

January 29, 1998

HOUSE BILL No. 1232

DIGEST OF HB 1232 (Updated January 27, 1998 10:13 pm - DI 77)

Citations Affected: IC 6-2.5; IC 16-18; IC 16-46; IC 35-46; noncode.

Synopsis: Tobacco regulation. Provides that the department of state revenue is responsible for issuing tobacco product retailer's licenses. Sets the annual fee for a tobacco products retailer's license at \$25 per retail location. Requires the department of revenue to hold a tobacco products retailer's license revocation hearing if the retailer has had at least five separate violations in a 12 month period. Establishes an advisory panel to advise the commissioner of the state department of health on how to use the funds in the youth antismoking education and enforcement fund. Provides that if a settlement between the tobacco industry and the attorneys general of several states requires Indiana to prohibit the sale or distribution of tobacco products through vending machines in order to receive the state's share of the settlement, the sale or distribution of tobacco products through vending machines is prohibited on the earliest date required for Indiana to receive the state's
(Continued next page)

Effective: July 1, 1998.

Hasler, Goeglein, Bauer, T. Brown

January 13, 1998, read first time and referred to Committee on Public Health.
January 28, 1998, amended, reported — Do Pass.

HB 1232—LS 7058/DI 88



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Digest Continued

share of the settlement. Makes conforming amendments.

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HB 1232—LS 7058/DI 88



January 29, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE BILL No. 1232

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 6-2.5-1-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
3 1, 1998]: **Sec. 10. "Tobacco product" means any product that is**
4 **made:**

5 (1) **in whole or in part from tobacco; and**
6 (2) **for smoking or chewing, or both.**
7 **The term includes snuff.**

8 SECTION 2. IC 6-2.5-8-1, AS AMENDED BY P.L.2-1997,
9 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 1998]: Sec. 1. (a) A retail merchant may not make a retail
11 transaction in Indiana, unless ~~he~~ **the retail merchant** has applied for
12 a registered retail merchant's certificate.

13 (b) A retail merchant may obtain a registered retail merchant's
14 certificate by filing an application with the department and paying a
15 registration fee of twenty-five dollars (\$25) for each place of business

HB 1232—LS 7058/DI 88



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1 listed on the application. **The application must provide a space**
 2 **where the retail merchant may indicate whether the retail**
 3 **merchant requires one (1) or more licenses for selling tobacco**
 4 **products, as provided in section 12 of this chapter.** The retail
 5 merchant shall also provide such security for payment of the tax as the
 6 department may require under IC 6-2.5-6-12.

7 (c) The retail merchant shall list on the application the location
 8 (including the township) of each place of business where he makes
 9 retail transactions. However, if the retail merchant does not have a
 10 fixed place of business, he shall list his residence as his place of
 11 business. In addition, a public utility may list only its principal Indiana
 12 office as its place of business for sales of public utility commodities or
 13 service, but the utility must also list on the application the places of
 14 business where it makes retail transactions other than sales of public
 15 utility commodities or service.

16 (d) Upon receiving a proper application, the correct fee, and the
 17 security for payment, if required, the department shall issue to the retail
 18 merchant a separate registered retail merchant's certificate for each
 19 place of business listed on the application. Each certificate shall bear
 20 a serial number and the location of the place of business for which it is
 21 issued.

22 (e) If a retail merchant intends to make retail transactions during a
 23 calendar year at a new Indiana place of business, ~~he~~ **the retail**
 24 **merchant** must file a supplemental application and pay the fee for that
 25 place of business.

26 (f) A retail merchant engaged in business in Indiana as defined in
 27 IC 6-2.5-3-1(c) who makes retail transactions that are only subject to
 28 the use tax must obtain a registered retail merchant's certificate before
 29 making those transactions. The retail merchant may obtain the
 30 certificate by following the same procedure as a retail merchant under
 31 subsections (b) and (c), except that the retail merchant must also
 32 include on the application:

- 33 (1) the names and addresses of the retail merchant's principal
- 34 employees, agents, or representatives who engage in Indiana in
- 35 the solicitation or negotiation of the retail transactions;
- 36 (2) the location of all of the retail merchant's places of business in
- 37 Indiana, including offices and distribution houses; and
- 38 (3) any other information that the department requests.

