification card issued under IC 9-24-16 if the customer
 18 or the customer's designee, in the opinion of the delivery agent
 19 or employee of the mailing or shipping service, appears to be
 20 less than twenty-seven (27) years of age;
 21 (2) provide to the mailing or shipping service used under
 22 subdivision (1) proof of compliance with section 6(a) of this
 23 chapter; and
 24 (3) include the following statement in bold type or capital letters
 25 on an invoice or shipping document:
 26 INDIANA LAW PROHIBITS THE MAILING OR SHIPPING
 27 OF CIGARETTES TO A PERSON LESS THAN ~~EIGHTEEN~~
 28 **(18) TWENTY-ONE (21)** YEARS OF AGE AND
 29 REQUIRES PAYMENT OF ALL APPLICABLE TAXES.
 30 (b) The commission may impose a civil penalty of not more than
 31 one thousand dollars (\$1,000) if a mailing or shipping service:
 32 (1) delivers cigarettes as part of a delivery sale without first
 33 receiving proof from the merchant of compliance with section
 34 6(a) of this chapter; or
 35 (2) fails to obtain a signature and proof of identification of the
 36 customer or the customer's designee under subsection (a)(1).
 37 The commission shall deposit amounts collected under this subsection
 38 into the **Richard D. Doyle** youth tobacco education and enforcement
 39 fund established by IC 7.1-6-2-6.
 40 (c) The following apply to a merchant that mails or ships cigarettes
 41 as part of a delivery sale without using a third party service as required
 42 by subsection (a)(1):



- 1 (1) The merchant shall require the customer or a person at least
- 2 ~~eighteen (18)~~ **twenty-one (21)** years of age who is designated by
- 3 the customer to:
- 4 (A) sign to accept delivery of the cigarettes; and
- 5 (B) present a valid operator's license issued under IC 9-24-3 or
- 6 identification card issued under IC 9-24-16 if the customer or
- 7 the customer's designee, in the opinion of the merchant or the
- 8 merchant's employee making the delivery, appears to be less
- 9 than twenty-seven (27) years of age.
- 10 (2) The commission may impose a civil penalty of not more than
- 11 one thousand dollars (\$1,000) if the merchant:
- 12 (A) delivers the cigarettes without first complying with section
- 13 6(a) of this chapter; or
- 14 (B) fails to obtain a signature and proof of identification of the
- 15 customer or the customer's designee under subdivision (1).
- 16 The commission shall deposit amounts collected under this
- 17 subdivision into the **Richard D. Doyle** youth tobacco education
- 18 and enforcement fund established by IC 7.1-6-2-6.
- 19 SECTION 10. IC 24-3-5-8, AS AMENDED BY P.L.160-2005,
- 20 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2018]: Sec. 8. The commission may impose a civil penalty of
- 22 not more one thousand dollars (\$1,000) on a:
- 23 (1) customer who signs another person's name to a statement
- 24 required under section 4(1) of this chapter; or
- 25 (2) merchant who sells cigarettes by delivery sale to a person less
- 26 than ~~eighteen (18)~~ **twenty-one (21)** years of age.
- 27 The commission shall deposit amounts collected under this section into
- 28 the **Richard D. Doyle** youth tobacco education and enforcement fund
- 29 established by IC 7.1-6-2-6.
- 30 SECTION 11. IC 35-43-5-3.8, AS AMENDED BY P.L.158-2013,
- 31 SECTION 473, IS AMENDED TO READ AS FOLLOWS
- 32 [EFFECTIVE JULY 1, 2018]: Sec. 3.8. (a) A person who knowingly or
- 33 intentionally obtains, possesses, transfers, or uses the synthetic
- 34 identifying information:
- 35 (1) with intent to harm or defraud another person;
- 36 (2) with intent to assume another person's identity; or
- 37 (3) with intent to profess to be another person;
- 38 commits synthetic identity deception, a Level 6 felony.
- 39 (b) The offense under subsection (a) is a Level 5 felony if:
- 40 (1) a person obtains, possesses, transfers, or uses the synthetic
- 41 identifying information of more than one hundred (100) persons;
- 42 or



