



Reprinted
March 5, 1999

HOUSE BILL No. 1104

DIGEST OF HB 1104 (Updated March 4, 1999 12:28 pm - DI 77)

Citations Affected: IC 6-2.5; IC 7.1-1; IC 7.1-2; IC 7.1-3; IC 7.1-5; IC 7.1-6; IC 35-46; noncode.

Synopsis: Noncommercial beer and wine and retail tobacco. Requires the department of revenue to compile a list of retailer's that sell tobacco products. Provides that the alcoholic beverage laws do not prohibit the manufacture of beer or wine that is not offered for sale and is used only for specific personal or noncommercial uses. Authorizes excise police and the alcoholic beverage commission to enforce tobacco laws. Provides that a brewer or winery may allow transportation to and consumption of this beer or wine on the licensed premises but may not
(Continued next page)

Effective: May 13, 1999; May 14, 1999; July 1, 1999.

**Hasler, Budak, Kuzman, Alderman,
Lytle, Crawford, Murphy,
Brown C, Bottorff, Goeglein,
Kruzan, Crosby**

January 6, 1999, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.
February 24, 1999, amended, reported — Do Pass.
March 1, 1999, read second time, ordered engrossed. Engrossed.
March 3, 1999, placed back on second reading for purpose of amendment.
March 4, 1999, reread second time, amended, ordered engrossed.

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allow sale of the product on the licensed premises. Allows a person to carry, convey, or consume this beer or wine on or about a licensed premises. Establishes specific penalties for violating certain tobacco laws. Requires that an underage tobacco buyer be issued a citation when a seller is issued a citation. Provides a penalty to a retail establishment for selling or distributing tobacco products to an underage person. Restricts outdoor tobacco product advertisements. Amends the locations where a tobacco vending machine may be placed. Prohibits a person less than 18 years old from entering a store that derives 50% of its gross sales from tobacco products.

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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE BILL No. 1104

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

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

- 1 SECTION 1. IC 6-2.5-6-14 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 14. (a) The department shall compile a list annually
4 of retail merchants that sell tobacco products that includes the
5 following information:**
6 (1) **On a county by county basis, the name and business
7 address for each location at which the retail merchant sells
8 tobacco products.**
9 (2) **The name and business address of each new retail
10 merchant since the previous report.**
11 (3) **The name and business address of each retail merchant
12 that no longer sells tobacco products since the previous
13 report.**
14 **The department shall deliver the list prepared under this section
15 to the division of mental health.**
16 (b) **A retail merchant that sells tobacco products must provide
17 the information required by the department under this section.**

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1 (c) **The department shall prescribe the form, or modify an**
 2 **existing form, to collect the information required by this section.**

3 SECTION 2. IC 7.1-1-2-3 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. ~~Scope: Exceptions:~~

5 (a) The provisions of this title shall not prohibit **the following:**

6 (1) The manufacture, sale, possession, transportation, or use of
 7 vinegar.

8 (2) The sale or transportation of sacramental wine to a minister,
 9 priest, or rabbi for a religious purpose.

10 (3) The manufacture, purchase, possession, transportation, or
 11 distribution of sacramental wine for a religious purpose by a
 12 minister, priest, or rabbi.

13 (4) The manufacture of wine or beer **that is not offered for sale**
 14 **and is used only for the following purposes:**

15 (A) **Personal or family** use.

16 (B) Use in ~~one's own~~ **the residence of the person who**
 17 **manufactures the wine or beer.**

18 (C) **Use at organized affairs or exhibitions.**

19 (D) **Technical or sensory evaluations.**

20 (E) **Wine or beer educational seminars.**

21 (F) **Wine or beer competitions including contests, tastings,**
 22 **or judgments.**

23 (5) The manufacture, sale, possession, transportation, or use of
 24 industrial alcohol. ~~or~~

25 (6) Alcoholic beverages held, served, or consumed on airline
 26 flights.

27 (b) ~~The purchase, transportation to, and the possession of alcoholic~~
 28 ~~beverages for use only in one's own residence~~ **described in subsection**
 29 **(a)(4)** shall not be prohibited but shall be subject to the applicable
 30 provisions of this title.

31 (c) The manufacture, sale, possession, transportation, or use of
 32 alcohol or alcoholic beverages, or a preparation containing alcohol for
 33 a medicinal, scientific, or mechanical purpose, shall not be prohibited
 34 but shall be controlled, regulated, and confined to permittees as
 35 provided in this title.

