
SENATE BILL No. 185

AM018503 has been incorporated into January 16, 2026 printing.

Synopsis: Alcohol and tobacco matters.

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SB 185—LS 6454/DI 137



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January 16, 2026

Second Regular Session of the 124th General Assembly (2026)

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 2025 Regular Session of the General Assembly.

SENATE BILL No. 185

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

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

- 1 SECTION 1. IC 7.1-3-18.5-1, AS AMENDED BY P.L.32-2019,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2026]: Sec. 1. (a) A person may not sell or otherwise
4 distribute in exchange for consideration a tobacco product or electronic
5 cigarette at retail **or wholesale** without a valid tobacco sales certificate
6 issued by the commission.
7 (b) A certificate may be issued only to a person who owns or
8 operates at least one (1) of the following:
9 (1) A premises consisting of a permanent building or structure,
10 **that does not contain sleeping or living quarters**, where the
11 tobacco product or electronic cigarette is sold or distributed.
12 (2) A premises upon which a cigarette vending machine is
13 located.
14 SECTION 2. IC 7.1-3-18.5-1.5 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2026]: **Sec. 1.5. (a) A person may not sell**
17 **tobacco products or electronic cigarettes at wholesale or**

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participate in the wholesale distribution of tobacco products or electronic cigarettes without a valid wholesale tobacco sales certificate issued by the commission.

(b) The commission may only issue a wholesale tobacco sales certificate to a person who owns or operates at a premises consisting of a permanent building or structure that is used for the wholesale distribution of tobacco products or electronic cigarettes.

SECTION 3. IC 7.1-3-18.5-2, AS AMENDED BY P.L.107-2024, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: 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.

(6) If the applicant is applying for a new certificate under section 3.2 of this chapter, a copy of each of the following:

(A) If the new ownership of the business is a business entity, the articles of incorporation, articles of organization, or any other formation documents of the business entity.

(B) If the new ownership of the business is an individual, either:

(i) the sales or purchase agreement; or

(ii) an affidavit signed by the applicant concerning the sale or purchase, on a form prescribed by the commission, that includes the name and address of the seller and purchaser.

(C) The certificate held by the previous ownership of the business.

(b) A separate certificate is required for each location where the tobacco products or electronic cigarettes are sold or distributed. A retail establishment may not hold more than one (1) active tobacco sales certificate for a retail location at any time. **The commission shall not issue a certificate to a retail location where a tobacco sales certificate was revoked within one (1) year prior to the date of the application.**

(c) A certificate holder shall conspicuously display the holder's



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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 twenty-one (21) years of age.

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

(3) The person has not had an interest in a certificate revoked **or suspended** by the commission for that business location within the preceding one (1) year.

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

SECTION 4. IC 7.1-3-18.5-2.4, AS ADDED BY P.L.107-2024, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 2.4. (a) Subject to available resources, the commission shall not issue a tobacco sales certificate, except as otherwise authorized in this title and subject to the other restrictions contained in this title, to the following persons:

(1) A person who does not have lawful status (as defined in IC 9-13-2-92.3).

(2) A person who has been convicted within five (5) years before the date of application of:

(A) a federal crime having a sentence of at least one (1) year;

(B) a Level 1, Level 2, Level 3, Level 4, or Level 5 felony; or

(C) a crime in a state other than Indiana having a penalty equal to the penalty for an Indiana Level 1, Level 2, Level 3, Level 4, or Level 5 felony.

However, this subdivision does not apply to a conviction that has been expunged under IC 35-38-9.

(3) A person who does not meet at least one (1) of the following descriptions:

(A) The person owns the premises to which the certificate will be applicable.

(B) The person has a valid lease on the premises:

