
HOUSE BILL No. 1232

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1-24; IC 12-7-2-197; IC 12-12-5-2; IC 16-18-2; IC 16-41-40; IC 16-46-12; IC 35-46-1-11; IC 35-46-1-11.5.

Synopsis: Tobacco regulation. Prohibits the sale or distribution of tobacco products through vending and other coin machines. Provides that each violation is a Class A misdemeanor. (Current law provides that each violation is a Class C infraction.) Provides law enforcement officers with the authority to seal, remove, impound, or disable a coin machine that is used to distribute or sell tobacco. Requires a person to have a tobacco products retailer's permit if the person: (1) sells a tobacco product at retail; or (2) distributes a tobacco product to the public without charge. Requires a person to obtain a separate permit for each location where the person wishes to sell or distribute tobacco products. Establishes the tobacco licensing commission. Requires the
(Continued next page)

Effective: July 1, 1998.

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January 13, 1998, read first time and referred to Committee on Public Health.

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Digest Continued

tobacco licensing commission to issue tobacco products retailer's permits and enforce the requirements of holding a permit. Sets the fee for an annual tobacco products retailer's permit at \$100. Creates the youth antismoking education fund. Deposits civil penalties from tobacco products retailer's permit holders into the fund. Requires the state department of health to administer the fund. Makes conforming amendments.

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Introduced

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.

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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 6-7-1-24 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1998]: Sec. 24. (a) Whenever the department
3 discovers any cigarettes which are subject to tax under this chapter and
4 upon which the tax has not been paid or the stamps affixed as required,
5 it may seize and take possession of the cigarettes together with any
6 ~~vending machine~~ or receptacle in which they are held for sale. The
7 seized cigarettes ~~vending machine~~, or receptacle, not including money
8 contained in the ~~vending machine~~ or receptacle, shall be forfeited to the
9 state. The department may, within a reasonable time after the seizure:
10 (1) sell the forfeited cigarettes and ~~vending machines~~ or
11 receptacles at public auction, but the department shall require the
12 purchaser to affix the proper amount of the stamps to the
13 cigarettes upon delivery to the purchaser;
14 (2) permit the person from whom the cigarettes were seized to
15 redeem the cigarettes and any ~~vending machine~~ or receptacle



1 seized therewith by the payment of the tax due together with a
 2 penalty of fifty percent (50%) and the costs incurred in the
 3 proceeding; or

4 (3) destroy the confiscated cigarettes and ~~vending machine or~~
 5 receptacle.

6 (b) The confiscation, destruction, sale, or redemption of cigarettes
 7 does not relieve any person of criminal penalties imposed for violation
 8 of this chapter.

9 (c) Any person who sells or holds for sale any packages of cigarettes
 10 not bearing Indiana tax stamps commits a Class A misdemeanor. This
 11 subsection does not apply to distributors or to employees of the
 12 department who are performing their official duties.

13 (d) The possession of more than one thousand five hundred (1,500)
 14 cigarettes in packages not bearing Indiana tax stamps by any person
 15 other than a distributor, a common carrier, or an employee of the state
 16 or federal government performing his official duties in the enforcement
 17 of this chapter constitutes prima facie evidence that the cigarettes are
 18 possessed for the purpose of sale.

19 (e) A person who knowingly possesses more than twelve thousand
 20 (12,000) cigarettes not bearing Indiana tax stamps and who has
 21 previously been convicted of a misdemeanor for possession or sale of
 22 unstamped cigarettes commits a Class D felony.

23 SECTION 2. IC 12-7-2-197 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 197. "Vending
 25 facilities", for purposes of IC 12-12-5, means automatic vending
 26 machines and snack bars and the auxiliary equipment necessary for the
 27 sale of newspapers, periodicals, confections, ~~tobacco products~~, foods,
 28 beverages, and other articles or services dispensed automatically or
 29 manually and prepared on or off the premises in accordance with all
 30 applicable health laws.

31 SECTION 3. IC 12-12-5-2 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) Vending facilities
 33 shall be established for the purpose of selling newspapers, periodicals,
 34 confections, ~~tobacco products~~, food, beverages, and other articles
 35 approved for sale by the bureau and the custodial authority of the
 36 building.

37 (b) The location and type of vending facility shall be determined by
 38 the bureau in cooperation with the custodial authority of the building
 39 in which the vending facility will be operated.