- 1 (2) the fair market value of the fraud or harm caused by the
- 2 offense is at least fifty thousand dollars (\$50,000).
- 3 (c) The conduct prohibited in subsections (a) and (b) does not apply
- 4 to:
- 5 (1) a person less than twenty-one (21) years of age who uses the
- 6 synthetic identifying information of another person to acquire:
- 7 (A) an alcoholic beverage (as defined in IC 7.1-1-3-5); or
- 8 **(B) a cigarette or tobacco product (as defined in**
- 9 **IC 6-7-2-5); or**
- 10 (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic
- 11 identifying information of another person to acquire:
- 12 ~~(A) a cigarette or tobacco product (as defined in IC 6-7-2-5);~~
- 13 ~~(B) (A) a periodical, a videotape, or other communication~~
- 14 ~~medium that contains or depicts nudity (as defined in~~
- 15 ~~IC 35-49-1-5);~~
- 16 ~~(C) (B) admittance to a performance (live or on film) that~~
- 17 ~~prohibits the attendance of the minor based on age; or~~
- 18 ~~(D) (C) an item that is prohibited by law for use or~~
- 19 ~~consumption by a minor.~~
- 20 (d) It is not a defense in a prosecution under subsection (a) or (b)
- 21 that no person was harmed or defrauded.
- 22 SECTION 12. IC 35-46-1-10, AS AMENDED BY P.L.20-2013,
- 23 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2018]: Sec. 10. (a) A person who knowingly:
- 25 (1) sells or distributes tobacco or an electronic cigarette to a
- 26 person less than ~~eighteen (18)~~ **twenty-one (21)** years of age; or
- 27 (2) purchases tobacco or an electronic cigarette for delivery to
- 28 another person who is less than ~~eighteen (18)~~ **twenty-one (21)**
- 29 years of age;
- 30 commits a Class C infraction. For a sale to take place under this
- 31 section, the buyer must pay the seller for the tobacco product or the
- 32 electronic cigarette.
- 33 (b) It is not a defense that the person to whom the tobacco or
- 34 electronic cigarette was sold or distributed did not smoke, chew, inhale,
- 35 or otherwise consume the tobacco or the electronic cigarette.
- 36 (c) The following defenses are available to a person accused of
- 37 selling or distributing tobacco or an electronic cigarette to a person
- 38 who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:
- 39 (1) The buyer or recipient produced a driver's license bearing the
- 40 purchaser's or recipient's photograph, showing that the purchaser
- 41 or recipient was of legal age to make the purchase.
- 42 (2) The buyer or recipient produced a photographic identification



1 card issued under IC 9-24-16-1, or a similar card issued under the
 2 laws of another state or the federal government, showing that the
 3 purchaser or recipient was of legal age to make the purchase.

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

8 (d) It is a defense that the accused person sold or delivered the
 9 tobacco or electronic cigarette to a person who acted in the ordinary
 10 course of employment or a business concerning tobacco or electronic
 11 cigarettes:

- 12 (1) agriculture;
- 13 (2) processing;
- 14 (3) transporting;
- 15 (4) wholesaling; or
- 16 (5) retailing.

17 (e) As used in this section, "distribute" means to give tobacco or an
 18 electronic cigarette to another person as a means of promoting,
 19 advertising, or marketing the tobacco or electronic cigarette to the
 20 general public.

21 (f) Unless the person buys or receives tobacco or an electronic
 22 cigarette under the direction of a law enforcement officer as part of an
 23 enforcement action, a person who sells or distributes tobacco or an
 24 electronic cigarette is not liable for a violation of this section unless the
 25 person less than ~~eighteen (18)~~ **twenty-one (21)** years of age who
 26 bought or received the tobacco or electronic cigarette is issued a
 27 citation or summons under section 10.5 of this chapter.