39 (g) The department may permit an out-of-state retail merchant to
 40 collect the use tax. However, before the out-of-state retail merchant
 41 may collect the tax, he must obtain a registered retail merchant's
 42 certificate in the manner provided by this section. Upon receiving the

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1 certificate, the out-of-state retail merchant becomes subject to the same
 2 conditions and duties as an Indiana retail merchant and must then
 3 collect the use tax due on all sales of tangible personal property that he
 4 knows is intended for use in Indiana.

5 (h) The department shall submit to the township assessor before July
 6 15 of each year:

7 (1) the name of each retail merchant that has newly obtained a
 8 registered retail merchant's certificate between March 2 of the
 9 preceding year and March 1 of the current year for a place of
 10 business located in the township; and

11 (2) the address of each place of business of the taxpayer in the
 12 township.

13 SECTION 3. IC 6-2.5-8-12 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 1998]: **Sec. 12. (a) A retail merchant must indicate on the retail
 16 merchant's application for a certificate under section 1 of this
 17 chapter if the retail merchant intends to:**

18 (1) sell a tobacco product at retail; or

19 (2) distribute a tobacco product to the public without charge.

20 (b) The department shall issue a tobacco products retailer's
 21 license to a retail merchant if the retail merchant:

22 (1) indicates that the retail merchant requires a tobacco
 23 products retailer's license on the application for a certificate
 24 under section 1 of this chapter; and

25 (2) pays the fee required under section 13 of this chapter.

26 (c) A retail merchant must obtain a separate tobacco products
 27 retailer's license to do each of the following:

28 (1) Sell a tobacco product at retail.

29 (2) Distribute a tobacco product to the public without charge.

30 (d) A retail merchant who owns or operates more than one (1)
 31 location where the retail merchant wishes to:

32 (1) sell a tobacco product at retail; or

33 (2) distribute a tobacco product to the public without charge;

34 must obtain a separate tobacco products retailer's license for each
 35 location.

36 (e) A retail merchant who is issued a tobacco products retailer's
 37 license under this chapter shall provide to each employee of the
 38 retail merchant a written summary of the laws and penalties
 39 associated with selling or distributing a tobacco product to an
 40 individual who is less than eighteen (18) years of age.

41 SECTION 4. IC 6-2.5-8-13 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 1, 1998]: **Sec. 13. (a) The annual fee for each tobacco products**
 2 **retailer's license is twenty-five dollars (\$25).**

3 **(b) A tobacco products retailer's license issued under section 12**
 4 **of this chapter is valid for one (1) year. The department shall send**
 5 **a renewal notice to each retail merchant who receives a tobacco**
 6 **products retailer's license in order to allow the retail merchant to**
 7 **send the fee required under subsection (a) to the department on a**
 8 **timely basis.**

9 SECTION 5. IC 6-2.5-8-14 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 1998]: **Sec. 14. (a) In addition to any other action allowed under**
 12 **this chapter, the department may revoke or refuse to issue a**
 13 **tobacco products retailer's license if the department finds that any**
 14 **of the following conditions exist:**

15 **(1) The retail merchant or the retail merchant's employees**
 16 **have demonstrated a pattern of selling or distributing tobacco**
 17 **products to individuals less than eighteen (18) years of age.**

18 **(2) The retail merchant has been convicted of violating**
 19 **tobacco product tax laws in Indiana or in another jurisdiction.**

20 **(3) The retail merchant has violated a court order issued**
 21 **under IC 34-4-38.**

22 **(4) The retail merchant has owned or controlled a tobacco**
 23 **vending machine in violation of IC 35-46-1-11.5.**

