

IC 7.1-3-18.5

Chapter 18.5. Tobacco Sales Certificate

IC 7.1-3-18.5-1

Tobacco sales certificate required

Sec. 1. (a) A person may not sell or otherwise distribute in exchange for consideration a tobacco product at retail without a valid tobacco sales certificate issued by the commission.

(b) A certificate may be issued only to a person who owns or operates at least one (1) of the following:

(1) A premises consisting of a permanent building or structure where the tobacco product is sold or distributed.

(2) A premises upon which a cigarette vending machine (as defined by IC 35-43-4-7) is located.

As added by P.L.250-2003, SEC.11.

IC 7.1-3-18.5-2

Information required; fees; certification for each location; display of certificate; denial; requirements

Sec. 2. (a) A person who desires a certificate must provide the following to the commission:

(1) The applicant's name and mailing address and the address of the premises for which the certificate is being issued.

(2) Except as provided in section 6(c) of this chapter, a fee of two hundred dollars (\$200).

(3) The name under which the applicant transacts or intends to transact business.

(4) The address of the applicant's principal place of business or headquarters, if any.

(5) The statement required under section 2.6 of this chapter.

(b) A separate certificate is required for each location where the tobacco products are sold or distributed.

(c) A certificate holder shall conspicuously display the holder's certificate on the holder's premises where the tobacco products are sold or distributed.

(d) Any intentional misstatement or suppression of a material fact in an application filed under this section constitutes grounds for denial of the certificate.

(e) A certificate may be issued only to a person who meets the following requirements:

(1) If the person is an individual, the person must be at least eighteen (18) years of age.

(2) The person must be authorized to do business in Indiana.

(f) The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

As added by P.L.250-2003, SEC.11. Amended by P.L.224-2005, SEC.10; P.L.94-2008, SEC.37.

IC 7.1-3-18.5-2.6

Statement of consent

Sec. 2.6. An application for a tobacco certificate must contain the express statement of the applicant that the applicant consents for the duration of the certificate term (if the commission issues the certificate to the applicant) to the entrance, inspection, and search by an enforcement officer, without a warrant or other process, of the applicant's retail premises to determine whether the applicant is complying with the provisions of this title. The consent required by this section is renewed and continued by the retention of a certificate or the certificate's use by the applicant or the applicant's agents.
As added by P.L.94-2008, SEC.38.

IC 7.1-3-18.5-3

Contents of certificate; term of certificate; nontransferable

Sec. 3. (a) A certificate issued by the commission under this chapter must contain the following information:

- (1) The certificate number.
 - (2) The certificate holder's name.
 - (3) The permanent location of the business or vending machine for which the certificate is issued.
 - (4) The expiration date of the certificate.
- (b) A certificate is:
- (1) valid for three (3) years after the date of issuance, unless the commission suspends the certificate; and
 - (2) nontransferable.

As added by P.L.250-2003, SEC.11. Amended by P.L.224-2005, SEC.11.

IC 7.1-3-18.5-4

Adoption of rules

Sec. 4. The commission may adopt rules under IC 4-22-2 to establish procedures for the issuance, renewal, and reinstatement of a certificate.

As added by P.L.250-2003, SEC.11.

IC 7.1-3-18.5-5

Certificate suspension; revocation; notice and hearing

Sec. 5. (a) Subject to subsection (b), the commission may suspend the certificate of a person who fails to pay a civil penalty imposed for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

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

As added by P.L.250-2003, SEC.11. Amended by P.L.227-2007, SEC.61; P.L.94-2008, SEC.39.

IC 7.1-3-18.5-6

Reinstatement or renewal; failure to pay civil penalty; Class B infraction; fee

Sec. 6. (a) If a certificate has:

(1) expired; or

(2) been suspended;

the commission may not reinstate or renew the certificate until all civil penalties imposed against the certificate holder for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7 have been paid.

(b) The failure to pay a civil penalty described in subsection (a) is a Class B infraction.

(c) If a certificate has been revoked, the commission may not reinstate or renew the certificate for at least one hundred eighty (180) days after the date of revocation. The commission may reinstate or renew the certificate only upon a reasonable showing by the applicant that the applicant shall:

(1) exercise due diligence in the sale of tobacco products on the applicant's premises where the tobacco products are sold or distributed; and

(2) properly supervise and train the applicant's employees or agents in the handling and sale of tobacco products.

If a certificate is reinstated or renewed, the applicant of the certificate shall pay an application fee of one thousand dollars (\$1,000).

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

As added by P.L.250-2003, SEC.11. Amended by P.L.94-2008, SEC.40.

IC 7.1-3-18.5-7

Tobacco sales without certificate; Class A infraction

Sec. 7. (a) A person who is required to have a certificate under this chapter and who sells or distributes tobacco products without a valid certificate commits a Class A infraction. Each violation of this section constitutes a separate offense.

(b) 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.

As added by P.L.250-2003, SEC.11. Amended by P.L.252-2003, SEC.4.

IC 7.1-3-18.5-8

Mitigate civil penalties

Sec. 8. The commission may mitigate civil penalties imposed against a certificate holder for violating IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, IC 35-46-1-11.7, or any of the provisions of this chapter if a certificate holder provides a training program for the certificate holder's employees that includes at least the following topics:

- (1) Laws governing the sale of tobacco products.
- (2) Methods of recognizing and handling customers who are less than eighteen (18) years of age.
- (3) Procedures for proper examination of identification cards to verify that customers are under eighteen (18) years of age.

As added by P.L.94-2008, SEC.41.

IC 7.1-3-18.5-9

Exercise due diligence; supervision and training of employees or agents; prima facie evidence of lack of due diligence

Sec. 9. A certificate holder shall exercise due diligence in the supervision and training of the certificate holder's employees or agents in the handling and sale of tobacco products on the holder's retail premises. Proof that employees or agents of the certificate holder, while in the scope of their employment, committed at least six (6) violations relating to IC 35-46-1-10.2(a) in any one hundred eighty (180) day period shall be prima facie evidence of a lack of due diligence by the certificate holder in the supervision and training of the certificate holder's employees or agents.

As added by P.L.94-2008, SEC.42.

IC 7.1-3-18.5-10

Failure to attend hearing

Sec. 10. (a) If a certificate holder fails to attend or participate in a hearing without good cause, the hearing judge may recommend to the commission that the commission suspend or revoke the certificate holder's certificate or impose a fine on the certificate holder of up to one thousand dollars (\$1,000).

(b) A hearing judge may grant a continuance of a hearing upon written motion showing good cause for the continuance.

As added by P.L.94-2008, SEC.43.