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

31 SECTION 13. IC 35-46-1-10.2, AS AMENDED BY P.L.20-2013,
 32 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2018]: Sec. 10.2. (a) A retail establishment that sells or
 34 distributes tobacco or an electronic cigarette to a person less than
 35 ~~eighteen (18)~~ **twenty-one (21)** years of age commits a Class C
 36 infraction. For a sale to take place under this section, the buyer must
 37 pay the retail establishment for the tobacco product or electronic
 38 cigarette. Notwithstanding IC 34-28-5-4(c), a civil judgment for an
 39 infraction committed under this section must be imposed as follows:

- 40 (1) If the retail establishment at that specific business location has
 41 not been issued a citation or summons for a violation of this
 42 section in the previous one hundred eighty (180) days, a civil



- 1 penalty of up to two hundred dollars (\$200).
- 2 (2) If the retail establishment at that specific business location has
- 3 had one (1) citation or summons issued for a violation of this
- 4 section in the previous one hundred eighty (180) days, a civil
- 5 penalty of up to four hundred dollars (\$400).
- 6 (3) If the retail establishment at that specific business location has
- 7 had two (2) citations or summonses issued for a violation of this
- 8 section in the previous one hundred eighty (180) days, a civil
- 9 penalty of up to seven hundred dollars (\$700).
- 10 (4) If the retail establishment at that specific business location has
- 11 had three (3) or more citations or summonses issued for a
- 12 violation of this section in the previous one hundred eighty (180)
- 13 days, a civil penalty of up to one thousand dollars (\$1,000).
- 14 A retail establishment may not be issued a citation or summons for a
- 15 violation of this section more than once every twenty-four (24) hours
- 16 for each specific business location.
- 17 (b) It is not a defense that the person to whom the tobacco or
- 18 electronic cigarette was sold or distributed did not smoke, chew, inhale,
- 19 or otherwise consume the tobacco or electronic cigarette.
- 20 (c) The following defenses are available to a retail establishment
- 21 accused of selling or distributing tobacco or an electronic cigarette to
- 22 a person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:
- 23 (1) The buyer or recipient produced a driver's license bearing the
- 24 purchaser's or recipient's photograph showing that the purchaser
- 25 or recipient was of legal age to make the purchase.
- 26 (2) The buyer or recipient produced a photographic identification
- 27 card issued under IC 9-24-16-1 or a similar card issued under the
- 28 laws of another state or the federal government showing that the
- 29 purchaser or recipient was of legal age to make the purchase.
- 30 (3) The appearance of the purchaser or recipient was such that an
- 31 ordinary prudent person would believe that the purchaser or
- 32 recipient was not less than the age that complies with regulations
- 33 promulgated by the federal Food and Drug Administration.
- 34 (d) It is a defense that the accused retail establishment sold or
- 35 delivered the tobacco or electronic cigarette to a person who acted in
- 36 the ordinary course of employment or a business concerning tobacco
- 37 or electronic cigarettes:
- 38 (1) agriculture;
- 39 (2) processing;
- 40 (3) transporting;
- 41 (4) wholesaling; or
- 42 (5) retailing.



1 (e) As used in this section, "distribute" means to give tobacco or an
 2 electronic cigarette to another person as a means of promoting,
 3 advertising, or marketing the tobacco or electronic cigarette to the
 4 general public.

5 (f) Unless a person buys or receives tobacco or an electronic
 6 cigarette under the direction of a law enforcement officer as part of an
 7 enforcement action, a retail establishment that sells or distributes
 8 tobacco or an electronic cigarette is not liable for a violation of this
 9 section unless the person less than ~~eighteen (18)~~ **twenty-one (21)** years
 10 of age who bought or received the tobacco or electronic cigarette is
 11 issued a citation or summons under section 10.5 of this chapter.

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

15 (h) A person who violates subsection (a) at least six (6) times in any
 16 one hundred eighty (180) day period commits habitual illegal sale of
 17 tobacco, a Class B infraction.

18 SECTION 14. IC 35-46-1-10.5, AS AMENDED BY P.L.20-2013,
 19 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2018]: Sec. 10.5. (a) A person less than ~~eighteen (18)~~
 21 **twenty-one (21)** years of age who:

- 22 (1) purchases tobacco or an electronic cigarette;
- 23 (2) accepts tobacco or an electronic cigarette for personal use; or
- 24 (3) possesses tobacco or an electronic cigarette on ~~his the~~
 25 **person's** person;

26 commits a Class C infraction.