36 SECTION 3. IC 7.1-2-2-9 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) An enforcement
 38 officer is vested with full police powers and duties to enforce:

39 (1) the provisions of this title;

40 (2) any other law of this state relating to alcohol or alcoholic
 41 beverages; and

42 (3) ~~youth tobacco sales~~ **laws, including tobacco vending**



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1 **machines.**

2 (b) An enforcement officer may issue a summons for infraction or
3 misdemeanor violations if the defendant promises to appear by signing
4 the summons. A defendant who fails to appear is subject to the
5 penalties provided by IC 35-44-3-6.5. Upon failure to appear, the court
6 shall issue a warrant for the arrest of the defendant.

7 (c) In addition to the authority of an enforcement officer under
8 subsection (a), an enforcement officer may act as an officer for the
9 arrest of offenders against the laws of this state if the enforcement
10 officer reasonably believes that a crime is or is about to be committed
11 or attempted in the enforcement officer's presence.

12 SECTION 4. IC 7.1-2-3-33 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 1999]: **Sec. 33. The commission is authorized to:**

15 (1) **investigate a violation of; and**

16 (2) **enforce a penalty for a violation of;**

17 **IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.3, IC 35-46-1-11.5,**
18 **or IC 35-46-1-11.7.**

19 SECTION 5. IC 7.1-3-2-7 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. The holder of a
21 brewer's permit or an out-of-state brewer holding either a primary
22 source of supply permit or an out-of-state brewer's permit may do the
23 following:

24 (1) Manufacture beer.

25 (2) Place beer in containers or bottles.

26 (3) Transport beer.

27 (4) Sell and deliver beer to a person holding a beer wholesaler's
28 permit issued under IC 7.1-3-3.

29 (5) If the brewer's brewery manufactures not more than twenty
30 thousand (20,000) barrels of beer in a calendar year, do the
31 following:

32 (A) Sell and deliver beer to a person holding a retailer or a
33 dealer permit under this title.

34 (B) Be the proprietor of a restaurant.

35 (C) Hold a beer retailer's permit, a wine retailer's permit, or a
36 liquor retailer's permit for a restaurant established under clause
37 (B).

38 (D) Transfer beer directly from the brewery to the restaurant
39 by means of:

40 (i) bulk containers; or

41 (ii) a continuous flow system.

42 (E) Install a window between the brewery and an adjacent

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- 1 restaurant that allows the public and the permittee to view both
 2 premises.
 3 (F) Install a doorway or other opening between the brewery
 4 and an adjacent restaurant that provides the public and the
 5 permittee with access to both premises.
 6 (6) If the brewer's brewery manufactures more than twenty
 7 thousand (20,000) barrels of beer in a calendar year, own a
 8 portion of the corporate stock of another brewery that:
 9 (A) is located in the same county as the brewer's brewery;
 10 (B) manufactures less than twenty thousand (20,000) barrels
 11 of beer in a calendar year; and
 12 (C) is the proprietor of a restaurant that operates under
 13 subdivision (5).
 14 (7) Sell and deliver beer to a consumer at the plant of the brewer
 15 or at the residence of the consumer. The delivery to a consumer
 16 shall be made only in a quantity at any one (1) time of not more
 17 than one-half (1/2) barrel, but the beer may be contained in bottles
 18 or other permissible containers.
 19 (8) Provide complimentary samples of beer that are:
 20 (A) produced by the brewer; and
 21 (B) offered to consumers for consumption on the brewer's
 22 premises.
 23 (9) Own a portion of the corporate stock of a sports corporation
 24 that:
 25 (A) manages a minor league baseball stadium located in the
 26 same county as the brewer's brewery; and
 27 (B) holds a beer retailer's permit, a wine retailer's permit, or a
 28 liquor retailer's permit for a restaurant located in that stadium.
 29 **(10) For beer described in IC 7.1-1-2-3(a)(4):**
 30 **(A) may allow transportation to and consumption of the**
 31 **beer on the licensed premises; and**
 32 **(B) may not sell, offer to sell, or allow sale of the beer on**
 33 **the licensed premises.**
 34 SECTION 6. IC 7.1-3-12-5 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) The holder of a
 36 small winery permit:
 37 (1) is entitled to manufacture table wine, to bottle wine, and to
 38 bottle table wine produced by the permit holder's small winery;
 39 (2) is entitled to serve complimentary samples of the winery's
 40 table wine on the licensed premises;
 41 (3) is entitled to sell the winery's table wine on the licensed
 42 premises to consumers either by the glass, or by the bottle, or

