

SENATE BILL No. 1

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-3-25; IC 7.1-3-18.5; IC 7.1-5-12-5; IC 7.1-6-2; IC 7.1-7; IC 24-3-5; IC 35-31.5-2; IC 35-43-5-3.8; IC 35-46-1.

Synopsis: Tobacco and vaping smoking age. Prohibits a person who is less than 21 years of age from buying or possessing: (1) cigarettes; (2) tobacco products; (3) e-liquids; or (4) electronic cigarettes. Makes conforming changes regarding enforcement provisions, sales certificates, prohibition of delivery sales, and notices posted at retail establishments and at vending machines. Provides that a retail establishment that sells an e-liquid to a person less than 21 years of age is subject to a civil judgment for an infraction. Triples the civil judgment for an infraction for a retail establishment that sells or distributes tobacco or an electronic cigarette to a person less than 21 years of age. Makes technical corrections.

Effective: July 1, 2020.

Charbonneau

January 6, 2020, read first time and referred to Committee on Health and Provider Services.



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.

SENATE BILL No. 1

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 7.1-1-3-25, AS AMENDED BY P.L.176-2015,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 25. (a) "Minor" ~~except as provided in subsection~~
4 ~~(b)~~; means a person less than twenty-one (21) years of age.
5 (b) "Minor", for purposes of IC 7.1-7, has the meaning set forth in
6 IC 7.1-7-2-17.
7 SECTION 2. IC 7.1-3-18.5-2, AS AMENDED BY P.L.231-2015,
8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2020]: Sec. 2. (a) A person who desires a certificate must
10 provide the following to the commission:
11 (1) The applicant's name and mailing address and the address of
12 the premises for which the certificate is being issued.
13 (2) Except as provided in section 6(c) of this chapter, a fee of two
14 hundred dollars (\$200).
15 (3) The name under which the applicant transacts or intends to
16 transact business.
17 (4) The address of the applicant's principal place of business or



headquarters, if any.

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

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

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

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

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

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

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

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

SECTION 3. IC 7.1-3-18.5-5, AS AMENDED BY P.L.214-2016, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) Subject to subsection (b), the commission may suspend the certificate of a person who fails to pay a civil penalty imposed for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11, 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.

(b) Before enforcing the imposition of a civil penalty or suspending or revoking a certificate under this chapter, the commission shall provide written notice of the alleged violation to the certificate holder and conduct a hearing. The commission shall provide written notice of the civil penalty or suspension or revocation of a certificate to the certificate holder.

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

(1) has violated IC 35-45-5-3, IC 35-45-5-3.5, IC 35-45-5-4, IC 35-46-1-11, IC 35-46-1-11.2, or IC 35-46-1-11.8;

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

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

SECTION 4. IC 7.1-3-18.5-8, AS AMENDED BY P.L.214-2016, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. The commission may mitigate civil penalties imposed against a certificate holder for violating IC 35-46-1-10,



IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.5, IC 35-46-1-11.7, IC 35-46-1-11.8, or any of the provisions of this chapter if a certificate holder provides a training program for the certificate holder's employees that includes at least the following topics:

- (1) Laws governing the sale of tobacco products and electronic cigarettes.
- (2) Methods of recognizing and handling customers who are less than ~~eighteen (18) years of the legal age to purchase tobacco products and electronic cigarettes.~~ **eighteen (18) years of the legal age to purchase tobacco products and electronic cigarettes.**
- (3) Procedures for proper examination of identification cards to verify that ~~customers are under eighteen (18) years of a customer is less than the legal age to purchase tobacco products and electronic cigarettes.~~ **customers are under eighteen (18) years of a customer is less than the legal age to purchase tobacco products and electronic cigarettes.**

SECTION 5. IC 7.1-3-18.5-9, AS AMENDED BY P.L.231-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 9. A certificate holder shall exercise due diligence in the supervision and training of the certificate holder's employees or agents in the handling and sale of tobacco products and electronic cigarettes on the holder's retail premises. Proof that employees or agents of the certificate holder, while in the scope of their employment, committed at least six (6) violations relating to ~~IC 35-46-1-10.2(a)~~ **IC 35-46-1-10.2(b)** in any one hundred eighty (180) day period shall be prima facie evidence of a lack of due diligence by the certificate holder in the supervision and training of the certificate holder's employees or agents.

