HOUSE BILL No. 1551

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1; IC 7.1-3-18.5; IC 7.1-5-12-5; IC 7.1-6-2-4; IC 7.1-7; IC 22-5-4; IC 24-3-5; IC 35-43-5-3.8; IC 35-46-1.

Synopsis: Tobacco issues. Increases the cigarette tax from $0.995 per pack to $1.995 per pack. Raises the age from 18 years of age to 21 years of age for prohibitions and crimes concerning the sale, purchase, and possession of cigarettes and other tobacco products. Makes a corresponding change to the laws concerning electronic cigarettes, tobacco retailer permits, and admission to establishments where smoking is permitted. Repeals employment protections for individuals who smoke cigarettes or use other tobacco products.

Effective: July 1, 2019.

Aylesworth

January 17, 2019, read first time and referred to Committee on Public Health.
HOUSE BILL No. 1551

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:

SECTION 1. IC 6-7-1-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 0.5. Notwithstanding section 14 of this chapter, revenue stamps paid for before July 1, 2019, and in the possession of a distributor may be used after June 30, 2019, only if the full amount of the tax imposed by section 12 of this chapter, as effective after June 30, 2019, is remitted to the department under the procedures prescribed by the department.

SECTION 2. IC 6-7-1-12, AS AMENDED BY P.L.191-2016, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12. The following taxes are imposed, and shall be collected and paid as provided in this chapter, upon the sale, exchange, bartering, furnishing, giving away, or otherwise disposing of cigarettes within the state of Indiana:

(1) On cigarettes weighing not more than three (3) pounds per thousand (1,000), a tax at the rate of four and nine hundred seventy-five thousandths cents ($0.04975) nine and nine
hundred seventy-five thousandths cents ($0.09975) per individual cigarette.

(2) On cigarettes weighing more than three (3) pounds per thousand (1,000), a tax at the rate of six and six hundred twelve thousandths cents ($0.06612) eleven and eighty three thousandths cents ($0.11083) per individual cigarette, except that if any cigarettes weighing more than three (3) pounds per thousand (1,000) shall be more than six and one-half (6 1/2) inches in length, they shall be taxable at the rate provided in subdivision (1), counting each two and three-fourths (2 3/4) inches (or fraction thereof) as a separate cigarette.

SECTION 3. IC 6-7-1-28.1, AS AMENDED BY P.L.213-2015, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 28.1. The taxes, registration fees, fines, or penalties collected under this chapter shall be deposited in the following manner:

(1) Four and twenty-two hundredths percent (4.22%) of the money shall be deposited in a fund to be known as the cigarette tax fund.

(2) Six-tenths percent (0.6%) of the money shall be deposited in a fund to be known as the mental health centers fund.

(3) The following amount of the money Fifty-six and twenty-four hundredths percent (56.24%) shall be deposited in the state general fund.

   (A) After June 30, 2011, and before July 1, 2013, sixty and twenty-four hundredths percent (60.24%).

   (B) After June 30, 2013, fifty-six and twenty-four hundredths percent (56.24%).

(4) Five and forty-three hundredths percent (5.43%) of the money shall be deposited into the pension relief fund established in IC 5-10.3-11.

(5) Twenty-seven and five hundredths percent (27.05%) of the money shall be deposited in the healthy Indiana plan trust fund established by IC 12-15-44.2-17.

(6) Two and forty-six hundredths percent (2.46%) of the money shall be deposited in the state general fund for the purpose of paying appropriations for Medicaid—Current Obligations, for provider reimbursements.

(7) The following amount of the money shall be deposited in the state retiree health benefit trust fund established by IC 5-10-8-8.5 as follows:

   (A) Before July 1, 2011, five and seventy-four hundredths
percent (5.74%).

(B) After June 30, 2011, and before July 1, 2013, zero percent (0%).

(C) After June 30, 2013, four percent (4%).

