

HOUSE BILL No. 1651

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-43-2; IC 35-46-1-10.

Synopsis: Youth tobacco access. Provides for issuance by the state department of health of three types of tobacco product licenses to retailers that sell or distribute tobacco products without charge. Establishes penalties for license violations and allows the state department of health to hold a tobacco products license revocation hearing if the retailer commits certain violations. Requires that an individual must be at least 18 years of age to sell or distribute tobacco products. Requires that a retailer must obtain a license from the state department of health to sell tobacco products before January 1, 2000. Makes conforming amendments.

Effective: July 1, 1999.

**Hasler, Goeglein, Crawford,
Murphy**

January 21, 1999, read first time and referred to Committee on Commerce and Economic Development.



C
O
P
Y

Introduced

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.

C
O
P
Y

HOUSE BILL No. 1651



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 16-18-2-319 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 319. "Retailer" **refers**
3 **to the following:**

4 (1) For purposes of IC 16-42-11, has the meaning set forth in
5 IC 16-42-11-2.

6 (2) **For purposes of IC 16-43-2, has the meaning set forth in**
7 **IC 16-43-2-1.**

8 SECTION 2. IC 16-18-2-351.5 IS ADDED TO THE INDIANA
9 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 1999]: **Sec. 351.5. "Tobacco product", for**
11 **purposes of IC 16-43-2, has the meaning set forth in IC 16-43-2-2.**

12 SECTION 3. IC 16-43-2 IS ADDED TO THE INDIANA CODE AS
13 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 1999]:

15 **Chapter 2. Youth Access to Tobacco**



1 **Sec. 1.** As used in this chapter, "retailer" means the holder of a
2 registered retail merchant's certificate under IC 6-2.5-8-1.

3 **Sec. 2.** As used in this chapter, "tobacco product" means a
4 product that is made:

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

7 The term includes snuff.

8 **Sec. 3.** A person may not:

- 9 (1) sell a tobacco product at retail; or
10 (2) distribute a tobacco product to the public without charge;
11 unless the person holds a valid tobacco products license issued
12 under this chapter.

13 **Sec. 4. (a)** A retailer may apply to the state department for a
14 tobacco products license by submitting an application on the form
15 prescribed by the state department.

16 **(b)** A retailer must indicate on the application described in
17 subsection (a) which of the following tobacco products licenses the
18 retailer is applying for:

- 19 (1) License to sell a tobacco product at retail in a place of
20 business where tobacco products are not accessible to
21 customers.
22 (2) License to sell a tobacco product at retail in a place of
23 business that prohibits an individual who is less than eighteen
24 (18) years of age from entering the place of business.
25 (3) License to distribute a tobacco product to the public
26 without charge.

27 **(c)** Except as provided under section 6 of this chapter, the state
28 department shall issue a tobacco products license to a retailer that
29 is an applicant if the application indicates that the applicant
30 requires a tobacco products license. The application must include
31 any information required by the state department. However, the
32 state department may:

- 33 (1) require only information that is necessary to administer
34 the tobacco products license; and
35 (2) not have an application that is more than one (1) page of
36 eight and one half inches by eleven inches (8 1/2 x 11).

37 **(d)** A retailer that owns or operates more than one (1) location
38 where the retailer intends to:

- 39 (1) sell a tobacco product at retail in a place of business where
40 the tobacco products are not accessible to customers;
41 (2) sell a tobacco product at retail in a place of business that
42 prohibits an individual who is less than eighteen (18) years of

C
O
P
Y



1 age from entering the place of business; or

2 (3) distribute a tobacco product to the public without charge;
3 must obtain a separate tobacco products license for each location.

4 **Sec. 5. (a)** The state department may not charge an annual fee
5 for a tobacco products license.

6 **(b)** A tobacco products license issued under section 4 of this
7 chapter is valid for one (1) year. The state department shall send
8 a renewal notice to a retailer that receives a tobacco products
9 license to allow the retailer to renew the tobacco products license
10 with the state department on a timely basis.

11 **Sec. 6. (a)** In addition to any other action allowed under this
12 chapter, the state department may revoke the tobacco products
13 license of a retailer or refuse to issue a tobacco products license to
14 a retailer if the state department finds that in the previous twelve
15 (12) consecutive months the retailer has:

16 (1) at least three (3) separate violations of IC 35-46-1-10;

17 (2) been convicted of violating tobacco product tax laws in
18 Indiana or in another jurisdiction;

19 (3) violated a court order issued under IC 34-26-4; or

20 (4) owned or controlled a tobacco vending machine in
21 violation of IC 35-46-1-11.5.