SECTION 6. IC 7.1-5-12-5, AS AMENDED BY P.L.231-2015, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

- (1) A horse racing facility operated under a permit under IC 4-31-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.
- (2) A riverboat (as defined in IC 4-33-2-17) and any other permanent structure that is:
 - (A) owned or leased by the owner of the riverboat; and
 - (B) located on land that is adjacent to:
 - (i) the dock to which the riverboat is moored; or
 - (ii) the land on which the riverboat is situated in the case of a riverboat described in IC 4-33-2-17(2).
- (3) A facility that operates under a gambling game license under



1 IC 4-35-5 and any other permanent structure on land owned or
 2 leased by the owner of the facility that is adjacent to the facility.

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

4 (5) An establishment owned or leased by a business that meets the
 5 following requirements:

6 (A) The business was in business and permitted smoking on
 7 December 31, 2012.

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

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

12 (D) The business limits smoking in the establishment to
 13 smoking with a waterpipe or hookah device.

14 (E) During the preceding calendar year, at least ten percent
 15 (10%) of the business's annual gross income was from the sale
 16 of loose tobacco for use in a waterpipe or hookah device.

17 (F) The person in charge of the business posts in the
 18 establishment conspicuous signs that display the message that
 19 cigarette smoking is prohibited.

20 (6) An establishment owned or leased by a business that meets the
 21 following requirements:

22 (A) The business prohibits entry by an individual who is less
 23 than twenty-one (21) years of age.

24 (B) The owner or operator of the business holds a beer, liquor,
 25 or wine retailer's permit.

26 (C) The business limits smoking in the establishment to cigar
 27 smoking.

28 (D) During the preceding calendar year, at least ten percent
 29 (10%) of the business's annual gross income was from the sale
 30 of cigars and the rental of onsite humidors.

31 (E) The person in charge of the business posts in the
 32 establishment conspicuous signs that display the message that
 33 cigarette smoking is prohibited.

34 (7) A premises owned or leased by and regularly used for the
 35 activities of a business that meets all of the following:

36 (A) The business is exempt from federal income taxation
 37 under 26 U.S.C. 501(c).

38 (B) The business:

39 (i) meets the requirements to be considered a club under
 40 IC 7.1-3-20-1; or

41 (ii) is a fraternal club (as defined in IC 7.1-3-20-7).

42 (C) The business provides food or alcoholic beverages only to



its bona fide members and their guests.

(D) The business:

(i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;

(ii) allows smoking only in the room or area described in item (i);

(iii) does not allow an individual who is less than ~~eighteen~~ **(18) twenty-one (21)** years of age to enter into the room or area described in item (i); and

(iv) allows a guest in the smoking room or area described in item (i) only when accompanied by a bona fide member of the business.

(8) A retail tobacco store used primarily for the sale of tobacco products and tobacco accessories that meets the following requirements:

(A) The owner or operator of the store holds a valid tobacco sales certificate issued under IC 7.1-3-18.5.

(B) The store prohibits entry by an individual who is less than ~~eighteen~~ **(18) twenty-one (21)** years of age.

(C) The sale of products other than tobacco products and tobacco accessories is merely incidental.

(D) The sale of tobacco products accounts for at least eighty-five percent (85%) of the store's annual gross sales.

(E) Food or beverages are not sold in a manner that requires consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises.

(9) A bar or tavern:

(A) for which a permittee holds:

(i) a beer retailer's permit under IC 7.1-3-4;

(ii) a liquor retailer's permit under IC 7.1-3-9; or

(iii) a wine retailer's permit under IC 7.1-3-14;

(B) that does not employ an individual who is less than eighteen (18) years of age;

(C) that does not allow an individual who:

(i) is less than twenty-one (21) years of age; and

(ii) is not an employee of the bar or tavern;

to enter any area of the bar or tavern; and

(D) that is not located in a business that would otherwise be subject to this chapter.

(10) A cigar manufacturing facility that does not offer retail sales.

(11) A premises of a cigar specialty store to which all of the



following apply:

(A) The owner or operator of the store holds a valid tobacco sales certificate issued under IC 7.1-3-18.5.

(B) The sale of tobacco products and tobacco accessories account for at least fifty percent (50%) of the store's annual gross sales.

(C) The store has a separate, enclosed, designated smoking room that is adequately ventilated to prevent migration of smoke to nonsmoking areas.