The money in the cigarette tax fund, the mental health centers fund, the healthy Indiana plan trust fund, or the pension relief fund at the end of a fiscal year does not revert to the state general fund. However, if in any fiscal year, the amount allocated to a fund under subdivision (1) or (2) is less than the amount received in fiscal year 1977, then that fund shall be credited with the difference between the amount allocated and the amount received in fiscal year 1977, and the allocation for the fiscal year to the fund under subdivision (3) shall be reduced by the amount of that difference. Money deposited under subdivisions (6) through (7) may not be used for any purpose other than the purpose stated in the subdivision.

SECTION 4. IC 7.1-3-18.5-2, AS AMENDED BY P.L.231-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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 or electronic cigarettes are sold or distributed.

(c) A certificate holder shall conspicuously display the holder's certificate on the holder's premises where the tobacco products or electronic cigarettes 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) twenty-one (21) 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.

SECTION 5. IC 7.1-3-18.5-8, AS AMENDED BY P.L.214-2016, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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, IC 35-46-1-11.2, IC 35-46-1-11.5, IC 35-46-1-11.7, IC 35-46-1-11.8, 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 and electronic cigarettes.

(2) Methods of recognizing and handling customers who are less than eighteen (18) twenty-one (21) years of age.

(3) Procedures for proper examination of identification cards to verify that customers are under eighteen (18) twenty-one (21) years of age.

SECTION 6. IC 7.1-5-12-5, AS AMENDED BY P.L.231-2015, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

(1) A horse racing facility operated under a permit under IC 4-31-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

(2) A riverboat (as defined in IC 4-33-2-17) and any other permanent structure that is:

(A) owned or leased by the owner of the riverboat; and

(B) located on land that is adjacent to:

(i) the dock to which the riverboat is moored; or

(ii) the land on which the riverboat is situated in the case of a riverboat described in IC 4-33-2-17(2).

(3) A facility that operates under a gambling game license under IC 4-35-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

(4) A satellite facility licensed under IC 4-31-5.5.

(5) An establishment owned or leased by a business that meets the following requirements:

(A) The business was in business and permitted smoking on December 31, 2012.

(B) The business prohibits entry by an individual who is less than twenty-one (21) years of age.
(C) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.
(D) The business limits smoking in the establishment to smoking with a waterpipe or hookah device.
(E) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of loose tobacco for use in a waterpipe or hookah device.
(F) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(6) An establishment owned or leased by a business that meets the following requirements:
   (A) The business prohibits entry by an individual who is less than twenty-one (21) years of age.
   (B) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.
   (C) The business limits smoking in the establishment to cigar smoking.
   (D) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.
   (E) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(7) A premises owned or leased by and regularly used for the activities of a business that meets all of the following:
   (A) The business is exempt from federal income taxation under 26 U.S.C. 501(c).
   (B) The business:
      (i) meets the requirements to be considered a club under IC 7.1-3-20-1; or
      (ii) is a fraternal club (as defined in IC 7.1-3-20-7).
   (C) The business provides food or alcoholic beverages only to its bona fide members and their guests.
   (D) The business:
      (i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;
      (ii) allows smoking only in the room or area described in item (i);
      (iii) does not allow an individual who is less than eighteen (18) years of age to enter into the room or
area described in item (i); and
(iv) allows a guest in the smoking room or area described in
item (i) only when accompanied by a bona fide member of
the business.

(8) A retail tobacco store used primarily for the sale of tobacco
products and tobacco accessories that meets the following
requirements:
(A) The owner or operator of the store holds a valid tobacco
sales certificate issued under IC 7.1-3-18.5.
(B) The store prohibits entry by an individual who is less than
eighteen (18) twenty-one (21) years of age.
(C) The sale of products other than tobacco products and
tobacco accessories is merely incidental.
(D) The sale of tobacco products accounts for at least
eighty-five percent (85%) of the store's annual gross sales.
(E) Food or beverages are not sold in a manner that requires
consumption on the premises, and there is not an area set aside
for customers to consume food or beverages on the premises.