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- 1 both;
- 2 (4) is entitled to sell table wine by the bottle or by the case to a
- 3 person who is the holder of a permit to sell wine at either
- 4 wholesale or retail;
- 5 (5) is exempt from the provisions of IC 7.1-3-14; ~~and~~
- 6 (6) is entitled to advertise the name and address of any retailer or
- 7 dealer who sells wine produced by the permit holder's winery;
- 8 **and**
- 9 **(7) for wine described in IC 7.1-1-2-3(a)(4):**
- 10 **(A) may allow transportation to and consumption of the**
- 11 **wine on the licensed premises; and**
- 12 **(B) may not sell, offer to sell, or allow the sale of the wine**
- 13 **on the licensed premises.**
- 14 (b) With the approval of the commission, a holder of a permit under
- 15 this chapter may conduct business at a second location that is separate
- 16 from the winery. At the second location, the holder of a permit may
- 17 conduct any business that is authorized at the first location, except for
- 18 the manufacturing or bottling of wine.
- 19 (c) With the approval of the commission, a holder of a permit under
- 20 this chapter may, individually or with other permit holders under this
- 21 chapter, participate in a trade show or an exposition at which products
- 22 of each permit holder participant are displayed, promoted, and sold.
- 23 The commission may not grant approval under this subsection to a
- 24 holder of a permit under this chapter:
- 25 (1) more than three (3) times in a calendar year; and
- 26 (2) for more than three (3) days for each event.
- 27 SECTION 7. IC 7.1-5-8-5 IS AMENDED TO READ AS
- 28 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. ~~Taking Alcoholic~~
- 29 ~~Beverage On Licensed Premises Prohibited:~~ **(a) This section does not**
- 30 **apply to a person who, on or about a licensed premises, carries,**
- 31 **conveys, or consumes beer or wine:**
- 32 **(1) described in IC 7.1-1-2-3(a)(4); and**
- 33 **(2) not sold or offered for sale.**
- 34 (b) It is a Class C misdemeanor for a person, for his own use, to
- 35 knowingly carry on, convey to, or consume, on or about the licensed
- 36 premises of a permittee, an alcoholic beverage that was not then and
- 37 there purchased from that permittee.
- 38 SECTION 8. IC 7.1-6-2-6 IS ADDED TO THE INDIANA CODE
- 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 40 1, 1999]: **Sec. 6. (a) The youth tobacco education and enforcement**
- 41 **fund is established. The fund shall be administered by the**
- 42 **commission.**



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1 (b) Expenses of administering the fund shall be paid from
2 money in the fund.

3 (c) The treasurer of state shall invest the money in the fund not
4 currently needed to meet the obligations of the fund in the same
5 manner as other public money may be invested.

6 (d) Money in the fund at the end of a state fiscal year does not
7 revert to the state general fund.

8 (e) Money in the fund shall be used for the following purposes:

9 (1) One-third (1/3) of the money in the fund for youth smoking
10 prevention education. The commission may contract with the
11 state department of health or the office of the secretary of
12 family and social services for youth smoking prevention
13 education programs.

14 (2) One-third (1/3) of the money in the fund for education and
15 training of retailers who sell tobacco products. The
16 commission may contract with education and training
17 programs of the office of the secretary of family and social
18 services, the division of mental health, enforcement officers,
19 or a program approved by the commission.

20 (3) One-third (1/3) of the money in the fund to the commission
21 for enforcement of youth tobacco laws.

22 SECTION 9. IC 35-46-1-10 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A person who
24 knowingly sells or distributes tobacco to a person less than eighteen
25 (18) years of age commits a Class C infraction. **For a sale to take
26 place under this section, the buyer must pay the seller for the
27 tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment
28 for an infraction committed under this section must impose a civil
29 penalty of fifty dollars (\$50). A person may not be issued a citation
30 or summons for a violation of this section more than once every
31 twenty-four (24) hours.**

32 (b) It is not a defense that the person to whom the tobacco was sold
33 or distributed did not smoke, chew, or otherwise consume the tobacco.