40 SECTION 4. IC 16-18-2-62 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 62. (a) "Commission",
 42 for purposes of IC 16-19-6, refers to the commission for special

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1 institutions.

2 (b) "Commission", for purposes of IC 16-31, refers to the Indiana
3 emergency medical services commission.

4 (c) **"Commission", for purposes of IC 16-41-40, refers to the
5 tobacco licensing commission.**

6 SECTION 5. IC 16-18-2-143 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 143. (a) "Fund", for
8 purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.

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

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

13 SECTION 6. IC 16-18-2-351.7 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 1998]: **Sec. 351.7. "Tobacco product", for
16 purposes of IC 16-41-40 and IC 16-46-12, has the meaning set forth
17 in IC 16-41-40-2.**

18 SECTION 7. IC 16-41-40 IS ADDED TO THE INDIANA CODE
19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 1998]:

21 **Chapter 40. Tobacco Licensing Commission**

22 **Sec. 1. As used in this chapter, "commission" refers to the
23 tobacco licensing commission established under section 3 of this
24 chapter.**

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

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

29 **The term includes snuff.**

30 **Sec. 3. The tobacco control commission is established.**

31 **Sec. 4. (a) The commission consists of five (5) members
32 appointed by the state health commissioner.**

33 **(b) The state health commissioner shall annually appoint one (1)
34 member of the commission to serve as chair of the commission.**

35 **Sec. 5. The term of each member of the commission is three (3)
36 years. A member may not serve more than three (3) consecutive
37 terms.**

38 **Sec. 6. (a) Three (3) members of the commission constitute a
39 quorum.**

40 **(b) The affirmative vote of three (3) members of the commission
41 is required for the commission to take any action.**

42 **Sec. 7. The commission shall meet quarterly or more frequently**



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1 at the call of the chair.

2 **Sec. 8. Each member of the commission is entitled to receive the**
 3 **same per diem, mileage, and travel allowances paid to individuals**
 4 **who serve as legislative and lay members, respectively, of interim**
 5 **study committees established by the legislative council.**

6 **Sec. 9. The commission has the following powers and duties:**

7 **(1) To adopt rules under IC 4-22-2 governing the:**

8 **(A) prevention of fraud, evasion, or deceit in the**
 9 **manufacture, labeling, importation, advertisement,**
 10 **transportation, or sale of; and**

11 **(B) evasion of other laws of Indiana relating to;**
 12 **tobacco products.**

13 **(2) To examine, inspect, and search a licensed premises or a**
 14 **vehicle where tobacco products are kept, manufactured, or**
 15 **sold.**

16 **(3) To prescribe the manner and methods by which all records**
 17 **relating to tobacco products are maintained.**

18 **(4) To inspect all records relating to tobacco products.**

19 **(5) To prohibit or regulate by rule the sale of tobacco**
 20 **products within Indiana when the sale violates IC 24-3-2.**

21 **(6) To issue tobacco products retailer's permits under this**
 22 **chapter.**

23 **Sec. 10. The commission may issue a tobacco products retailer's**
 24 **permit to a person who desires to:**

25 **(1) sell a tobacco product at retail; or**

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

27 **Sec. 11. The annual license fee for each tobacco products**
 28 **retailer's permit is one hundred dollars (\$100).**

29 **Sec. 12. (a) In addition to any other action allowed under this**
 30 **chapter, the commission may revoke or refuse to issue a permit if**
 31 **the commission finds that any of the following conditions exist:**

32 **(1) The person made a false or deceptive statement on the**
 33 **application for the permit.**

34 **(2) The person or the person's employees have demonstrated**
 35 **a pattern of selling or distributing tobacco products to**
 36 **individuals less than eighteen (18) years of age.**

37 **(3) The person has been convicted of violating tobacco**
 38 **product tax laws in Indiana or in another jurisdiction.**

39 **(4) The person has violated a court order issued under**
 40 **IC 34-4-38.**

41 **(5) The person has owned or controlled a tobacco vending**
 42 **machine in violation of IC 35-46-1-11.5.**



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1 (b) In addition to a penalty under subsection (a), the commission
 2 may assess a civil penalty against the holder of a tobacco products
 3 retailer's permit for the violation of a provision of this chapter or
 4 of a rule of the commission. The commission may assess a civil
 5 penalty against a holder for each day the violation continues if the
 6 violation is of a continuing nature.