22 **(b)** In addition to any penalty imposed under subsection (a), the
23 state department may assess a civil penalty against a retailer that
24 sells a tobacco product at retail or distributes a tobacco product to
25 the public without charge and does not have a valid tobacco
26 products license. The state department may assess a civil penalty
27 against a retailer for each day the violation continues if the
28 violation is of a continuing nature.

29 **(c)** Before the state department revokes a license under
30 subsection (a), the state department shall hold a hearing that
31 complies with IC 4-21.5.

32 **Sec. 7.** A retailer who is issued a tobacco products license under
33 this chapter shall:

34 (1) post and conspicuously display in the retail establishment
35 the tobacco products license; and

36 (2) provide to each employee of the retailer a written
37 summary of the laws and penalties associated with selling or
38 distributing a tobacco product to an individual less than
39 eighteen (18) years of age.

40 **Sec. 8. (a)** Tobacco products for sale in the retail establishment
41 of a retailer holding a license described in section 4(b)(1) of this
42 chapter may not be accessible to customers of the retail

C
O
P
Y



1 establishment.

2 (b) An individual who wishes to purchase a tobacco product in
3 a retail establishment displaying a license described in section
4 4(b)(1) of this chapter must ask an employee of the retail
5 establishment for access to the tobacco product.

6 (c) A person who owns or has control over an establishment
7 selling tobacco products at retail displaying a license described in
8 section 4(b)(1) of this chapter shall limit the placement of tobacco
9 products in the retail establishment so that only the employees of
10 the retail establishment have access to the tobacco products.

11 **Sec. 9.** (a) A retail establishment displaying a license described
12 in section 4(b)(2) of this chapter may not allow an individual who
13 is less than eighteen (18) years of age to enter the retail
14 establishment.

15 (b) An individual who is less than eighteen (18) years of age may
16 not enter a retail establishment with a license described in section
17 4(b)(2) of this chapter.

18 (c) A retailer with a license described in section 4(b)(2) of this
19 chapter must conspicuously post on all entrances to the retail
20 establishment a sign in boldface type that states "NOTICE: It is
21 unlawful for a person less than 18 years old to enter this store."

22 **Sec. 10.** A retailer with a license described in section 4(b)(3) of
23 this chapter may not distribute a tobacco product to an individual
24 who is less than eighteen (18) years of age.

25 **Sec. 11.** An individual must be at least eighteen (18) years of age
26 to sell or distribute without charge tobacco products in the course
27 of the individual's employment.

28 **Sec. 12.** A person that:

29 (1) owns or has control over an establishment selling tobacco
30 products at retail or distributing tobacco products without
31 charge; and

32 (2) violates section 7, 8, 9, 10, or 11 of this chapter;

33 commits a Class B infraction. However, the person commits a Class
34 A infraction if the person violates this section three (3) or more
35 times within twelve (12) consecutive months.

36 **Sec. 13.** A law enforcement officer (as defined by IC 35-41-1-17)
37 who observes a violation of IC 35-46-1-10 shall do the following:

38 (1) Provide the retailer with a written notice of the violation.

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

41 **Sec. 14.** The state department may adopt rules under IC 4-22-2
42 to implement this chapter.

C
O
P
Y



1 SECTION 4. IC 35-46-1-10 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A person who
 3 knowingly sells or distributes tobacco to a person less than eighteen
 4 (18) years of age commits a Class **E B** infraction.

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

7 (c) It is a defense that the accused person reasonably believed that
 8 the buyer or taker was at least eighteen (18) years of age.

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

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

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

20 SECTION 5. [EFFECTIVE JULY 1, 1999] (a) **As used in this**
 21 **SECTION, "tobacco product" has the meaning set forth in**
 22 **IC 16-43-2-2, as added by this act.**

23 (b) **Notwithstanding IC 16-43-2, as added by this act, a person**
 24 **that:**

- 25 (1) **sells a tobacco product at retail; or**
- 26 (2) **distributes a tobacco product to the public without charge;**
 27 **is not required to have a tobacco products license required under**
 28 **IC 16-43-2, as added by this act.**

29 (c) **This SECTION expires January 1, 2000.**

C
O
P
Y

