January 24, 2013

HOUSE BILL No. 1225

DIGEST OF HB 1225 (Updated January 23, 2013 10:57 am - DI 14)

Citations Affected: IC 7.1-1; IC 7.1-6; IC 35-43; IC 35-46.

Synopsis: Sale of electronic cigarettes to minors. Prohibits the sale of electronic cigarettes to individuals less than 18 years of age. Makes it a Class C infraction for an individual less than 18 years of age to purchase, accept for personal use, or possess an electronic cigarette. Regulates display and use of electronic cigarettes in vending machines. Makes other changes concerning the use of electronic cigarettes.

Effective: July 1, 2013.

Lehman

January 14, 2013, read first time and referred to Committee on Public Policy.
January 23, 2013, amended, reported — Do Pass.

C o p y

January 24, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1225

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 7.1-1-3-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 15.5. "Electronic cigarette" has the meaning set forth in IC 35-46-1-1.5.**

SECTION 2. IC 7.1-6-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) An enforcement officer vested with full police powers and duties may engage a person less than eighteen (18) years of age as part of an enforcement action under this article if the initial or contemporaneous receipt or purchase of a tobacco product **or electronic cigarette** by a person less than eighteen (18) years of age occurs under the direction of an enforcement officer vested with full police powers and duties and is part of the enforcement action.

(b) An enforcement officer vested with full police powers and duties shall not:

(1) recruit or attempt to recruit a person less than eighteen (18) years of age to participate in an enforcement action under

subsection (a) at the scene of a violation of section 2 of this chapter; or

(2) allow a person less than eighteen (18) years of age to purchase or receive a tobacco product **or electronic cigarette** as part of an enforcement action under subsection (a) without the written permission of the person's parents or legal guardians.

SECTION 3. IC 35-43-5-3.5, AS AMENDED BY P.L.137-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3.5. (a) Except as provided in subsection (c), a person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person, including the identifying information of a person who is deceased:

(1) without the other person's consent; and

(2) with intent to:

(A) harm or defraud another person;

(B) assume another person's identity; or

(C) profess to be another person;

commits identity deception, a Class D felony.

(b) However, the offense defined in subsection (a) is a Class C felony if:

(1) a person obtains, possesses, transfers, or uses the identifying information of more than one hundred (100) persons;

(2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars ($50,000); or

(3) a person obtains, possesses, transfers, or uses the identifying information of a person who is less than eighteen (18) years of age and is:

(A) the person's son or daughter;

(B) a dependent of the person;

(C) a ward of the person; or

(D) an individual for whom the person is a guardian.

(c) The conduct prohibited in subsections (a) and (b) does not apply to:

(1) a person less than twenty-one (21) years of age who uses the identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);

(2) a minor (as defined in IC 35-49-1-4) who uses the identifying information of another person to acquire:

(A) a cigarette, **an electronic cigarette (as defined in IC 35-46-1-1.5),** or **a** tobacco product (as defined in IC 6-7-2-5);

(B) a periodical, a videotape, or other communication medium

C o p y

that contains or depicts nudity (as defined in IC 35-49-1-5);

(C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or

(D) an item that is prohibited by law for use or consumption by a minor; or

(3) any person who uses the identifying information for a lawful purpose.

(d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

SECTION 4. IC 35-46-1-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 1.5. As used in this chapter, "electronic cigarette" means a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution. The term includes the components, cartridges, and other chemical delivery systems for use in the device.**

SECTION 5. IC 35-46-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco **or an electronic cigarette** to a person less than eighteen (18) years of age; or

(2) purchases tobacco **or an electronic cigarette** for delivery to another person who is 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 **or the electronic cigarette.**

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

(c) The following defenses are available to a person accused of selling or distributing tobacco **or an electronic cigarette** 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

C o p y

promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco **or electronic cigarette** to a person who acted in the ordinary course of employment or a business concerning tobacco **or electronic cigarettes:**

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

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

(f) Unless ~~a~~ **the** person buys or receives tobacco **or an electronic cigarette** under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco **or an electronic cigarette** 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 **or electronic cigarette** is issued a citation or summons under section 10.5 of this chapter.

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

SECTION 6. IC 35-46-1-10.2, AS AMENDED BY P.L.94-2008, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco **or an electronic cigarette** 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 **or electronic cigarette.** 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 one hundred eighty (180) days, a civil penalty of up to two hundred dollars ($200).