24 **(b) In addition to a penalty under subsection (a), the department**
 25 **may assess a civil penalty against the holder of a tobacco products**
 26 **retailer's license for the violation of a provision of this chapter. The**
 27 **department may assess a civil penalty against a holder for each day**
 28 **the violation continues if the violation is of a continuing nature.**

29 SECTION 6. IC 6-2.5-8-15 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 1998]: **Sec. 15. (a) The department shall revoke a tobacco**
 32 **products retailer's license issued under section 12 of this chapter**
 33 **if the state excise police or another appropriate law enforcement**
 34 **entity determines that a retail merchant has at least five (5)**
 35 **separate violations of IC 35-46-1-10 in a period of twelve (12)**
 36 **consecutive months.**

37 **(b) A member of the state excise police or another law**
 38 **enforcement entity that observes a violation of IC 35-46-1-10 shall**
 39 **do the following:**

40 **(1) Provide the retail merchant with a written notice of the**
 41 **violation.**

42 **(2) Provide a copy of the notice under subdivision (1) to the**

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1 **department.**

2 (c) Before the department revokes a license as provided in
3 subsection (a), the department shall hold a hearing that complies
4 with IC 4-21.5.

5 SECTION 7. IC 6-2.5-8-16 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 1998]: **Sec. 16. (a) The department shall monthly transfer the**
8 **application fees collected by the department under section 13 of**
9 **this chapter for tobacco products retailer's licenses to the state**
10 **department of health.**

11 (b) The commissioner of the state department of health shall
12 reimburse the department for the costs of administering the
13 program for tobacco products retailer's licenses under section 12
14 through 15 of this chapter.

15 SECTION 8. IC 16-18-2-143 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 143. (a) "Fund", for**
17 **purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.**

18 (b) "Fund", for purposes of ~~IC 16-45-6~~, **IC 16-46-5**, has the meaning
19 set forth in IC 16-46-5-3.

20 (c) "Fund", for purposes of **IC 16-46-12**, has the meaning set
21 forth in **IC 16-46-12-1.**

22 SECTION 9. IC 16-18-2-351.7 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 1998]: **Sec. 351.7. "Tobacco product", for**
25 **purposes of IC 16-46-12, has the meaning set forth in**
26 **IC 16-46-12-2.**

27 SECTION 10. IC 16-46-12 IS ADDED TO THE INDIANA CODE
28 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 1998]:

30 **Chapter 12. Youth Antismoking Education Fund**

31 **Sec. 1. As used in this chapter, "fund" refers to the youth**
32 **antismoking education fund established under section 3 of this**
33 **chapter.**

34 **Sec. 2. As used in this chapter, "tobacco product" means any**
35 **product that is made:**

- 36 (1) in whole or in part from tobacco; and
37 (2) for smoking or chewing, or both.

38 **The term includes snuff.**

39 **Sec. 3. The youth antismoking education fund is established for**
40 **the purpose of:**

- 41 (1) educating the youth of Indiana to prevent members of this
42 group from beginning to use tobacco products;



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1 (2) encouraging the youth of Indiana who use tobacco
2 products to cease using tobacco products; and

3 (3) providing assistance to implement youth tobacco
4 antismoking enforcement authority as provided in IC 7.1-6-2.

5 **Sec. 4. The fund shall be administered by the state department.**
6 **The expenses of administering the fund shall be paid from money**
7 **in the fund.**

8 **Sec. 5. The treasurer of state shall invest the money in the fund**
9 **not currently needed to meet the obligations of the fund in the same**
10 **manner as other public funds may be invested. Interest that**
11 **accrues from these investments shall be deposited in the fund.**

12 **Sec. 6. Money in the fund at the end of a state fiscal year does**
13 **not revert to the state general fund.**

14 **Sec. 7. Money in the fund consists of the following:**

15 (1) Money received from the department of state revenue as
16 provided in IC 6-2.5-8-16.

17 (2) Appropriations.

18 (3) Grants.

19 (4) Gifts.

20 (5) Five percent (5%) of the money that Indiana receives from
21 the settlement of an action between:

22 (A) Indiana and other states; and

23 (B) the tobacco industry.