34 (c) It is a defense that the accused person reasonably believed that
35 the buyer or taker was at least eighteen (18) years of age. The
36 following defenses are available to a person accused of selling or
37 distributing tobacco to a person who is less than eighteen (18) years
38 of age:

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

42 (2) The buyer or recipient produced a photographic



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

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

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

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

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

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

27 **(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected**
 28 **under this section must be deposited in the youth tobacco education**
 29 **and enforcement fund (IC 7.1-6-2-6).**

30 SECTION 10. IC 35-46-1-10.2 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 1999]: **Sec. 10.2. (a) A retail establishment**
 33 **that sells or distributes tobacco to a person less than eighteen (18)**
 34 **years of age commits a Class C infraction. For a sale to take place**
 35 **under this section, the buyer must pay the retail establishment for**
 36 **the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil**
 37 **judgment for an infraction committed under this section must be**
 38 **imposed as follows:**

- 39 **(1) If the retail establishment at that specific business location**
 40 **has not been issued a citation or summons for a violation of**
 41 **this section in the previous ninety (90) days, a civil penalty of**
 42 **fifty dollars (\$50).**



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1 (2) If the retail establishment at that specific business location
 2 has had one (1) citation or summons issued for a violation of
 3 this section in the previous ninety (90) days, a civil penalty of
 4 one hundred dollars (\$100).

5 (3) If the retail establishment at that specific business location
 6 has had two (2) citations or summons issued for a violation of
 7 this section in the previous ninety (90) days, a civil penalty of
 8 two hundred fifty dollars (\$250).

9 (4) If the retail establishment at that specific business location
 10 has had three (3) or more citations or summonses issued for
 11 a violation of this section in the previous ninety (90) days, a
 12 civil penalty of five hundred dollars (\$500).

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

16 (b) It is not a defense that the person to whom the tobacco was
 17 sold or distributed did not smoke, chew, or otherwise consume the
 18 tobacco.

19 (c) The following defenses are available to a retail establishment
 20 accused of selling or distributing tobacco to a person who is less
 21 than eighteen (18) years of age:

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

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

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

35 (d) It is a defense that the accused retail establishment sold or
 36 delivered the tobacco to a person who acted in the ordinary course
 37 of employment or a business concerning tobacco:

38 (1) agriculture;

39 (2) processing;

40 (3) transporting;

41 (4) wholesaling; or

42 (5) retailing.



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

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

10 (g) Notwithstanding IC 34-28-5-4(c), civil penalties collected
 11 under this section must be deposited in the youth tobacco education
 12 and enforcement fund (IC 7.1-6-2-6).

13 SECTION 11. IC 35-46-1-11.3 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE MAY 13, 1999]: Sec. 11.3. (a) This section
 15 does not apply to advertisements **that are less than fourteen (14)**
 16 **square feet and** posted:

- 17 (1) at street level **in the window or** on the exterior of a business
 18 **property or** establishment where tobacco products are
 19 manufactured, distributed, or sold; or
 20 (2) on vehicles.

21 (b) After ~~December 31, 1996~~, **May 13, 1999**, a person may not
 22 advertise or cause to be advertised tobacco products on a billboard
 23 located within two hundred (200) feet of a public or private elementary
 24 or secondary school, as measured between the nearest point of the
 25 billboard and the nearest point of a building used by the school for
 26 instructional purposes. **or an outdoor advertisement that occupies an**
 27 **area that exceeds fourteen (14) square feet, including any**
 28 **advertisement that functions as a segment of a larger advertising**
 29 **unit or series.**

30 (c) A person who violates this section commits a ~~Class E~~
 31 ~~misdemeanor~~. **Class C infraction. An advertisement that is in**
 32 **violation of this section must be removed not more than ten (10)**
 33 **days after a citation or summons has been issued. Notwithstanding**
 34 **IC 34-28-5-4(c), if an advertisement that is in violation of this**
 35 **section is not removed not more than ten (10) days after a citation**
 36 **or summons has been issued, a civil judgment for an infraction**
 37 **committed under this section must include a civil penalty of one**
 38 **hundred dollars (\$100) for each day that the advertisement was in**
 39 **violation of this section.**

40 (d) Notwithstanding IC 34-28-5-4(c), civil penalties collected
 41 under this section must be deposited in the youth tobacco education
 42 and enforcement fund (IC 7.1-6-2-6).