7 Sec. 13. The commission shall refuse to issue and shall revoke a
 8 tobacco products retailer's permit if the commission finds that the
 9 person has at least five (5) separate violations of IC 35-46-1-10 in
 10 a twelve (12) month period.

11 Sec. 14. Before the commission revokes a permit under section
 12 12 or section 13 of this chapter, the commission shall hold a
 13 hearing that complies with IC 4-21.5.

14 Sec. 15. A person must obtain a separate tobacco products
 15 retailer's permit to do each of the following:

- 16 (1) Sell a tobacco product at retail.
- 17 (2) Distribute a tobacco product to the public without charge.

18 Sec. 16. A person that owns or operates more than one (1)
 19 location where the person wishes to:

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

22 must obtain a separate tobacco products retailer's permit for each
 23 location.

24 Sec. 17. A person who is issued a tobacco products retailer's
 25 permit under this chapter shall provide to each employee a written
 26 summary of the laws and penalties associated with selling or
 27 distributing a tobacco product to an individual who is less than
 28 eighteen (18) years of age.

29 Sec. 18. The chair of the commission shall deposit money
 30 collected from civil penalties against:

- 31 (1) tobacco products retailer's permit holders under section
- 32 12(b) of this chapter; and
- 33 (2) persons who sell tobacco products in violation of this
- 34 chapter;

35 in the youth antismoking education fund established under
 36 IC 16-46-12.

37 Sec. 19. A person who knowingly or intentionally violates this
 38 chapter commits a Class B misdemeanor.

39 SECTION 8. IC 16-46-12 IS ADDED TO THE INDIANA CODE
 40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 1998]:

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



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

4 **Sec. 2.** As used in this chapter, "tobacco product" has the
5 meaning set forth in IC 16-41-40-2.

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

8 (1) educating the youth of Indiana to prevent members of this
9 group from beginning to use tobacco products; and

10 (2) encouraging the youth of Indiana who use tobacco
11 products to cease using tobacco products.

12 **Sec. 4.** The fund shall be administered by the state department.
13 The expenses of administering the fund shall be paid from money
14 in the fund.

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

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

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

22 (1) Money deposited under IC 16-41-40-18.

23 (2) Appropriations.

24 (3) Grants.

25 (4) Gifts.

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

28 (A) Indiana and other states; and

29 (B) the tobacco industry.

30 **Sec. 8.** The state department may use money in the fund to
31 participate in joint ventures with other governmental agencies or
32 public or private entities to carry out the purposes of the fund.

33 SECTION 9. IC 35-46-1-11.5 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11.5. (a) This section
35 does not apply to a coin machine that is located in the following:

36 (1) That part of a licensed premises (as defined in IC 7-1-1-3-20)
37 where entry is limited to persons who are at least eighteen (18)
38 years of age.

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

42 (3) Private clubs if the membership is limited to persons who are

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1 at least eighteen (18) years of age.

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

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

5 ~~(B) an employee;~~

6 ~~who is at least eighteen (18) years of age. The vending machine~~
7 ~~may be operated directly or through a remote control device if the~~
8 ~~device is inaccessible to all customers.~~

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

11 ~~(c) (b) A person may not:~~

12 ~~(1) distribute or sell tobacco by use of a coin machine; or~~

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

15 ~~(d) (c) A person who knowingly or intentionally violates this~~
16 ~~section commits a Class C infraction. A misdemeanor.~~

17 ~~(d) A coin machine operated in violation of this section may be~~
18 ~~sealed, removed, impounded, or disabled by a law enforcement~~
19 ~~officer having jurisdiction in the county where the violation occurs.~~

20 SECTION 10. IC 35-46-1-11 IS REPEALED [EFFECTIVE JULY
21 1, 1998].

22 SECTION 11. [EFFECTIVE JULY 1, 1998] (a) As used in this
23 SECTION, "tobacco product" has the meaning set forth in
24 IC 16-41-40-2, as added by this act.

25 (b) Notwithstanding IC 16-41-40, as added by this act, a person
26 who:

27 (1) sells a tobacco product at retail; or

28 (2) distributes a tobacco product to the public without charge;
29 is not required to have a tobacco products retailer's permit as
30 required under IC 16-41-40, as added by this act.

31 (c) This SECTION expires January 1, 1999.

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