24 **Sec. 8. The youth antismoking education and enforcement fund**
25 **advisory panel is established for the purpose of advising the**
26 **commissioner on how to distribute money in the fund for the**
27 **following:**

28 (1) To the department of state revenue, as provided in
29 IC 6-2.5-8-16.

30 (2) To enforcement authorities for enforcement activities, as
31 provided in IC 7.1-6-2.

32 (3) To local organizations through grants to accomplish the
33 educational purposes of the fund.

34 **Sec. 9. The advisory panel consists of the following members:**

35 (1) The commissioner or the commissioner's designee, who
36 serves as chair of the advisory panel.

37 (2) The commissioner of the department of state revenue or
38 the commissioner's designee.

39 (3) The director of the division of mental health or the
40 director's designee.

41 (4) The director of the state excise police or the director's
42 designee.

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1 (5) A member of the commission for a drug free Indiana, to be
2 appointed by the governor.

3 (6) Four (4) members of the general assembly shall serve as
4 nonvoting members of the advisory panel. The president pro
5 tempore of the senate shall appoint two (2) senators, both of
6 whom may not be members of the same political party. The
7 speaker of the house of representatives shall appoint two (2)
8 representatives, both of whom may not be members of the
9 same political party.

10 Sec. 10. (a) The advisory panel shall meet quarterly or more
11 frequently at the call of the chair.

12 (b) A member of the general assembly who serves on the
13 advisory panel is entitled to receive the same mileage and travel
14 allowance paid to individuals who serve as legislative members of
15 interim study committees established by the legislative council.

16 (c) Three (3) members of the advisory panel constitute a
17 quorum.

18 (d) The affirmative vote of three (3) members of the advisory
19 panel is required for the advisory panel to take any action.

20 Sec. 11. Notwithstanding section 8 of this chapter, the advisory
21 panel may suggest to the commissioner that the commissioner use
22 money in the fund to participate in joint ventures with other
23 governmental agencies or public or private entities to carry out the
24 purposes of the fund.

25 SECTION 11. IC 35-46-1-11.5 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11.5. (a) This section
27 does not apply to a coin machine that is located in the following:

28 (1) That part of a licensed premises (as defined in IC 7.1-1-3-20)
29 where entry is limited to persons who are at least eighteen (18)
30 years of age. **However, this subdivision does not apply to a part
31 of a licensed premises that is a restroom or other common
32 area that is accessible to persons who are less than eighteen
33 (18) years of age.**

34 (2) Private industrial or office locations that are customarily
35 accessible only to persons who are at least eighteen (18) years of
36 age.

37 (3) Private clubs if the membership is limited to persons who are
38 at least eighteen (18) years of age.

