
HOUSE BILL No. 1405

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-2; IC 7.1-1-3-6.5; IC 7.1-3-18.5-5; IC 7.1-5-10-24; IC 24-3-5.4-14; IC 35-46-1-1.7.

Synopsis: Tobacco matters. Defines "dissolvable tobacco product". Provides that a dissolvable tobacco product and small cigars are taxed for purposes of the tobacco products tax at a rate of 65% of the wholesale price of the dissolvable tobacco product or small cigars. Defines "blunt wrap". Requires the alcohol and tobacco commission to revoke a tobacco sales certificate of an establishment that sells blunt wraps if that establishment is not a tobacco business. Requires the attorney general to post in the tobacco master settlement agreement directory notice of any removal from the directory of a tobacco product manufacturer or brand family at least 90 days before the attorney general removes the tobacco product manufacturer or brand family from the directory. Provides that a distributor may not purchase cigarettes of a tobacco product manufacturer or brand family later than 30 days after the attorney general provides notice that the tobacco product manufacturer or brand family will be removed from the directory. Provides that the attorney general may not remove a particular brand style of cigarettes from the directory, for a period of one year, if the tobacco product manufacturer, for marketing purposes, voluntarily terminates fabrication or repackages the particular brand style. Provides that a blunt wrap may be sold only in an establishment that has as its primary purpose the sale of tobacco products (tobacco business). Provides that a person or retail establishment that knowingly: (1) sells or distributes a dissolvable tobacco product or blunt wrap to a person less than 18 years of age; or (2) purchases a dissolvable tobacco product or blunt wrap for delivery to a person less than 18 years of age; commits a Class C infraction. Provides that a
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Effective: July 1, 2011.

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January 18, 2011, read first time and referred to Committee on Public Policy.



Digest Continued

person who is less than 18 years of age who: (1) purchases a dissolvable tobacco product or blunt wrap; (2) accepts a dissolvable tobacco product or blunt wrap for personal use; or (3) possesses a dissolvable tobacco product or blunt wrap, commits a class C infraction. Provides that a dissolvable tobacco product or blunt wrap is considered a tobacco product for purposes of provisions relating to the regulation of tobacco vending machines.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1405

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

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

1 SECTION 1. IC 6-7-2-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 1.5. (a) As used in this chapter, "dissolvable tobacco
4 product" means a smokeless tobacco product that dissolves in the
5 mouth of the user.**

6 **(b) The term does not include a product that:**
7 **(1) contains nicotine;**
8 **(2) does not contain tobacco; and**
9 **(3) is used for the cessation of use of a tobacco or smokeless
10 tobacco product.**

11 SECTION 2. IC 6-7-2-4.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2011]: **Sec. 4.5. As used in this chapter, "small cigar" means a
14 cigar that weighs not more than three (3) pounds per thousand
15 (1,000).**



1 SECTION 3. IC 6-7-2-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2011]: Sec. 5. As used in this chapter, "tobacco
3 product" means:

4 (1) any product made from tobacco, other than a cigarette (as
5 defined in IC 6-7-1-2), that is made for smoking, chewing, or
6 both; or

7 (2) snuff; or

8 (3) **dissolvable tobacco product.**

9 SECTION 4. IC 6-7-2-7, AS AMENDED BY P.L.234-2007,
10 SECTION 201, IS AMENDED TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2011]: Sec. 7. A tax is imposed on the
12 distribution of tobacco products in Indiana. **Tobacco products, other
13 than a dissolvable tobacco product and small cigars, are taxed at
14 the rate of twenty-four percent (24%) of the wholesale price of the
15 tobacco products. A dissolvable tobacco product and small cigars
16 are taxed at the rate of sixty-five percent (65%) of the wholesale
17 price of the dissolvable tobacco product or small cigars. The
18 distributor of the tobacco products is liable for the tax. The tax is
19 imposed at the time the distributor:**

20 (1) brings or causes tobacco products to be brought into Indiana
21 for distribution;

22 (2) manufactures tobacco products in Indiana for distribution; or

23 (3) transports tobacco products to retail dealers in Indiana for
24 resale by those retail dealers.

25 SECTION 5. IC 7.1-1-3-6.5 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 2011]: Sec. 6.5. **"Blunt wrap" means an individual tobacco
28 wrapper, also known as a wrap or roll-your-own cigar wrap, that
29 is made wholly or in part from tobacco, including reconstituted
30 tobacco, whether in the form of a tobacco leaf, sheet, or tube, if
31 such a wrap is designed to be sold to individuals.**

32 SECTION 6. IC 7.1-3-18.5-5, AS AMENDED BY P.L.94-2008,
33 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2011]: Sec. 5. (a) Subject to subsection (b), the commission
35 may suspend the certificate of a person who fails to pay a civil penalty
36 imposed for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5,
37 or IC 35-46-1-11.7.

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

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certificate holder.

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

- (1) has violated **IC 7.1-5-10-24**, IC 35-45-5-3, IC 35-45-5-3.5, or IC 35-45-5-4;
- (2) has committed habitual illegal sale of tobacco as established under IC 35-46-1-10.2(h); or
- (3) has committed habitual illegal entrance by a minor as established under IC 35-46-1-11.7(f).

SECTION 7. IC 7.1-5-10-24 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2011]: **Sec. 24. A blunt wrap may be sold only in a tobacco business (as defined in IC 35-46-1-1).**

SECTION 8. IC 24-3-5.4-14, AS AMENDED BY P.L.24-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on accessIndiana (as operated under IC 4-13.1-2) a directory listing all brand families listed in certifications filed under section 13 of this chapter.