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1 SECTION 12. IC 35-46-1-11.5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.5. (a) **Except for a**
 3 **coin machine that is placed in an entranceway, an exit, a hallway,**
 4 **a restroom, or another common area that is accessible to persons**
 5 **who are less than eighteen (18) years of age,** this section does not
 6 apply to a coin machine that is located in the following:

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

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

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

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

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

18 ~~(B) an employee;~~

19 ~~who is at least eighteen (18) years of age. The vending machine~~
 20 ~~may be operated directly or through a remote control device if the~~
 21 ~~device is inaccessible to all customers. **Riverboats where entry**~~
 22 ~~**is limited to persons who are at least twenty-one (21) years of**~~
 23 ~~**age and on which lawful gambling is authorized.**~~

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

26 (c) ~~a person~~ **Except as provided in subsection (a), an owner of a**
 27 **retail establishment** may not:

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

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

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

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

40 (2) **If the owner of the retail establishment has had one (1)**
 41 **citation or summons issued for a violation of this section in the**
 42 **previous ninety (90) days, a civil penalty of two hundred fifty**



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1 dollars (\$250).

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

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

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

14 SECTION 13. IC 35-46-1-11.7 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 1999]: **Sec. 11.7. (a) A retail establishment**
 17 **that derives at least fifty percent (50%) of its monthly gross sales**
 18 **from the sale of tobacco products may not allow an individual who**
 19 **is less than eighteen (18) years of age to enter the retail**
 20 **establishment.**

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

23 **(c) A retail establishment described in subsection (a) must**
 24 **conspicuously post on all entrances to the retail establishment a**
 25 **sign in boldface type that states "NOTICE: It is unlawful for a**
 26 **person less than 18 years old to enter this store."**

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

31 **(1) If the person has not been cited for a violation of this**
 32 **section in the previous ninety (90) days, a civil penalty of fifty**
 33 **dollars (\$50).**

34 **(2) If the person has had one (1) violation in the previous**
 35 **ninety (90) days, a civil penalty of one hundred dollars (\$100).**

36 **(3) If the person has had two (2) violations in the previous**
 37 **ninety (90) days, a civil penalty of two hundred fifty dollars**
 38 **(\$250).**

39 **(4) If the person has had three (3) or more violations in the**
 40 **previous ninety (90) days, a civil penalty of five hundred**
 41 **dollars (\$500).**

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



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hours.

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

SECTION 14. [EFFECTIVE MAY 14, 1999] (a) Notwithstanding IC 35-46-1-11.3, as amended by this act, a person who before May 14, 1999, had:

- (1) an advertisement of a tobacco product on a billboard that was compliant with IC 35-46-1-11.3, before its amendment by this act; and
- (2) a contract to continue the advertisement of the tobacco product after May 13, 1999;

may continue to advertise the tobacco product on the billboard. However, the person may not renew or extend the contract after May 13, 1999.

(b) This SECTION expires July 1, 2000.

SECTION 15. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1104, 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 2, line 8, strike "purchase,".

Page 2, line 8, strike "to,".

Page 4, line 28, delete "the" and insert "a".

Page 4, line 28, after "premises" insert ",".

Page 4, line 28, delete "of a".

Page 4, line 29, delete "brewer or winery,".

and when so amended that said bill do pass.

(Reference is to HB 1104 as introduced.)

KUZMAN, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1104 be returned to the second reading calender forthwith for the purpose of amendment.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1104 be amended to read as follows:

Delete the title and insert the following:

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14. (a) The department shall compile a list annually of retail merchants that sell tobacco products that includes the following information:**

- (1) On a county by county basis, the name and business address for each location at which the retail merchant sells tobacco products.
- (2) The name and business address of each new retail merchant since the previous report.
- (3) The name and business address of each retail merchant that no longer sells tobacco products since the previous report.

The department shall deliver the list prepared under this section to the division of mental health.

(b) A retail merchant that sells tobacco products must provide the information required by the department under this section.

(c) The department shall prescribe the form, or modify an existing form, to collect the information required by this section."

Page 2, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 2. IC 7.1-2-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9. (a) An enforcement officer is vested with full police powers and duties to enforce:**

- (1) the provisions of this title;
- (2) any other law of this state relating to alcohol or alcoholic beverages; and



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(3) ~~youth tobacco sales~~. **laws, including tobacco vending machines.**

(b) An enforcement officer may issue a summons for infraction or misdemeanor violations if the defendant promises to appear by signing the summons. A defendant who fails to appear is subject to the penalties provided by IC 35-44-3-6.5. Upon failure to appear, the court shall issue a warrant for the arrest of the defendant.