39 ~~(4) A location where the vending machine can be operated only
40 by:~~

41 ~~(A) the owner; or~~

42 ~~(B) an employee;~~



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- 1 who is at least eighteen (18) years of age. The vending machine
 2 may be operated directly or through a remote control device if the
 3 device is inaccessible to all customers.
- 4 (b) As used in this section, "coin machine" has the meaning set forth
 5 in IC 35-43-5-1.
- 6 (c) A person may not:
- 7 (1) distribute or sell tobacco by use of a coin machine; or
 8 (2) install or maintain a coin machine that is intended to be used
 9 for the sale or distribution of tobacco.
- 10 (d) A person who **knowingly or intentionally** violates this section
 11 commits a Class C infraction **A misdemeanor**.
- 12 (e) **A coin machine operated in violation of this section may be**
 13 **sealed, removed, impounded, or disabled by a law enforcement**
 14 **officer having jurisdiction in the county where the violation occurs.**
- 15 SECTION 12. [EFFECTIVE JULY 1, 1998] (a) **As used in this**
 16 **SECTION, "tobacco product" has the meaning set forth in**
 17 **IC 16-46-12-2, as added by this act.**
- 18 (b) **Notwithstanding IC 6-2.5-8-12, as added by this act, a person**
 19 **who:**
- 20 (1) **sells a tobacco product at retail; or**
 21 (2) **distributes a tobacco product to the public without charge;**
 22 **is not required to have a tobacco products retailer's permit as**
 23 **required under IC 6-2.5-8-12, as added by this act.**
- 24 (c) **This SECTION expires January 1, 1999.**
- 25 SECTION 13. [EFFECTIVE JULY 1, 1998] (a) **As used in this**
 26 **SECTION, "settlement" refers to the Universal Tobacco**
 27 **Settlement that was agreed to in June 1997 by tobacco industry**
 28 **representatives and the attorneys general of several states.**
- 29 (b) **As used in this SECTION, "tobacco product" has the**
 30 **meaning set forth in IC 16-46-12-2, as added by this act.**
- 31 (c) **If implementation of the settlement by the United States**
 32 **Congress requires Indiana to prohibit the sale or distribution of**
 33 **tobacco products through vending machines in order to be eligible**
 34 **to receive financial benefits of the settlement, the sale or**
 35 **distribution of tobacco products in Indiana through vending**
 36 **machines is prohibited, effective on the earliest date required by**
 37 **the United States Congress for Indiana to receive financial benefits**
 38 **of the settlement.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1232, 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 15, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 10. "Tobacco product" means any product that is made:**

- (1) in whole or in part from tobacco; and**
- (2) for smoking or chewing, or both.**

The term includes snuff.

SECTION 2. IC 6-2.5-8-1, AS AMENDED BY P.L.2-1997, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) A retail merchant may not make a retail transaction in Indiana, unless ~~he~~ **the retail merchant** has applied for a registered retail merchant's certificate.

(b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of twenty-five dollars (\$25) for each place of business listed on the application. **The application must provide a space where the retail merchant may indicate whether the retail merchant requires one (1) or more licenses for selling tobacco products, as provided in section 12 of this chapter.** The retail merchant shall also provide such security for payment of the tax as the department may require under IC 6-2.5-6-12.

(c) The retail merchant shall list on the application the location (including the township) of each place of business where he makes retail transactions. However, if the retail merchant does not have a fixed place of business, he shall list his residence as his place of business. In addition, a public utility may list only its principal Indiana office as its place of business for sales of public utility commodities or service, but the utility must also list on the application the places of business where it makes retail transactions other than sales of public utility commodities or service.

(d) Upon receiving a proper application, the correct fee, and the security for payment, if required, the department shall issue to the retail merchant a separate registered retail merchant's certificate for each place of business listed on the application. Each certificate shall bear a serial number and the location of the place of business for which it is issued.

HB 1232—LS 7058/DI 88



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(e) If a retail merchant intends to make retail transactions during a calendar year at a new Indiana place of business, ~~he~~ **the retail merchant** must file a supplemental application and pay the fee for that place of business.

(f) A retail merchant engaged in business in Indiana as defined in IC 6-2.5-3-1(c) who makes retail transactions that are only subject to the use tax must obtain a registered retail merchant's certificate before making those transactions. The retail merchant may obtain the certificate by following the same procedure as a retail merchant under subsections (b) and (c), except that the retail merchant must also include on the application:

- (1) the names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transactions;
- (2) the location of all of the retail merchant's places of business in Indiana, including offices and distribution houses; and
- (3) any other information that the department requests.

(g) The department may permit an out-of-state retail merchant to collect the use tax. However, before the out-of-state retail merchant may collect the tax, he must obtain a registered retail merchant's certificate in the manner provided by this section. Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that he knows is intended for use in Indiana.

(h) The department shall submit to the township assessor before July 15 of each year:

- (1) the name of each retail merchant that has newly obtained a registered retail merchant's certificate between March 2 of the preceding year and March 1 of the current year for a place of business located in the township; and
- (2) the address of each place of business of the taxpayer in the township.