(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 one hundred eighty (180) days, a civil penalty of up to four hundred dollars ($400).

(3) If the retail establishment at that specific business location has

C o p y

had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars ($700).

(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 one hundred eighty (180) days, a civil penalty of up to one thousand dollars ($1,000).

A retail establishment may not be issued a citation or summons 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 **or electronic cigarette** was sold or distributed did not smoke, chew, **inhale,** or otherwise consume the tobacco **or electronic cigarette.**

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco **or an electronic cigarette** 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 **or electronic cigarette** to a person who acted in the ordinary course of employment or a business concerning tobacco **or electronic cigarettes:**

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

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

(f) Unless a person buys or receives tobacco **or an electronic cigarette** under the direction of a law enforcement officer as part of an

C o p y

enforcement action, a retail establishment that sells or distributes tobacco **or an electronic cigarette** 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 **or electronic cigarette** is issued a citation or summons under section 10.5 of this chapter.

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

(h) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal sale of tobacco, a Class B infraction.

SECTION 7. IC 35-46-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10.5. (a) A person less than eighteen (18) years of age who:

(1) purchases tobacco **or an electronic cigarette;**

(2) accepts tobacco **or an electronic cigarette** for personal use; or

(3) possesses tobacco **or an electronic cigarette** on his person;

commits a Class C infraction.

(b) It is a defense under subsection (a) that the accused person acted in the ordinary course of employment in a business concerning tobacco **or electronic cigarettes:**

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

SECTION 8. IC 35-46-1-11, AS AMENDED BY P.L.94-2008, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. (a) A tobacco **or electronic cigarette** vending machine that is located in a public place must bear the following conspicuous notices:

(1) A notice:

(A) that reads as follows, with the capitalization indicated: "If you are under 18 years of age, YOU ARE FORBIDDEN by Indiana law to buy tobacco **or electronic cigarettes** from this machine."; or

(B) that:

(i) conveys a message substantially similar to the message described in clause (A); and

(ii) is formatted with words and in a form authorized under the rules adopted by the alcohol and tobacco commission.

C o p y

(2) A notice that reads as follows, "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.".

(3) A notice printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(b) A person who owns or has control over a tobacco **or electronic cigarette** vending machine in a public place and who:

(1) fails to post a notice required by subsection (a) on the vending machine; or

(2) fails to replace a notice within one (1) month after it is removed or defaced;

commits a Class C infraction.

(c) An establishment selling tobacco **or electronic cigarettes** at retail shall post and maintain in a conspicuous place, at the point of sale, the following:

(1) Signs printed in letters at least one-half (1/2) inch high, reading as follows:

(A) "The sale of tobacco **or electronic cigarettes** to persons under 18 years of age is forbidden by Indiana law.".

(B) "Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight.".

(2) A sign printed in letters and numbers at least one-half (1/2) inch high that displays a toll free phone number for assistance to callers in quitting smoking, as determined by the state department of health.

(d) A person who:

(1) owns or has control over an establishment selling tobacco **or electronic cigarettes** at retail; and

(2) fails to post and maintain the sign required by subsection (c);

commits a Class C infraction.

SECTION 9. IC 35-46-1-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in 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.

C o p y

(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) 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) Except as provided in subsection (a), an owner of a retail establishment may not:

(1) distribute or sell tobacco **or electronic cigarettes** 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 **or electronic cigarettes.**

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

SECTION 10. IC 35-46-1-11.8, AS AMENDED BY P.L.10-2011, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C o p y

JULY 1, 2013]: Sec. 11.8. (a) As used in this section, "self-service display" means a display that contains tobacco **or electronic cigarettes** in an area where a customer:

(1) is permitted; and

(2) has access to the tobacco **or electronic cigarettes** without assistance from a sales person.

(b) This section does not apply to a self-service display located in a retail establishment that:

(1) has a primary purpose to sell tobacco **or electronic cigarettes;** and

(2) prohibits entry by persons who are less than eighteen (18) years of age.

(c) The owner of a retail establishment that sells or distributes tobacco **or electronic cigarettes** through a self-service display, other than a coin operated machine operated under IC 35-46-1-11 or IC 35-46-1-11.5, commits a Class C infraction.

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

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1225, 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, delete lines 7 through 42.

Delete pages 3 through 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1225 as introduced.)

DAVIS, Chair

Committee Vote: yeas 13, nays 0.

C o p y