(9) A bar or tavern:
(A) for which a permittee holds:
(i) a beer retailer's permit under IC 7.1-3-4;
(ii) a liquor retailer's permit under IC 7.1-3-9; or
(iii) a wine retailer's permit under IC 7.1-3-14;
(B) that does not employ an individual who is less than
eighteen (18) years of age;
(C) that does not allow an individual who:
(i) is less than twenty-one (21) years of age; and
(ii) is not an employee of the bar or tavern;
to enter any area of the bar or tavern; and
(D) that is not located in a business that would otherwise be
subject to this chapter.

(10) A cigar manufacturing facility that does not offer retail sales.

(11) A premises of a cigar specialty store to which all of the
following apply:
(A) The owner or operator of the store holds a valid tobacco
sales certificate issued under IC 7.1-3-18.5.
(B) The sale of tobacco products and tobacco accessories
account for at least fifty percent (50%) of the store's annual
gross sales.
(C) The store has a separate, enclosed, designated smoking
room that is adequately ventilated to prevent migration of
smoke to nonsmoking areas.
(D) Smoking is allowed only in the room described in clause (C).

(E) Individuals who are less than eighteen (18) twenty-one (21) years of age are prohibited from entering into the room described in clause (C).

(F) Cigarette smoking is not allowed on the premises of the store.

(G) The owner or operator of the store posts a conspicuous sign on the premises of the store that displays the message that cigarette smoking is prohibited.

(H) The store does not prepare any food or beverage that would require a certified food handler under IC 16-42-5.2.

(12) The premises of a business that is located in the business owner's private residence (as defined in IC 3-5-2-42.5) if the only employees of the business who work in the residence are the owner and other individuals who reside in the residence.

(b) The owner, operator, manager, or official in charge of an establishment or premises in which smoking is allowed under this section shall post conspicuous signs in the establishment that read "WARNING: Smoking Is Allowed In This Establishment" or other similar language.

(c) This section does not allow smoking in the following enclosed areas of an establishment or premises described in subsection (a)(1) through (a)(11):

(1) Any hallway, elevator, or other common area where an individual who is less than eighteen (18) twenty-one (21) years of age is permitted.

(2) Any room that is intended for use by an individual who is less than eighteen (18) twenty-one (21) years of age.

(d) The owner, operator, or manager of an establishment or premises that is listed under subsection (a) and that allows smoking shall provide a verified statement to the commission that states that the establishment or premises qualifies for the exemption. The commission may require the owner, operator, or manager of an establishment or premises to provide documentation or additional information concerning the exemption of the establishment or premises.

SECTION 7. IC 7.1-6-2-4, AS AMENDED BY P.L.20-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) An enforcement officer vested with full police powers and duties may engage a person less than eighteen (18) twenty-one (21) 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) twenty-one (21) 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) twenty-one (21) 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) twenty-one (21) 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 8. IC 7.1-7-2-17, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 17. "Minor" means an individual who is less than eighteen (18) twenty-one (21) years of age.

SECTION 9. IC 7.1-7-6-2, AS AMENDED BY P.L.206-2017, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) This subsection does not apply to a delivery sale as defined in IC 7.1-7-2-6.3. If a retailer:

(1) knowingly and intentionally sells e-liquid to a minor; or

(2) knowingly, intentionally, or negligently fails to verify the age of a person who appears to be less than twenty-seven (27) years of age by checking a government issued identification and sells the person e-liquid;

the retailer commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the e-liquid.

(b) 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 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.

(c) It is not a defense that the person to whom e-liquid was sold or distributed did not inhale or otherwise consume e-liquid.

(d) The following defenses are available to a retail establishment accused of selling or distributing e-liquid 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.

(e) It is a defense that the accused retail establishment sold or delivered e-liquid to a person who acted in the ordinary course of employment or a business concerning e-liquid:

(1) agriculture;
(2) processing;
(3) transporting;
(4) wholesaling; or
(5) retailing.

(f) As used in this section, "distribute" means to give e-liquid to another person as a means of promoting, advertising, or marketing e-liquid to the general public.

(g) Unless a person buys or receives e-liquid under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes e-liquid is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the e-liquid is issued a citation or summons in violation of this article.
(h) 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).