SECTION 3. IC 6-2.5-8-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 12. (a) A retail merchant must indicate on the retail merchant's application for a certificate under section 1 of this chapter if the retail merchant intends to:**

- (1) sell a tobacco product at retail; or
- (2) distribute a tobacco product to the public without charge.

(b)The department shall issue a tobacco products retailer's license to a retail merchant if the retail merchant:

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- (1) indicates that the retail merchant requires a tobacco products retailer's license on the application for a certificate under section 1 of this chapter; and
- (2) pays the fee required under section 13 of this chapter.
- (c) A retail merchant must obtain a separate tobacco products retailer's license to do each of the following:
 - (1) Sell a tobacco product at retail.
 - (2) Distribute a tobacco product to the public without charge.
- (d) A retail merchant who owns or operates more than one (1) location where the retail merchant wishes to:
 - (1) sell a tobacco product at retail; or
 - (2) distribute a tobacco product to the public without charge;
 must obtain a separate tobacco products retailer's license for each location.
- (e) A retail merchant who is issued a tobacco products retailer's license under this chapter shall provide to each employee of the retail merchant a written summary of the laws and penalties associated with selling or distributing a tobacco product to an individual who is less than eighteen (18) years of age.

SECTION 4. IC 6-2.5-8-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 13. (a) The annual fee for each tobacco products retailer's license is twenty-five dollars (\$25).**

(b) A tobacco products retailer's license issued under section 12 of this chapter is valid for one (1) year. The department shall send a renewal notice to each retail merchant who receives a tobacco products retailer's license in order to allow the retail merchant to send the fee required under subsection (a) to the department on a timely basis.

SECTION 5. IC 6-2.5-8-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 14. (a) In addition to any other action allowed under this chapter, the department may revoke or refuse to issue a tobacco products retailer's license if the department finds that any of the following conditions exist:**

- (1) The retail merchant or the retail merchant's employees have demonstrated a pattern of selling or distributing tobacco products to individuals less than eighteen (18) years of age.
- (2) The retail merchant has been convicted of violating tobacco product tax laws in Indiana or in another jurisdiction.
- (3) The retail merchant has violated a court order issued under IC 34-4-38.



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(4) The retail merchant has owned or controlled a tobacco vending machine in violation of IC 35-46-1-11.5.

(b) In addition to a penalty under subsection (a), the department may assess a civil penalty against the holder of a tobacco products retailer's license for the violation of a provision of this chapter. The department may assess a civil penalty against a holder for each day the violation continues if the violation is of a continuing nature.

SECTION 6. IC 6-2.5-8-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 15. (a) The department shall revoke a tobacco products retailer's license issued under section 12 of this chapter if the state excise police or another appropriate law enforcement entity determines that a retail merchant has at least five (5) separate violations of IC 35-46-1-10 in a period of twelve (12) consecutive months.**

(b) A member of the state excise police or another law enforcement entity that observes a violation of IC 35-46-1-10 shall do the following:

(1) Provide the retail merchant with a written notice of the violation.

(2) Provide a copy of the notice under subdivision (1) to the department.

(c) Before the department revokes a license as provided in subsection (a), the department shall hold a hearing that complies with IC 4-21.5.

SECTION 7. IC 6-2.5-8-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 16. (a) The department shall monthly transfer the application fees collected by the department under section 13 of this chapter for tobacco products retailer's licenses to the state department of health.**

(b) The commissioner of the state department of health shall reimburse the department for the costs of administering the program for tobacco products retailer's licenses under section 12 through 15 of this chapter."

Delete page 2.

Page 3, delete lines 1 through 5.

Page 3, line 16, delete "IC 16-41-40 and".

Page 3, line 17, delete "IC 16-41-40-2" and insert "IC 16-46-12-2".

Page 3, delete lines 18 through 42.

Delete page 4.

Page 5, delete lines 1 through 38.



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Page 6, line 4, delete "has the" and insert "**means any product that is made:**

- (1) in whole or in part from tobacco; and**
- (2) for smoking or chewing, or both.**

The term includes snuff."

Page 6, delete line 5.

Page 6, line 9, delete "and".