(D) Smoking is allowed only in the room described in clause (C).

(E) Individuals who are less than ~~eighteen (18)~~ **twenty-one (21)** years of age are prohibited from entering into the room described in clause (C).

(F) Cigarette smoking is not allowed on the premises of the store.

(G) The owner or operator of the store posts a conspicuous sign on the premises of the store that displays the message that cigarette smoking is prohibited.

(H) The store does not prepare any food or beverage that would require a certified food handler under IC 16-42-5.2.

(12) The premises of a business that is located in the business owner's private residence (as defined in IC 3-5-2-42.5) if the only employees of the business who work in the residence are the owner and other individuals who reside in the residence.

(b) The owner, operator, manager, or official in charge of an establishment or premises in which smoking is allowed under this section shall post conspicuous signs in the establishment that read "WARNING: Smoking Is Allowed In This Establishment" or other similar language.

(c) This section does not allow smoking in the following enclosed areas of an establishment or premises described in subsection (a)(1) through (a)(11):

(1) Any hallway, elevator, or other common area where an individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age is permitted.

(2) Any room that is intended for use by an individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age.

(d) The owner, operator, or manager of an establishment or premises that is listed under subsection (a) and that allows smoking shall provide a verified statement to the commission that states that the establishment or premises qualifies for the exemption. The commission may require



the owner, operator, or manager of an establishment or premises to provide documentation or additional information concerning the exemption of the establishment or premises.

SECTION 7. IC 7.1-6-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. The division of mental health and addiction established under IC 12-21 shall coordinate the conduct of random unannounced inspections at locations where tobacco products, **e-liquids, or electronic cigarettes** are sold or distributed to ensure compliance with this article. Only the commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off-duty law enforcement officers to conduct inspections under this section.

SECTION 8. IC 7.1-6-2-4, AS AMENDED BY P.L.20-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) An enforcement officer vested with full police powers and duties may engage a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age as part of an enforcement action under this article if the initial or contemporaneous receipt or purchase of a tobacco product, **e-liquid**, or electronic cigarette by a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age occurs under the direction of an enforcement officer vested with full police powers and duties and is part of the enforcement action.

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

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

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

SECTION 9. IC 7.1-7-2-6.3, AS ADDED BY P.L.206-2017, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6.3. "Delivery sale" means a sale of ~~e-liquids~~ **e-liquid** to a purchaser in Indiana in which the purchaser submits the order for the sale:

(1) by telephone;

(2) over the Internet; or



(3) through the mail or another delivery system;
and the ~~e-liquids~~ **are e-liquid** is shipped through a delivery service.
"Delivery sale" does not include a sale of ~~e-liquids~~ **an e-liquid** not for
personal consumption to a person who is a retailer.

SECTION 10. IC 7.1-7-2-17 IS REPEALED [EFFECTIVE JULY
1, 2020]. ~~Sec. 17. "Minor" means an individual who is less than
eighteen (18) years of age.~~

SECTION 11. IC 7.1-7-4-1, AS AMENDED BY P.L.206-2017,
SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2020]: Sec. 1. (a) A manufacturer of e-liquid may not mix,
bottle, package, or sell e-liquid to retailers, consumers, or distributors
in Indiana without a permit issued by the commission under this article.

(b) ~~All e-liquids~~ **An e-liquid** manufactured by an e-liquids
manufacturer approved by the commission under this article before
July 1, 2017, may be distributed and sold for retail until the expiration
date of the ~~e-liquids~~ **e-liquid**.

(c) A manufacturing permit issued by the commission is valid for
five (5) years. A manufacturing permit issued by the commission under
this article before July 1, 2017, does not expire before July 1, 2020.

(d) An initial application for a manufacturing permit must include
the following:

- (1) The name, telephone number, and address of the applicant.
- (2) The name, telephone number, and address of the
manufacturing facility.
- (3) The name, telephone number, title, and address of the person
responsible for the manufacturing facility.
- (4) Verification that the facility will comply with applicable
tobacco products good manufacturing practices promulgated
under 21 U.S.C. 387f(e) of the federal Food, Drug, and Cosmetic
Act.
- (5) Verification that the manufacturer will comply with the
applicable ingredient listing required by 21 U.S.C. 387d(a)(1) of
the federal Food, Drug, and Cosmetic Act.
- (6) Written consent allowing the state police department to
conduct a state or national criminal history background check on
any person listed on the application.
- (7) A nonrefundable initial application fee of one thousand dollars
(\$1,000).