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

- 30 (1) agriculture;
- 31 (2) processing;
- 32 (3) transporting;
- 33 (4) wholesaling; or
- 34 (5) retailing.

35 SECTION 15. IC 35-46-1-11, AS AMENDED BY P.L.20-2013,
 36 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2018]: Sec. 11. (a) A tobacco or electronic cigarette vending
 38 machine that is located in a public place must bear the following
 39 conspicuous notices:

40 (1) A notice:

41 (A) that reads as follows, with the capitalization indicated: "If
 42 you are under ~~18~~ **21** years of age, YOU ARE FORBIDDEN by



- 1 Indiana law to buy tobacco or electronic cigarettes from this
 2 machine."; or
 3 (B) that:
 4 (i) conveys a message substantially similar to the message
 5 described in clause (A); and
 6 (ii) is formatted with words and in a form authorized under
 7 the rules adopted by the alcohol and tobacco commission.
 8 (2) A notice that reads as follows, "Smoking by Pregnant Women
 9 May Result in Fetal Injury, Premature Birth, and Low Birth
 10 Weight."
 11 (3) A notice printed in letters and numbers at least one-half (1/2)
 12 inch high that displays a toll free phone number for assistance to
 13 callers in quitting smoking, as determined by the state department
 14 of health.
 15 (b) A person who owns or has control over a tobacco or electronic
 16 cigarette vending machine in a public place and who:
 17 (1) fails to post a notice required by subsection (a) on the vending
 18 machine; or
 19 (2) fails to replace a notice within one (1) month after it is
 20 removed or defaced;
 21 commits a Class C infraction.
 22 (c) An establishment selling tobacco or electronic cigarettes at retail
 23 shall post and maintain in a conspicuous place, at the point of sale, the
 24 following:
 25 (1) Signs printed in letters at least one-half (1/2) inch high,
 26 reading as follows:
 27 (A) "The sale of tobacco or electronic cigarettes to persons
 28 under ~~18~~ **21** years of age is forbidden by Indiana law."
 29 (B) "Smoking by Pregnant Women May Result in Fetal Injury,
 30 Premature Birth, and Low Birth Weight."
 31 (2) A sign printed in letters and numbers at least one-half (1/2)
 32 inch high that displays a toll free phone number for assistance to
 33 callers in quitting smoking, as determined by the state department
 34 of health.
 35 (d) A person who:
 36 (1) owns or has control over an establishment selling tobacco or
 37 electronic cigarettes at retail; and
 38 (2) fails to post and maintain the sign required by subsection (c);
 39 commits a Class C infraction.
 40 SECTION 16. IC 35-46-1-11.5, AS AMENDED BY P.L.20-2013,
 41 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2018]: Sec. 11.5. (a) Except for a coin machine that is placed



1 in or directly adjacent to an entranceway or an exit, or placed in a
 2 hallway, a restroom, or another common area that is accessible to
 3 persons who are less than ~~eighteen (18)~~ **twenty-one (21)** years of age,
 4 this section does not apply to a coin machine that is located in the
 5 following:

6 (1) That part of a licensed premises (as defined in IC 7.1-1-3-20)
 7 where entry is limited to persons who are at least ~~eighteen (18)~~
 8 **twenty-one (21)** years of age.

9 (2) Private industrial or office locations that are customarily
 10 accessible only to persons who are at least ~~eighteen (18)~~
 11 **twenty-one (21)** years of age.

12 (3) Private clubs if the membership is limited to persons who are
 13 at least ~~eighteen (18)~~ **twenty-one (21)** years of age.

14 (4) Riverboats where entry is limited to persons who are at least
 15 twenty-one (21) years of age and on which lawful gambling is
 16 authorized.

17 (b) As used in this section, "coin machine" has the meaning set forth
 18 in IC 35-43-5-1.

19 (c) Except as provided in subsection (a), an owner of a retail
 20 establishment may not:

21 (1) distribute or sell tobacco or electronic cigarettes by use of a
 22 coin machine; or

23 (2) install or maintain a coin machine that is intended to be used
 24 for the sale or distribution of tobacco or electronic cigarettes.