Page 6, line 11, delete "." and insert "; **and**".

Page 6, between lines 11 and 12, begin a new line block indented and insert:

"(3) providing assistance to implement youth tobacco antismoking enforcement authority as provided in IC 7.1-6-2."

Page 6, line 22, delete "deposited under IC 16-41-40-18" and insert "**received from the department of state revenue as provided in IC 6-2.5-8-16."**

Page 6, between lines 29 and 30, begin a new paragraph and insert:

"Sec. 8. The youth antismoking education and enforcement fund advisory panel is established for the purpose of advising the commissioner on how to distribute money in the fund for the following:

- (1) To the department of state revenue, as provided in IC 6-2.5-8-16.**
- (2) To enforcement authorities for enforcement activities, as provided in IC 7.1-6-2.**
- (3) To local organizations through grants to accomplish the educational purposes of the fund.**

Sec. 9. The advisory panel consists of the following members:

- (1) The commissioner or the commissioner's designee, who serves as chair of the advisory panel.**
- (2) The commissioner of the department of state revenue or the commissioner's designee.**
- (3) The director of the division of mental health or the director's designee.**
- (4) The director of the state excise police or the director's designee.**
- (5) A member of the commission for a drug free Indiana, to be appointed by the governor.**
- (6) Four (4) members of the general assembly shall serve as nonvoting members of the advisory panel. The president pro tempore of the senate shall appoint two (2) senators, both of whom may not be members of the same political party. The**



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speaker of the house of representatives shall appoint two (2) representatives, both of whom may not be members of the same political party.

Sec. 10. (a) The advisory panel shall meet quarterly or more frequently at the call of the chair.

(b) A member of the general assembly who serves on the advisory panel is entitled to receive the same mileage and travel allowance paid to individuals who serve as legislative members of interim study committees established by the legislative council.

(c) Three (3) members of the advisory panel constitute a quorum.

(d) The affirmative vote of three (3) members of the advisory panel is required for the advisory panel to take any action."

Page 6, line 30, delete "8. The state department may" and insert "**11. Notwithstanding section 8 of this chapter, the advisory panel may suggest to the commissioner that the commissioner**".

Page 6, line 34, reset in roman "This section".

Page 6, reset in roman lines 35 through 38.

Page 6, line 38, after "." insert "**However, this subdivision does not apply to a part of a licensed premises that is a restroom or other common area that is accessible to persons who are less than eighteen (18) years of age.**".

Page 6, reset in roman lines 39 through 42.

Page 7, reset in roman line 1.

Page 7, line 9, reset in roman "(b)".

Page 7, line 11, reset in roman "(c)".

Page 7, line 11, delete "(b)".

Page 7, line 15, reset in roman "(d)".

Page 7, line 15, delete "(c)".

Page 7, line 17, delete "(d)" and insert "(e)".

Page 7, delete lines 20 through 21.

Page 7, line 24, delete "IC 16-41-40-2" and insert "**IC 16-46-12-2**".

Page 7, line 25, delete "IC 16-41-40, as added" and insert "**IC 6-2.5-8-12, as added**".

Page 7, line 30, delete "IC 16-41-40, as added" and insert "**IC 6-2.5-8-12, as added**".

Page 7, after line 31, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE JULY 1, 1998] (a) As used in this SECTION, "settlement" refers to the Universal Tobacco Settlement that was agreed to in June 1997 by tobacco industry representatives and the attorneys general of several states.

(b) As used in this SECTION, "tobacco product" has the



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meaning set forth in IC 16-46-12-2, as added by this act.

(c) If implementation of the settlement by the United States Congress requires Indiana to prohibit the sale or distribution of tobacco products through vending machines in order to be eligible to receive financial benefits of the settlement, the sale or distribution of tobacco products in Indiana through vending machines is prohibited, effective on the earliest date required by the United States Congress for Indiana to receive financial benefits of the settlement."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1232 as introduced.)

C. BROWN, Chair

Committee Vote: yeas 12, nays 2.

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