



Reprinted
January 29, 2013

HOUSE BILL No. 1225

DIGEST OF HB 1225 (Updated January 28, 2013 1:50 pm - DI 77)

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, GiaQuinta, Eberhart,
Austin**

January 14, 2013, read first time and referred to Committee on Public Policy.
January 23, 2013, amended, reported — Do Pass.
January 28, 2013, read second time, amended, ordered engrossed.

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HB 1225—LS 6821/DI 77+



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.

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:

- 1 SECTION 1. IC 7.1-1-3-15.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2013]: **Sec. 15.5. "Electronic cigarette" has**
4 **the meaning set forth in IC 35-46-1-1.5.**
- 5 SECTION 2. IC 7.1-6-2-4 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) An enforcement
7 officer vested with full police powers and duties may engage a person
8 less than eighteen (18) years of age as part of an enforcement action
9 under this article if the initial or contemporaneous receipt or purchase
10 of a tobacco product **or electronic cigarette** by a person less than
11 eighteen (18) years of age occurs under the direction of an enforcement
12 officer vested with full police powers and duties and is part of the
13 enforcement action.
- 14 (b) An enforcement officer vested with full police powers and duties
15 shall not:
- 16 (1) recruit or attempt to recruit a person less than eighteen (18)
17 years of age to participate in an enforcement action under

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

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

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

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

14 (2) with intent to:

15 (A) harm or defraud another person;

16 (B) assume another person's identity; or

17 (C) profess to be another person;

18 commits identity deception, a Class D felony.

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

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

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

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

28 (A) the person's son or daughter;

29 (B) a dependent of the person;

30 (C) a ward of the person; or

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

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

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

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

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

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

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- 1 that contains or depicts nudity (as defined in IC 35-49-1-5);
- 2 (C) admittance to a performance (live or film) that prohibits
- 3 the attendance of the minor based on age; or
- 4 (D) an item that is prohibited by law for use or consumption by
- 5 a minor; or
- 6 (3) any person who uses the identifying information for a lawful
- 7 purpose.
- 8 (d) It is not a defense in a prosecution under subsection (a) or (b)
- 9 that no person was harmed or defrauded.

10 SECTION 4. IC 35-46-1-1.5 IS ADDED TO THE INDIANA CODE
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2013]: **Sec. 1.5. As used in this chapter, "electronic cigarette"**
 13 **means a device that is capable of providing an inhalable dose of**
 14 **nicotine by delivering a vaporized solution. The term includes the**
 15 **components and cartridges.**

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

- 19 (1) sells or distributes tobacco **or an electronic cigarette** to a
- 20 person less than eighteen (18) years of age; or
- 21 (2) purchases tobacco **or an electronic cigarette** for delivery to
- 22 another person who is less than eighteen (18) years of age;
- 23 commits a Class C infraction. For a sale to take place under this
- 24 section, the buyer must pay the seller for the tobacco product **or the**
- 25 **electronic cigarette.**
- 26 (b) It is not a defense that the person to whom the tobacco **or**
- 27 **electronic cigarette** was sold or distributed did not smoke, chew,
- 28 **inhale**, or otherwise consume the tobacco **or the electronic cigarette.**

29 (c) The following defenses are available to a person accused of
 30 selling or distributing tobacco **or an electronic cigarette** to a person
 31 who is less than eighteen (18) years of age:

- 32 (1) The buyer or recipient produced a driver's license bearing the
- 33 purchaser's or recipient's photograph, showing that the purchaser
- 34 or recipient was of legal age to make the purchase.
- 35 (2) The buyer or recipient produced a photographic identification
- 36 card issued under IC 9-24-16-1, or a similar card issued under the
- 37 laws of another state or the federal government, showing that the
- 38 purchaser or recipient was of legal age to make the purchase.
- 39 (3) The appearance of the purchaser or recipient was such that an
- 40 ordinary prudent person would believe that the purchaser or
- 41 recipient was not less than the age that complies with regulations
- 42 promulgated by the federal Food and Drug Administration.