(c) In addition to the authority of an enforcement officer under subsection (a), an enforcement officer may act as an officer for the arrest of offenders against the laws of this state if the enforcement officer reasonably believes that a crime is or is about to be committed or attempted in the enforcement officer's presence.

SECTION 3. IC 7.1-2-3-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 33. The commission is authorized to:**

- (1) investigate a violation of; and
- (2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.3, IC 35-46-1-11.5, or IC 35-46-1-11.7."

Page 4, after line 35, begin a new paragraph and insert:

"SECTION 7. IC 7.1-6-2-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6. (a) The youth tobacco education and enforcement fund is established. The fund shall be administered by the commission.**

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund shall be used for the following purposes:

(1) One-third (1/3) of the money in the fund for youth smoking prevention education. The commission may contract with the state department of health or the office of the secretary of family and social services for youth smoking prevention education programs.

(2) One-third (1/3) of the money in the fund for education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social



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services, the division of mental health, enforcement officers, or a program approved by the commission.

(3) One-third (1/3) of the money in the fund to the commission for enforcement of youth tobacco laws.

SECTION 8. IC 35-46-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A person who knowingly sells or distributes tobacco to a person less than eighteen (18) 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. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must impose a civil penalty of fifty dollars (\$50). A person may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours.**

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

(c) It is a defense that the accused person reasonably believed that the buyer or taker was at least eighteen (18) years of age. **The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) 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) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

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



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

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

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

SECTION 9. IC 35-46-1-10.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. 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 ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the retail establishment at that specific business location has had two (2) citations or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(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 ninety (90) days, a civil penalty of five hundred dollars (\$500).

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

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



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tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) 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) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

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

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

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

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

SECTION 10. IC 35-46-1-11.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MAY 13, 1999]: Sec. 11.3. (a) This section does not apply to advertisements **that are less than fourteen (14) square feet and** posted:

- (1) at street level **in the window or** on the exterior of a business



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property or establishment where tobacco products are manufactured, distributed, or sold; or

(2) on vehicles.

(b) After ~~December 31, 1996~~, **May 13, 1999**, a person may not advertise or cause to be advertised tobacco products on a billboard located within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the billboard and the nearest point of a building used by the school for instructional purposes: **or an outdoor advertisement that occupies an area that exceeds fourteen (14) square feet, including any advertisement that functions as a segment of a larger advertising unit or series.**

(c) A person who violates this section commits a ~~Class E misdemeanor~~: **Class C infraction. An advertisement that is in violation of this section must be removed not more than ten (10) days after a citation or summons has been issued. Notwithstanding IC 34-28-5-4(c), if an advertisement that is in violation of this section is not removed not more than ten (10) days after a citation or summons has been issued, a civil judgment for an infraction committed under this section must include a civil penalty of one hundred dollars (\$100) for each day that the advertisement was in violation of this section.**

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

SECTION 7. IC 35-46-1-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.5. (a) **Except for a coin machine that is placed in an entranceway, an exit, a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) 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) years of age.
- (2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.
- (3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.
- (4) ~~A location where the vending machine can be operated only by:~~
 - (A) the owner; or



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(B) an employee;
 who is at least eighteen (18) years of age. The vending machine may be operated directly or through a remote control device if the device is inaccessible to all customers. **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) ~~a person~~ **Except as provided in subsection (a), an owner of a retail establishment** may not:

- (1) distribute or sell tobacco 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.

(d) ~~A person~~ **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 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund IC 7.1-6-2-6.**

SECTION 8. IC 35-46-1-11.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 11.7. (a) A retail establishment that derives at least fifty percent (50%) of its monthly gross sales**



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from the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) 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 a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store."

(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 ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the person has had one (1) violation in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the person has had two (2) violations in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the person has had three (3) or more violations in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

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

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

SECTION 9. [EFFECTIVE MAY 14, 1999] (a) Notwithstanding IC 35-46-1-11.3, as amended by this act, a person who before May 14, 1999, had:

(1) an advertisement of a tobacco product on a billboard that was compliant with IC 35-46-1-11.3, before its amendment by this act; and

(2) a contract to continue the advertisement of the tobacco product after May 13, 1999;

may continue to advertise the tobacco product on the billboard. However, the person may not renew or extend the contract after May 13, 1999.

(b) This SECTION expires July 1, 2000.

SECTION 10. An emergency is declared for this act."



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Renumber all SECTIONS consecutively.

(Reference is to HB 1104 as printed February 25, 1999.)

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