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

SECTION 10. IC 22-5-4 IS REPEALED [EFFECTIVE JULY 1, 2019]. (Off Duty Use of Tobacco by Employee).

SECTION 11. IC 24-3-5-4, AS AMENDED BY P.L.160-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. Subject to section 4.5 of this chapter, a merchant may not mail or ship cigarettes as part of a delivery sale unless, before mailing or shipping the cigarettes, the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars ($1,000); and

(ii) purchasing cigarettes by a person less than eighteen (18) twenty-one (21) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the cigarette order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of cigarettes by delivery sale is a taxable event for purposes of IC 6-7-1;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

SECTION 12. IC 24-3-5-5, AS AMENDED BY P.L.160-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) twenty-one (21) years of age who is designated by the customer to:
(A) sign to accept delivery of the cigarettes; and
(B) present a valid operator's license issued under IC 9-24-3 or
an identification card issued under IC 9-24-16 if the customer
or the customer's designee, in the opinion of the delivery agent
or employee of the mailing or shipping service, appears to be
less than twenty-seven (27) years of age;
(2) provide to the mailing or shipping service used under
subdivision (1) proof of compliance with section 6(a) of this
chapter; and
(3) include the following statement in bold type or capital letters
on an invoice or shipping document:
INDIANA LAW PROHIBITS THE MAILING OR SHIPPING
OF CIGARETTES TO A PERSON LESS THAN EIGHTEEN
(18) TWENTY-ONE (21) YEARS OF AGE AND
REQUIRES PAYMENT OF ALL APPLICABLE TAXES.
(b) The commission may impose a civil penalty of not more than
one thousand dollars ($1,000) if a mailing or shipping service:
(1) delivers cigarettes as part of a delivery sale without first
receiving proof from the merchant of compliance with section
6(a) of this chapter; or
(2) fails to obtain a signature and proof of identification of the
customer or the customer's designee under subsection (a)(1).
The commission shall deposit amounts collected under this subsection
into the Richard D. Doyle youth tobacco education and enforcement
fund established by IC 7.1-6-2-6.
(c) The following apply to a merchant that mails or ships cigarettes
as part of a delivery sale without using a third party service as required
by subsection (a)(1):
(1) The merchant shall require the customer or a person at least
eighteen (18) twenty-one (21) years of age who is designated by
the customer to:
(A) sign to accept delivery of the cigarettes; and
(B) present a valid operator's license issued under IC 9-24-3 or
identification card issued under IC 9-24-16 if the customer or
the customer's designee, in the opinion of the merchant or the
merchant's employee making the delivery, appears to be less
than twenty-seven (27) years of age.
(2) The commission may impose a civil penalty of not more than
one thousand dollars ($1,000) if the merchant:
(A) delivers the cigarettes without first complying with section
6(a) of this chapter; or
(B) fails to obtain a signature and proof of identification of the
customer or the customer's designee under subdivision (1).

The commission shall deposit amounts collected under this subdivision into the Richard D. Doyle youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 13. IC 24-3-5-8, AS AMENDED BY P.L.160-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. The commission may impose a civil penalty of not more one thousand dollars ($1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or
(2) merchant who sells cigarettes by delivery sale to a person less than eighteen (18) twenty-one (21) years of age.

The commission shall deposit amounts collected under this section into the Richard D. Doyle youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 14. IC 35-43-5-3.8, AS AMENDED BY P.L.158-2013, SECTION 473, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3.8. (a) A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information:

(1) with intent to harm or defraud another person;
(2) with intent to assume another person's identity; or
(3) with intent to profess to be another person;

commits synthetic identity deception, a Level 6 felony.

(b) The offense under subsection (a) is a Level 5 felony if:

(1) a person obtains, possesses, transfers, or uses the synthetic identifying information of more than one hundred (100) persons; or
(2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars ($50,000).

(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 synthetic identifying information of another person to acquire:

(A) an alcoholic beverage (as defined in IC 7.1-1-3-5); or
(B) a cigarette or tobacco product (as defined in IC 6-7-2-5); or

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

(A) a cigarette or tobacco product (as defined in IC 6-7-2-5); or
(B) (A) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 7-1-3-4).
IC 35-49-1-5); (C) an item that is prohibited by law for use or consumption by a minor.