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

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

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

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

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

24 SECTION 6. IC 35-46-1-10.2, AS AMENDED BY P.L.94-2008,
 25 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2013]: Sec. 10.2. (a) A retail establishment that sells or
 27 distributes tobacco **or an electronic cigarette** to a person less than
 28 eighteen (18) years of age commits a Class C infraction. For a sale to
 29 take place under this section, the buyer must pay the retail
 30 establishment for the tobacco product **or electronic cigarette**.
 31 Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction
 32 committed under this section must be imposed as follows:

- 33 (1) If the retail establishment at that specific business location has
 34 not been issued a citation or summons for a violation of this
 35 section in the previous one hundred eighty (180) days, a civil
 36 penalty of up to two hundred dollars (\$200).
 37 (2) If the retail establishment at that specific business location has
 38 had one (1) citation or summons issued for a violation of this
 39 section in the previous one hundred eighty (180) days, a civil
 40 penalty of up to four hundred dollars (\$400).
 41 (3) If the retail establishment at that specific business location has
 42 had two (2) citations or summonses issued for a violation of this



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1 section in the previous one hundred eighty (180) days, a civil
2 penalty of up to seven hundred dollars (\$700).

3 (4) If the retail establishment at that specific business location has
4 had three (3) or more citations or summonses issued for a
5 violation of this section in the previous one hundred eighty (180)
6 days, a civil penalty of up to one thousand dollars (\$1,000).

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

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

13 (c) The following defenses are available to a retail establishment
14 accused of selling or distributing tobacco **or an electronic cigarette** to
15 a person who is less than eighteen (18) years of age:

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

19 (2) The buyer or recipient produced a photographic identification
20 card issued under IC 9-24-16-1 or a similar card issued under the
21 laws of another state or the federal government showing that the
22 purchaser or recipient was of legal age to make the purchase.

23 (3) The appearance of the purchaser or recipient was such that an
24 ordinary prudent person would believe that the purchaser or
25 recipient was not less than the age that complies with regulations
26 promulgated by the federal Food and Drug Administration.

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

31 (1) agriculture;

32 (2) processing;

33 (3) transporting;

34 (4) wholesaling; or

35 (5) retailing.

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

40 (f) Unless a person buys or receives tobacco **or an electronic**
41 **cigarette** under the direction of a law enforcement officer as part of an
42 enforcement action, a retail establishment that sells or distributes

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1 tobacco **or an electronic cigarette** is not liable for a violation of this
 2 section unless the person less than eighteen (18) years of age who
 3 bought or received the tobacco **or electronic cigarette** is issued a
 4 citation or summons under section 10.5 of this chapter.

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

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

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

- 14 (1) purchases tobacco **or an electronic cigarette**;
 15 (2) accepts tobacco **or an electronic cigarette** for personal use;
 16 or
 17 (3) possesses tobacco **or an electronic cigarette** on his person;
 18 commits a Class C infraction.

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

- 22 (1) agriculture;
 23 (2) processing;
 24 (3) transporting;
 25 (4) wholesaling; or
 26 (5) retailing.

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

- 32 (1) A notice:
 33 (A) that reads as follows, with the capitalization indicated: "If
 34 you are under 18 years of age, YOU ARE FORBIDDEN by
 35 Indiana law to buy tobacco **or electronic cigarettes** from this
 36 machine."; or
 37 (B) that:
 38 (i) conveys a message substantially similar to the message
 39 described in clause (A); and
 40 (ii) is formatted with words and in a form authorized under
 41 the rules adopted by the alcohol and tobacco commission.
 42 (2) A notice that reads as follows, "Smoking by Pregnant Women

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- 1 May Result in Fetal Injury, Premature Birth, and Low Birth
 2 Weight.".
- 3 (3) A notice printed in letters and numbers at least one-half (1/2)
 4 inch high that displays a toll free phone number for assistance to
 5 callers in quitting smoking, as determined by the state department
 6 of health.
- 7 (b) A person who owns or has control over a tobacco **or electronic**
 8 **cigarette** vending machine in a public place and who:
- 9 (1) fails to post a notice required by subsection (a) on the vending
 10 machine; or
 11 (2) fails to replace a notice within one (1) month after it is
 12 removed or defaced;
 13 commits a Class C infraction.
- 14 (c) An establishment selling tobacco **or electronic cigarettes** at
 15 retail shall post and maintain in a conspicuous place, at the point of
 16 sale, the following:
- 17 (1) Signs printed in letters at least one-half (1/2) inch high,
 18 reading as follows:
- 19 (A) "The sale of tobacco **or electronic cigarettes** to persons
 20 under 18 years of age is forbidden by Indiana law.".
- 21 (B) "Smoking by Pregnant Women May Result in Fetal Injury,
 22 Premature Birth, and Low Birth Weight.".
- 23 (2) A sign printed in letters and numbers at least one-half (1/2)
 24 inch high that displays a toll free phone number for assistance to
 25 callers in quitting smoking, as determined by the state department
 26 of health.
- 27 (d) A person who:
- 28 (1) owns or has control over an establishment selling tobacco **or**
 29 **electronic cigarettes** at retail; and
 30 (2) fails to post and maintain the sign required by subsection (c);
 31 commits a Class C infraction.
- 32 SECTION 9. IC 35-46-1-11.5 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11.5. (a) Except for a
 34 coin machine that is placed in or directly adjacent to an entranceway or
 35 an exit, or placed in a hallway, a restroom, or another common area that
 36 is accessible to persons who are less than eighteen (18) years of age,
 37 this section does not apply to a coin machine that is located in the
 38 following:
- 39 (1) That part of a licensed premises (as defined in IC 7.1-1-3-20)
 40 where entry is limited to persons who are at least eighteen (18)
 41 years of age.
 42 (2) Private industrial or office locations that are customarily