(b) A directory described in subsection (a) shall not include the name or brand families of a nonparticipating manufacturer:

- (1) that fails to comply with section 13 of this chapter;
- (2) whose certification fails to comply with section 13(c) or 13(e) of this chapter, unless the attorney general determines that the failure has been remedied; or
- (3) that:
 - (A) has filed a certification under section 13 of this chapter; and
 - (B) poses an elevated risk for noncompliance, as determined by the attorney general under section 13.6(a) of this chapter; unless the nonparticipating manufacturer, or an importer that assumes joint and several liability with the nonparticipating manufacturer under section 13.5 of this chapter, posts a bond under section 13.6 of this chapter.

(c) The directory may not include a tobacco product manufacturer or a brand family if the attorney general concludes that:

- (1) in the case of a nonparticipating manufacturer, all escrow payments required under IC 24-3-3-12 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow

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1 fund governed by a qualified escrow agreement that has been
 2 approved by the attorney general; or
 3 (2) all outstanding final judgments, including interest on the
 4 judgments, for violations of IC 24-3-3 have not been fully
 5 satisfied for the tobacco product manufacturer or brand family.
 6 (d) The directory may not include a newly qualified nonparticipating
 7 manufacturer unless the newly qualified nonparticipating manufacturer
 8 posts a bond under section 13.6 of this chapter.
 9 (e) The attorney general shall update the directory as necessary to
 10 correct mistakes or to add or remove a tobacco product manufacturer
 11 or brand family to keep the directory in conformity with the
 12 requirements of this chapter.
 13 **(f) If a tobacco product manufacturer, for marketing purposes,
 14 voluntary terminates fabrication of a brand style contained in a
 15 brand family or the brand style is repackaged, the attorney general
 16 may not remove the name of the brand style from the directory
 17 earlier than one (1) year after the date the brand style was
 18 repackaged or fabrication ceased.**
 19 ~~(f)~~ **(g) This subsection applies to a notice sent by the attorney
 20 general to each distributor or stamping agent before July 1, 2011.**
 21 The attorney general shall post in the directory and transmit by
 22 electronic mail or other means to each distributor or stamping agent
 23 notice of any removal from the directory of a tobacco product
 24 manufacturer or brand family not later than thirty (30) days before the
 25 attorney general removes the tobacco product manufacturer or brand
 26 family from the directory.
 27 **(h) This subsection applies to a notice sent by the attorney
 28 general to each distributor or stamping agent after June 30, 2011.**
 29 **The attorney general shall post in the directory and transmit by
 30 electronic mail or other means to each distributor or stamping
 31 agent notice of any removal from the directory of a tobacco
 32 product manufacturer or brand family at least ninety (90) days
 33 before the attorney general removes the tobacco product
 34 manufacturer or brand family from the directory. A distributor or
 35 similar intermediary may not purchase cigarettes of a tobacco
 36 product manufacturer or brand family later than thirty (30) days
 37 after the attorney general posts and transmits notice under this
 38 subsection that the attorney general will remove the tobacco
 39 product manufacturer or brand family from the directory.**
 40 ~~(g)~~ **(i) Unless otherwise provided in an agreement between a
 41 tobacco product manufacturer and a distributor or stamping agent, a
 42 distributor or stamping agent is entitled to a refund from a tobacco**

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1 product manufacturer for any money paid by the distributor or
2 stamping agent to the tobacco product manufacturer for any cigarettes
3 of the tobacco product manufacturer or brand family that:

4 (1) are in the possession of the distributor or stamping agent on;
5 or

6 (2) the distributor or stamping agent receives from a retailer after;
7 the date on which the tobacco product manufacturer or brand family is
8 removed from the directory.

9 ~~(h)~~ **(j)** Unless otherwise provided in an agreement between a retailer
10 and a distributor, stamping agent, or tobacco product manufacturer, a
11 retailer is entitled to a refund from a distributor, stamping agent, or
12 tobacco product manufacturer for any money paid by the retailer to the
13 distributor, stamping agent, or tobacco product manufacturer for any
14 cigarettes of the tobacco product manufacturer or brand family that are
15 in the possession of the retailer on the date on which the tobacco
16 product manufacturer or brand family is removed from the directory.

17 ~~(i)~~ **(k)** The attorney general shall not restore a tobacco product
18 manufacturer or brand family to the directory until the tobacco product
19 manufacturer pays a distributor, stamping agent, or retailer any refund
20 due under subsection ~~(g)~~ **(i)** or ~~(h)~~ **(j)**.

21 ~~(j)~~ **(l)** A distributor or stamping agent shall provide and update as
22 necessary an electronic mail address to the attorney general for
23 purposes of receiving a notification required by this chapter.

24 SECTION 9. IC 35-46-1-1.7 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1.7. As used in this
26 chapter, "tobacco" includes:

- 27 (1) chewing tobacco;
- 28 (2) cigars, cigarettes, and snuff that contain tobacco; ~~and~~
- 29 (3) pipe tobacco;
- 30 **(4) blunt wraps (as defined in IC 7.1-1-3-6.5); and**
- 31 **(5) a dissolvable tobacco product (as defined in IC 6-7-2-1.5).**

32 SECTION 10. [EFFECTIVE JULY 1, 2011] **(a) IC 6-7-2-1.5 and**
33 **IC 6-7-2-4.5, both as added by this act, and IC 6-7-2-5, as amended**
34 **by this act, apply to a tobacco product:**

- 35 **(1) brought into Indiana for distribution;**
- 36 **(2) manufactured in Indiana for distribution; or**
- 37 **(3) transported to a retail dealer in Indiana for resale by the**
38 **retail dealer;**

39 **by a distributor after June 30, 2011.**

40 **(b) This SECTION expires July 1, 2012.**

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