(i) at the time of the application for a certificate; and

(ii) for the duration of the period in which the person

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- 1 sells or distributes in the manner described in section
 2 1 of this chapter.
- 3 (C) The person has a franchise agreement with a franchisor:
 4 (i) that owns the premises to which the certificate will
 5 be applicable; or
 6 (ii) that has a bona fide lease on the premises for the
 7 full period for which the certificate is to be issued.
- 8 (4) A person whose place of business is conducted by a manager
 9 or agent, unless the manager or agent possesses the same
 10 qualifications required for the issuance of a tobacco sales
 11 certificate to the person.
- 12 (5) A minor.
- 13 (6) A person non compos mentis.
- 14 (7) A person who has held a permit or certificate under this title
 15 and who has had that permit or certificate revoked **or suspended**
 16 within one (1) year prior to the date of application for a tobacco
 17 sales certificate.
- 18 (8) A person who has made an application for a permit or
 19 certificate of any type under this title which has been denied less
 20 than one (1) year prior to the person's application for a tobacco
 21 sales certificate unless the first application was denied by reason
 22 of a procedural or technical defect.
- 23 (b) Subsection (a)(5) does not prevent a minor from being a
 24 stockholder in a corporation.
- 25 SECTION 5. IC 7.1-3-18.5-3, AS AMENDED BY P.L.224-2005,
 26 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2026]: Sec. 3. (a) A certificate issued by the commission
 28 under this chapter must contain the following information:
 29 (1) The certificate number.
 30 (2) The certificate holder's name.
 31 (3) The permanent location of the business or vending machine
 32 for which the certificate is issued.
 33 (4) The expiration date of the certificate.
- 34 (b) A certificate is:
 35 (1) valid for ~~three (3) years~~ **one (1) year** after the date of
 36 issuance, unless the commission suspends the certificate; and
 37 (2) nontransferable.
- 38 SECTION 6. IC 7.1-3-18.5-9.2, AS ADDED BY P.L.107-2024,
 39 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2026]: Sec. 9.2. (a) An employee of a certificate holder must
 41 hold a valid:

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1 (1) driver's license issued by the state of Indiana or another state;
 2 or
 3 (2) identification card issued by the state of Indiana, another
 4 state, or the United States;
 5 to sell tobacco products.

6 (b) An employee must have the employee's driver's license or
 7 identification card or a copy of the employee's driver's license or
 8 identification card:

9 (1) either:
 10 (A) in the employee's possession; or
 11 (B) on file with the employee's employer; and
 12 (2) upon request, readily available to show to an excise officer
 13 or law enforcement;
 14 when selling tobacco products.

15 (c) If an employee holds a valid license or identification card as
 16 described in subsection (a) but is unable to show the license,
 17 identification card, or a copy to an excise officer under subsection (b)
 18 because:

19 (1) the employee has left the license, identification card, or copy
 20 in another location; or
 21 (2) the license, identification card, or copy has otherwise been
 22 lost or mislaid;

23 the employee may, within five (5) days of the employee's inability to
 24 show the license, identification card, or copy to the excise officer,
 25 produce to the excise officer or to the office of the commission
 26 satisfactory evidence of a license or identification card issued to the
 27 individual that was valid at the time the individual was unable to show
 28 the license, identification card, or copy.

29 (d) If an employee who is unable to show a license, identification
 30 card, or copy to an excise officer fails to produce satisfactory evidence
 31 within five (5) days in the manner described in subsection (c), the
 32 commission may impose a civil penalty on the certificate holder under
 33 IC 7.1-3-23-3.

34 **(e) If a certificate holder's employees violate this section three**
 35 **(3) or more times in a one (1) year period, the commission shall**
 36 **suspend the certificate holder's certificate for a period of five (5)**
 37 **days.**

38 SECTION 7. IC 7.1-5-10-23, AS AMENDED BY P.L.32-2019,
 39 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2026]: Sec. 23. It is a Class C infraction for a permittee,
 41 **certificate holder**, or an employee or agent of a permittee **or**



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certificate holder to recklessly, knowingly, or intentionally sell, barter, exchange, provide, or furnish another person who is or reasonably appears to be less than forty (40) years of age an alcoholic beverage **or tobacco product** for consumption off the licensed premises without first requiring the person to produce:

- (1) a driver's license;
- (2) an identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government; or
- (3) a government issued document;

bearing the person's photograph and birth date showing that the person is at least twenty-one (21) years of age.

SECTION 8. IC 7.1-7-1-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 0.5. (a) An e-liquid product manufactured, distributed, or sold in Indiana must adhere to all applicable rules and regulations of the federal Food and Drug Administration, including those rules and regulations regarding product safety, labeling, and manufacturing standards.**

(b) Except as otherwise provided in this article, this article does not require a product subject to this article to be specifically approved by the federal Food and Drug Administration if the product satisfies all applicable rules and regulations.

(c) If a product subject to this article is approved by the federal Food and Drug Administration, the approval constitutes prima facie evidence of compliance with this article.