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1 accessible only to persons who are at least eighteen (18) years of
 2 age.
 3 (3) Private clubs if the membership is limited to persons who are
 4 at least eighteen (18) years of age.
 5 (4) Riverboats where entry is limited to persons who are at least
 6 twenty-one (21) years of age and on which lawful gambling is
 7 authorized.
 8 (b) As used in this section, "coin machine" has the meaning set forth
 9 in IC 35-43-5-1.
 10 (c) Except as provided in subsection (a), an owner of a retail
 11 establishment may not:
 12 (1) distribute or sell tobacco **or electronic cigarettes** by use of a
 13 coin machine; or
 14 (2) install or maintain a coin machine that is intended to be used
 15 for the sale or distribution of tobacco **or electronic cigarettes**.
 16 (d) An owner of a retail establishment who violates this section
 17 commits a Class C infraction. A citation or summons issued under this
 18 section must provide notice that the coin machine must be moved
 19 within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil
 20 judgment for an infraction committed under this section must be
 21 imposed as follows:
 22 (1) If the owner of the retail establishment has not been issued a
 23 citation or summons for a violation of this section in the previous
 24 ninety (90) days, a civil penalty of fifty dollars (\$50).
 25 (2) If the owner of the retail establishment has had one (1) citation
 26 or summons issued for a violation of this section in the previous
 27 ninety (90) days, a civil penalty of two hundred fifty dollars
 28 (\$250).
 29 (3) If the owner of the retail establishment has had two (2)
 30 citations or summonses issued for a violation of this section in the
 31 previous ninety (90) days for the same machine, the coin machine
 32 shall be removed or impounded by a law enforcement officer
 33 having jurisdiction where the violation occurs.
 34 An owner of a retail establishment may not be issued a citation or
 35 summons for a violation of this section more than once every two (2)
 36 business days for each business location.
 37 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
 38 this section must be deposited in the Richard D. Doyle youth tobacco
 39 education and enforcement fund established under IC 7.1-6-2-6.
 40 SECTION 10. IC 35-46-1-11.8, AS AMENDED BY P.L.10-2011,
 41 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2013]: Sec. 11.8. (a) As used in this section, "self-service

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1 display" means a display that contains tobacco **or electronic cigarettes**
2 in an area where a customer:
3 (1) is permitted; and
4 (2) has access to the tobacco **or electronic cigarettes** without
5 assistance from a sales person.
6 (b) This section does not apply to a self-service display located in
7 a retail establishment that:
8 (1) has a primary purpose to sell tobacco **or electronic**
9 **cigarettes; and**
10 (2) prohibits entry by persons who are less than eighteen (18)
11 years of age.
12 (c) The owner of a retail establishment that sells or distributes
13 tobacco **or electronic cigarettes** through a self-service display, other
14 than a coin operated machine operated under IC 35-46-1-11 or
15 IC 35-46-1-11.5, commits a Class C infraction.
16 (d) Notwithstanding IC 34-28-5-5(c), civil penalties collected under
17 this section must be deposited in the Richard D. Doyle youth tobacco
18 education and enforcement fund (IC 7.1-6-2-6).

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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.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1225 be amended to read as follows:

Page 3, line 15, delete "components, cartridges, and other chemical delivery systems for" and insert "**components and cartridges**".

Page 3, delete line 16.

(Reference is to HB 1225 as printed January 24, 2013.)

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