25 (d) An owner of a retail establishment who violates this section
 26 commits a Class C infraction. A citation or summons issued under this
 27 section must provide notice that the coin machine must be moved
 28 within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil
 29 judgment for an infraction committed under this section must be
 30 imposed as follows:

31 (1) If the owner of the retail establishment has not been issued a
 32 citation or summons for a violation of this section in the previous
 33 ninety (90) days, a civil penalty of fifty dollars (\$50).

34 (2) If the owner of the retail establishment has had one (1) citation
 35 or summons issued for a violation of this section in the previous
 36 ninety (90) days, a civil penalty of two hundred fifty dollars
 37 (\$250).

38 (3) If the owner of the retail establishment has had two (2)
 39 citations or summonses issued for a violation of this section in the
 40 previous ninety (90) days for the same machine, the coin machine
 41 shall be removed or impounded by a law enforcement officer
 42 having jurisdiction where the violation occurs.



1 An owner of a retail establishment may not be issued a citation or
 2 summons for a violation of this section more than once every two (2)
 3 business days for each business location.

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

7 SECTION 17. IC 35-46-1-11.7, AS AMENDED BY P.L.94-2008,
 8 SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2018]: Sec. 11.7. (a) A retail establishment that has as its
 10 primary purpose the sale of tobacco products may not allow an
 11 individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age
 12 to enter the retail establishment.

13 (b) An individual who is less than ~~eighteen (18)~~ **twenty-one (21)**
 14 years of age may not enter a retail establishment described in
 15 subsection (a).

16 (c) A retail establishment described in subsection (a) must
 17 conspicuously post on all entrances to the retail establishment the
 18 following:

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

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

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

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

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

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

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

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

42 (e) 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 established under IC 7.1-6-2-6.

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

6 SECTION 18. IC 35-46-1-11.8, AS AMENDED BY P.L.20-2013,
7 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2018]: Sec. 11.8. (a) As used in this section, "self-service
9 display" means a display that contains tobacco or electronic cigarettes
10 in an area where a customer:

11 (1) is permitted; and

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

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

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

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

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

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

27 SECTION 19. [EFFECTIVE JULY 1, 2018] (a) **As used in this**
28 **SECTION, "distribute" means to give a tobacco product to**
29 **another person as a means of promoting, advertising, or marketing**
30 **the tobacco product to the general public.**

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

33 (c) **Notwithstanding IC 7.1-3-18.5-2 and IC 7.1-3-18.5-8, both as**
34 **amended by this act, a valid certificate held on June 30, 2018, by an**
35 **individual who is less than twenty-one (21) years of age remains**
36 **valid until its expiration.**

37 (d) **Notwithstanding IC 24-3-5-4(1)(B)(ii), IC 24-3-5-5, and**
38 **IC 24-3-5-8, all as amended by this act, the notice, mailing,**
39 **shipping, customer designation, and penalty requirements that**
40 **apply to a person who is less than twenty-one (21) years of age**
41 **apply to a person who on June 30, 2018, is less than eighteen (18)**
42 **years of age.**



- 1 (e) Notwithstanding IC 35-46-1-10, IC 35-46-1-10.2,
- 2 IC 35-46-1-10.5, IC 35-46-1-11.5, IC 35-46-1-11.7, and
- 3 IC 35-46-1-11.8, all as amended by this act:
- 4 (1) a person who on June 30, 2018, is at least eighteen (18)
- 5 years of age may purchase and possess tobacco products and
- 6 electronic cigarettes; and
- 7 (2) a merchant or retailer may:
- 8 (A) sell or distribute tobacco products and electronic
- 9 cigarettes;
- 10 (B) allow entry into a retail establishment that has as its
- 11 primary purpose the sale of tobacco products and
- 12 electronic cigarettes; and
- 13 (C) allow access to a self-service cigarette display and coin
- 14 machines;
- 15 to a person who on June 30, 2018, is at least eighteen (18)
- 16 years of age.
- 17 (f) This SECTION expires June 30, 2021.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1380, 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 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 19.

Page 11, delete lines 17 through 37.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1380 as introduced.)

KIRCHHOFER

Committee Vote: yeas 9, nays 0.