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

SECTION 15. IC 35-46-1-10, AS AMENDED BY P.L.20-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco or an electronic cigarette to a person less than eighteen (18) twenty-one (21) years of age; or
(2) purchases tobacco or an electronic cigarette for delivery to another person who is less than eighteen (18) twenty-one (21) 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) twenty-one (21) 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 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 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) twenty-one (21) 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).

SECTION 16. IC 35-46-1-10.2, AS AMENDED BY P.L.20-2013,
SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2019]: Sec. 10.2. (a) A retail establishment that sells or
distributes tobacco or an electronic cigarette to a person less than
eighteen (18) twenty-one (21) 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
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) twenty-one (21) 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 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) twenty-one (21) 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 17. IC 35-46-1-10.5, AS AMENDED BY P.L.20-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10.5. (a) A person less than eighteen (18) twenty-one (21) 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 the person's 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 18. IC 35-46-1-11, AS AMENDED BY P.L.20-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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 21 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.

(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 21 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 19. IC 35-46-1-11.5, AS AMENDED BY P.L.20-2013, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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) twenty-one (21) 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) twenty-one (21) years of age.
   (2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) twenty-one (21) years of age.
   (3) Private clubs if the membership is limited to persons who are at least eighteen (18) twenty-one (21) 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 20. IC 35-46-1-11.7, AS AMENDED BY P.L.94-2008,
SECTION 64, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2019]: Sec. 11.7. (a) A retail establishment that has as its
primary purpose the sale of tobacco products may not allow an
individual who is less than eighteen (18) twenty-one (21) years of age
to enter the retail establishment.

(b) An individual who is less than eighteen (18) twenty-one (21)
years of age may not enter a retail establishment described in
subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment the following:

(1) A sign in boldface type that states "NOTICE: It is unlawful for a person less than \textbf{21} years \textit{of age} to enter this store."

(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 violates this section commits a Class C infraction. 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 person has not been cited 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 person has had one (1) violation in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars ($400).

(3) If the person has had two (2) violations in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars ($700).

(4) If the person has had three (3) or more violations in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars ($1,000).

A person may not be cited more than once every twenty-four (24) hours.

(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.

(f) A person who violates subsection (a) at least six (6) times in any one hundred eighty (180) day period commits habitual illegal entrance by a minor, a Class B infraction.

SECTION 21. IC 35-46-1-11.8, AS AMENDED BY P.L.20-2013, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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) twenty-one (21) 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).

SECTION 22. [EFFECTIVE JULY 1, 2019] (a) As used in this SECTION, "distribute" means to give a tobacco product to another person as a means of promoting, advertising, or marketing the tobacco product to the general public.
(b) As used in this SECTION, "tobacco product" has the meaning set forth in IC 7.1-6-1-3.
(c) Notwithstanding IC 7.1-3-18.5-2 and IC 7.1-3-18.5-8, both as amended by this act, a valid certificate held on June 30, 2019, by an individual who is less than twenty-one (21) years of age remains valid until its expiration.
(d) Notwithstanding IC 24-3-5-4(1)(B)(ii), IC 24-3-5-5, and IC 24-3-5-8, all as amended by this act, the notice, mailing, shipping, customer designation, and penalty requirements that apply to a person who is less than twenty-one (21) years of age apply to a person who on June 30, 2019, is less than eighteen (18) years of age.
(e) Notwithstanding IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-10.5, IC 35-46-1-11.5, and IC 35-46-1-11.8, all as amended by this act:
   (1) a person who on June 30, 2019, is at least eighteen (18) years of age may purchase and possess tobacco products; and
   (2) a merchant or retailer may:
      (A) sell or distribute tobacco products;
      (B) allow entry into a retail establishment that has as its primary purpose the sale of tobacco products; and
      (C) allow access to a self-service cigarette display;
   to a person who on June 30, 2019, is at least eighteen (18) years of age.
(f) This SECTION expires June 30, 2022.