(e) The fees collected under subsection (d)(7) shall be deposited in
the enforcement and administration fund established under IC 7.1-4-10.

SECTION 12. IC 7.1-7-5.5-1, AS ADDED BY P.L.206-2017,
SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2020]: Sec. 1. A retailer may not make a delivery sale of e-liquid to ~~a minor~~ **an individual who does not meet the minimum age requirement** as set forth in IC 7.1-7-6-5.

SECTION 13. IC 7.1-7-5.5-2, AS ADDED BY P.L.206-2017, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. A retailer may not ship ~~e-liquids~~ **an e-liquid** without first making a good faith effort to verify the age of the purchaser of the ~~e-liquids~~ **e-liquid** as set forth in IC 7.1-7-6-6.

SECTION 14. IC 7.1-7-5.5-3, AS ADDED BY P.L.206-2017, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) Before ~~e-liquids~~ **are an e-liquid** is shipped in a delivery sale, a retailer must be fully paid for the purchase and shall accept payment from the purchaser:

- (1) by a check drawn on an account in the purchaser's name;
- (2) by a credit card issued in the purchaser's name; or
- (3) by a debit card issued in the purchaser's name.

(b) A retailer may ship ~~e-liquids~~ **an e-liquid** only to a purchaser.

SECTION 15. IC 7.1-7-5.5-5, AS ADDED BY P.L.206-2017, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. A retailer who ships ~~e-liquids~~ **an e-liquid** from a delivery sale order shall include as part of the shipping documents a document with the following statement: "E-LIQUIDS: Indiana law prohibits the sale of this product to a person who is less than ~~18~~ **21** years of age.".

SECTION 16. IC 7.1-7-6-2, AS AMENDED BY P.L.206-2017, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. (a) This subsection does not apply to a delivery sale as defined in IC 7.1-7-2-6.3 **or tobacco, e-liquid, and electronic cigarette crimes set forth in IC 35-46-1-10.** If a retailer:

- (1) knowingly and intentionally sells e-liquid to ~~a minor~~ **an individual who is less than twenty-one (21) years of age**; or
- (2) knowingly, intentionally, or negligently fails to verify the age of a person who appears to be less than twenty-seven (27) years of age by checking a government issued identification and sells the person e-liquid;

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

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

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this 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 (c) It is not a defense that the person to whom e-liquid was sold or
18 distributed did not inhale or otherwise consume e-liquid.

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

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

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

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

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

- 36 (1) agriculture;
- 37 (2) processing;
- 38 (3) transporting;
- 39 (4) wholesaling; or
- 40 (5) retailing.

41 (f) As used in this section, "distribute" means to give e-liquid to
42 another person as a means of promoting, advertising, or marketing



1 e-liquid to the general public.

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

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

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

14 SECTION 17. IC 7.1-7-6-5, AS ADDED BY P.L.206-2017,
15 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2020]: Sec. 5. **This section does not apply to tobacco,
17 e-liquid, and electronic cigarette crimes set forth in IC 35-46-1-10.**
18 A person who knowingly or intentionally makes a delivery sale of
19 ~~e-liquids an e-liquid~~ to a ~~minor an individual who is less than~~
20 **twenty-one (21) years of age** commits a Class C infraction.

21 SECTION 18. IC 7.1-7-6-6, AS ADDED BY P.L.206-2017,
22 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2020]: Sec. 6. (a) As used in this section, "good faith effort to
24 verify the age of ~~a the~~ purchaser of ~~e-liquids~~ **e-liquid**" means:

25 (1) verifying the age of the purchaser in a commercially available
26 database; or

27 (2) obtaining a photocopy of a government issued identification;
28 that indicates the birth date or age of the purchaser.

29 (b) A person who knowingly or intentionally ships ~~e-liquids an~~
30 **e-liquid** without first making a good faith effort to verify the age of the
31 purchaser of the ~~e-liquids~~ **e-liquid** commits a Class C infraction.