SECTION 9. IC 7.1-7-1-1, AS AMENDED BY P.L.206-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 1. (a) Except as provided in subsection (b), this article applies to the following:**

- (1) The commercial manufacturing, bottling, selling, bartering, or importing of e-liquid in Indiana.
- (2) The sale, possession, and use of e-liquid products in Indiana, **including through a cigarette vending machine.**

(b) This article does not apply applies to a manufacturer manufacturers of a both closed and open system vapor product, except as specifically provided in this article: devices manufactured or sold in Indiana.

SECTION 10. IC 7.1-7-1-2, AS AMENDED BY P.L.206-2017, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 2. The purpose of this article is to protect public health and safety by:**

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(1) ensuring the safety and security of e-liquid manufactured for sale in Indiana;

(2) ensuring that e-liquid manufactured or sold in Indiana conforms to appropriate standards of identity, strength, quality, and purity; ~~and~~

(3) ensuring that e-liquid is not contaminated or adulterated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety; **and**

(4) ensuring dangerous foreign adversary products are not sold or distributed in Indiana.

SECTION 11. IC 7.1-7-2-8 IS REPEALED [EFFECTIVE JULY 1, 2026]. ~~Sec. 8: "Distributor" means a person who is licensed under IC 6-7-2-8 that:~~

~~(1) distributes, sells, barter, or exchanges e-liquid in Indiana to retail dealers for the purpose of resale; or~~

~~(2) purchases e-liquid directly from a manufacturer for the purpose of resale.~~

SECTION 12. IC 7.1-7-2-10, AS AMENDED BY P.L.206-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 10. "E-liquid" means a substance that:

(1) may or may not contain nicotine; and

(2) is intended to be vaporized and inhaled using a vapor ~~product.~~ **device.**

SECTION 13. IC 7.1-7-2-12, AS AMENDED BY P.L.206-2017, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 12. "Flavoring" means a food grade additive or synthetic flavoring substance that is used to add flavor and that is not prohibited by the federal Food and Drug Administration as an additive in vapor ~~products.~~ **devices.**

SECTION 14. IC 7.1-7-2-12.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 12.3. "Foreign adversary" means an individual, business entity, or other entity located in or organized under the laws of a nation governed by a foreign government listed in 15 CFR 791.4.**

SECTION 15. IC 7.1-7-2-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 12.5. "Foreign adversary product" means:**

(1) an e-liquid; or

(2) an e-liquid containing an ingredient;



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that is manufactured, sourced, or otherwise imported from a nation governed by a foreign government listed in 15 CFR 791.4.

SECTION 16. IC 7.1-7-2-15, AS AMENDED BY P.L.206-2017, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 15. "Manufacturer" means a person located inside or outside Indiana that is engaged in manufacturing e-liquid **for closed and open system vapor devices.**

SECTION 17. IC 7.1-7-2-15.5 IS REPEALED [EFFECTIVE JULY 1, 2026]. ~~Sec. 15.5. "Manufacturer of a closed system vapor product" means a manufacturer of vapor products whose closed system vapor products are for sale in Indiana; but that does not produce open system vapor products that are for sale in Indiana.~~

SECTION 18. IC 7.1-7-2-23, AS AMENDED BY P.L.206-2017, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 23. "Vapor ~~product~~ **device**" means a powered vaporizer that converts e-liquid to a vapor intended for inhalation. **The term includes both open and closed system vapor devices.**

SECTION 19. IC 7.1-7-2-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 24. "Wholesaler" means a person who has obtained or is required to obtain a wholesale tobacco sales certificate under IC 7.1-3-18.5-1.5 that:

- (1) distributes, sells, barter, or exchanges e-liquid in Indiana to retail dealers for the purpose of resale; or
- (2) purchases e-liquid directly from a manufacturer for the purpose of resale to resellers.

SECTION 20. IC 7.1-7-3-2, AS AMENDED BY P.L.206-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 2. The commission has the following duties and responsibilities:

- (1) To require the submission of information necessary to implement this article.
- (2) To issue permits.
- (3) To charge fees as set forth in this article. ~~The fees charged under this subdivision may not exceed the actual costs incurred by the commission.~~
- (4) To approve or deny a permit application made under IC 7.1-7-4 within sixty (60) days of receiving the application.

SECTION 21. IC 7.1-7-4-1, AS AMENDED BY P.L.49-2020, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 1. (a) **Not later than January 1, 2027, a manufacturer of an e-liquid product that is manufactured or sold**



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1 **in Indiana must obtain a permit under this section.**

2 ~~(a)~~ **(b)** A manufacturer of e-liquid may not mix, bottle, package,
3 or sell e-liquid to retailers, consumers, or ~~distributors~~ **wholesalers** in
4 Indiana without a permit issued by the commission under this article.