32 SECTION 19. IC 24-3-5-4, AS AMENDED BY P.L.160-2005,
33 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2020]: Sec. 4. Subject to section 4.5 of this chapter, a
35 merchant may not mail or ship cigarettes as part of a delivery sale
36 unless, before mailing or shipping the cigarettes, the merchant:

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

39 (A) providing the prospective customer's address and date of
40 birth;

41 (B) advising the prospective customer that:

42 (i) signing another person's name to the statement required



under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

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

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

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

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

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

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

SECTION 20. IC 24-3-5-5, AS AMENDED BY P.L.160-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

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

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

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN ~~EIGHTEEN (18)~~ **TWENTY-ONE (21)** YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section



6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

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

(c) The following apply to a merchant that mails or ships cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least ~~eighteen (18)~~ **twenty-one (21)** years of age who is designated by the customer to:

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

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the cigarettes without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

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

SECTION 21. IC 24-3-5-8, AS AMENDED BY P.L.160-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. The commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells cigarettes by delivery sale to a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age.

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

SECTION 22. IC 35-31.5-2-100, AS AMENDED BY P.L.185-2019, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 100. (a) "Distribute", for purposes of IC 35-45-4-8, has the meaning set forth in IC 35-45-4-8.



(b) "Distribute", for purposes of IC 35-46-1-10, has the meaning set forth in ~~IC 35-46-1-10(e)~~. **IC 35-46-1-10(f).**

(c) "Distribute", for purposes of IC 35-46-1-10.2, has the meaning set forth in ~~IC 35-46-1-10.2(e)~~. **IC 35-46-1-10.2(f).**

(d) "Distribute", for purposes of IC 35-47.5, has the meaning set forth in IC 35-47.5-2-6.

(e) "Distribute", for purposes of IC 35-48, has the meaning set forth in IC 35-48-1-14.

(f) "Distribute", for purposes of IC 35-49, has the meaning set forth in IC 35-49-1-2.

SECTION 23. IC 35-31.5-2-107.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 107.5. "E-liquid," for purposes of IC 35-46-1, has the meaning set forth in IC 35-46-1-1.4.**

SECTION 24. IC 35-43-5-3.8, AS AMENDED BY P.L.158-2013, SECTION 473, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3.8. (a) A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information:

- (1) with intent to harm or defraud another person;
- (2) with intent to assume another person's identity; or
- (3) with intent to profess to be another person;

commits synthetic identity deception, a Level 6 felony.

(b) The offense under subsection (a) is a Level 5 felony if:

- (1) a person obtains, possesses, transfers, or uses the synthetic identifying information of more than one hundred (100) persons; or
- (2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000).

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

- (1) a person less than twenty-one (21) years of age who uses the synthetic identifying information of another person to acquire:

- (A) an alcoholic beverage (as defined in IC 7.1-1-3-5); or
- (B) **a cigarette, e-liquid, or tobacco product (as defined in IC 6-7-2-5); or**

- (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic identifying information of another person to acquire:

- (A) ~~a cigarette or tobacco product (as defined in IC 6-7-2-5);~~
- (B) (A) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);



~~(C)~~ (B) admittance to a performance (live or on film) that prohibits the attendance of the minor based on age; or

~~(D)~~ (C) an item that is prohibited by law for use or consumption by a minor.

(d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

SECTION 25. IC 35-46-1-1.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 1.4. As used in this chapter, "e-liquid" has the meaning set forth in IC 7.1-7-2-10.**

SECTION 26. IC 35-46-1-10, AS AMENDED BY P.L.20-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) **This section does not apply to the e-liquid crimes set forth in IC 7.1-7.**

(b) A person who knowingly:

(1) sells or distributes tobacco or an electronic cigarette to a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age; or

(2) purchases tobacco or an electronic cigarette for delivery to another person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product or the electronic cigarette.

~~(b)~~ (c) It is not a defense that the person to whom the tobacco or electronic cigarette was sold or distributed did not smoke, chew, inhale, or otherwise consume the tobacco or the electronic cigarette.

~~(c)~~ (d) The following defenses are available to a person accused of selling or distributing tobacco or an electronic cigarette to a person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:

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

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

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

~~(d)~~ (e) It is a defense that the accused person sold or delivered the tobacco or electronic cigarette to a person who acted in the ordinary



1 course of employment or a business concerning tobacco or electronic
2 cigarettes:

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

8 ~~(e)~~ **(f)** As used in this section, "distribute" means to give tobacco or
9 an electronic cigarette to another person as a means of promoting,
10 advertising, or marketing the tobacco or electronic cigarette to the
11 general public.

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

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

22 SECTION 27. IC 35-46-1-10.2, AS AMENDED BY P.L.20-2013,
23 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2020]: Sec. 10.2. (a) **This section does not apply to the**
25 **e-liquid crimes set forth in IC 7.1-7.**

26 **(b)** A retail establishment that sells or distributes tobacco, **an**
27 **e-liquid**, or an electronic cigarette to a person less than ~~eighteen (18)~~
28 **twenty-one (21)** years of age commits a Class C infraction. For a sale
29 to take place under this section, the buyer must pay the retail
30 establishment for the tobacco product, **an e-liquid**, or electronic
31 cigarette. Notwithstanding IC 34-28-5-4(c), a civil judgment for an
32 infraction committed under this section must be imposed as follows:

- 33 (1) If the retail establishment at that specific business location has
34 not been issued a citation or summons for a violation of this
35 section in the previous one hundred eighty (180) days, a civil
36 penalty of up to ~~two six~~ hundred dollars ~~(\$200)~~: **(\$600)**.
- 37 (2) If the retail establishment at that specific business location has
38 had one (1) citation or summons issued for a violation of this
39 section in the previous one hundred eighty (180) days, a civil
40 penalty of up to ~~four one thousand two~~ hundred dollars ~~(\$400)~~:
41 **(\$1,200)**.
- 42 (3) If the retail establishment at that specific business location has



had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to ~~seven thousand one~~ hundred dollars ~~(\$700)~~. **(\$2,100).**

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

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

~~(b)~~ **(c)** It is not a defense that the person to whom the tobacco, **an e-liquid**, or electronic cigarette was sold or distributed did not smoke, chew, inhale, or otherwise consume the tobacco, **e-liquid**, or electronic cigarette.

~~(c)~~ **(d)** The following defenses are available to a retail establishment accused of selling or distributing tobacco, **an e-liquid**, or an electronic cigarette to a person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:

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

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

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

~~(d)~~ **(e)** It is a defense that the accused retail establishment sold or delivered the tobacco, **e-liquid**, or electronic cigarette to a person who acted in the ordinary course of employment or a business concerning tobacco, **an e-liquid**, or electronic cigarettes **for the following activities:**

(1) Agriculture.

(2) Processing.

(3) Transporting.

(4) Wholesaling. ~~or~~

(5) Retailing.

~~(e)~~ **(f)** As used in this section, "distribute" means to give tobacco or



an electronic cigarette to another person as a means of promoting, advertising, or marketing the tobacco or electronic cigarette to the general public.

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

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

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

SECTION 28. IC 35-46-1-10.5, AS AMENDED BY P.L.20-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10.5. (a) A person less than ~~eighteen (18)~~ **twenty-one (21)** years of age who:

- (1) purchases tobacco, **an e-liquid**, or an electronic cigarette;
- (2) accepts tobacco, **an e-liquid**, or an electronic cigarette for personal use; or
- (3) possesses tobacco, **an e-liquid**, or an electronic cigarette on ~~his the person's~~ person;

commits a Class C infraction.

(b) It is a defense under subsection (a) that the accused person acted in the ordinary course of employment in a business concerning tobacco, **an e-liquid**, or **an** electronic ~~cigarettes~~ **cigarette for the following activities:**

- (1) Agriculture.
- (2) Processing.
- (3) Transporting.
- (4) Wholesaling, ~~or~~
- (5) Retailing.

SECTION 29. IC 35-46-1-11, AS AMENDED BY P.L.20-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11. (a) A tobacco or electronic cigarette vending machine that is located in a public place must bear the following conspicuous notices:

- (1) A notice:



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



SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than ~~eighteen (18)~~ **twenty-one (21)** years of age, this section does not apply to a coin machine that is located in the following:

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

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

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

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

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

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

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

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

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

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

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

(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine



shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

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

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

SECTION 31. IC 35-46-1-11.7, AS AMENDED BY P.L.94-2008, SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age to enter the retail establishment.

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

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

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

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

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

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

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

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

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

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



1 hours.

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

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

8 SECTION 32. IC 35-46-1-11.8, AS AMENDED BY P.L.20-2013,
9 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2020]: Sec. 11.8. (a) As used in this section, "self-service
11 display" means a display that contains tobacco or electronic cigarettes
12 in an area where a customer:

13 (1) is permitted; and

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

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

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

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

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

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