5 ~~(b) An e-liquid manufactured by an e-liquids manufacturer~~
6 ~~approved by the commission under this article before July 1, 2017, may~~
7 ~~be distributed and sold for retail until the expiration date of the~~
8 ~~e-liquid.~~

9 (c) A manufacturing permit issued by the commission **before July**
10 **1, 2026,** is valid for five (5) years. **A manufacturing permit issued by**
11 **the commission after June 30, 2026, is valid for two (2) years. A**
12 ~~manufacturing permit issued by the commission under this article~~
13 ~~before July 1, 2017, does not expire before July 1, 2020.~~

14 (d) An initial application for a manufacturing permit must include
15 the following:

16 (1) The name, telephone number, and address of the applicant.

17 (2) The name, telephone number, and address of the
18 manufacturing facility.

19 (3) The name, telephone number, title, and address of the person
20 responsible for the manufacturing facility.

21 (4) Verification that the facility will comply with applicable
22 tobacco products good manufacturing practices promulgated
23 under 21 U.S.C. 387f(e) of the federal Food, Drug, and Cosmetic
24 Act.

25 (5) Verification that the manufacturer will comply with the
26 applicable ingredient listing required by 21 U.S.C. 387d(a)(1) of
27 the federal Food, Drug, and Cosmetic Act.

28 (6) Written consent allowing the state police department to
29 conduct a state or national criminal history background check on
30 any person listed on the application.

31 (7) A nonrefundable initial application fee of ~~one thousand~~
32 ~~dollars (\$1,000).~~ **three thousand dollars (\$3,000).**

33 **(8) Verification that the manufacturer will comply with all**
34 **other state and federal laws related to e-liquids.**

35 **(9) An affirmation, made under the penalties for perjury,**
36 **that the manufacturer will not use any ingredients or**
37 **e-liquids in the manufacturer's manufacturing process that**
38 **originate in a nation governed by a foreign government listed**
39 **in 15 CFR 791.4.**

40 (e) The fees collected under subsection (d)(7) shall be deposited
41 in the enforcement and administration fund established under

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1 IC 7.1-4-10.

2 **(f) Except as otherwise provided in this article, an applicant**
 3 **for a permit under this section must adhere to all state and federal**
 4 **laws applicable to e-liquids, including rules and regulations**
 5 **promulgated by the federal Food and Drug Administration.**

6 SECTION 22. IC 7.1-7-4-2, AS AMENDED BY P.L.206-2017,
 7 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2026]: Sec. 2. (a) A manufacturing permit that is renewed by
 9 the commission **before July 1, 2026**, is valid for five (5) years. **A**
 10 **manufacturing permit that is renewed by the commission after**
 11 **June 30, 2026, is valid for two (2) years.**

12 (b) A renewal application for a manufacturing permit must include
 13 the following:

- 14 (1) The name, telephone number, and address of the applicant.
- 15 (2) The name, telephone number, and address of the
- 16 manufacturing facility.
- 17 (3) The name, telephone number, title, and address of the person
- 18 responsible for the manufacturing facility.
- 19 (4) Verification that the facility complies with all tobacco
- 20 products good manufacturing practices:

21 (A) set forth in; and

22 (B) promulgated in federal rules under;

23 21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food,
 24 Drug, and Cosmetic Act.

25 (5) Written consent allowing the state police department to
 26 conduct a state or national criminal history background check on
 27 any person listed on the application.

28 (6) A nonrefundable renewal application fee of ~~five hundred~~
 29 ~~dollars (\$500):~~ **one thousand dollars (\$1,000).**

30 **(7) Verification that the manufacturer will comply with all**
 31 **other state and federal laws related to e-liquids.**

32 **(8) An affirmation, made under the penalties for perjury,**
 33 **that the manufacturer will not use any ingredients or**
 34 **e-liquids in the manufacturer's manufacturing process that**
 35 **originate in a nation governed by a foreign government listed**
 36 **in 15 CFR 791.4.**

37 (c) The fees collected under subsection (b)(6) shall be deposited
 38 in the enforcement and administration fund established under
 39 IC 7.1-4-10.

40 SECTION 23. IC 7.1-7-4-6, AS AMENDED BY P.L.17-2019,
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2026]: Sec. 6. (a) As used in this section:



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(1) "adulterated" means a product that:

(A) consists in whole or in part of any filthy, putrid, or decomposed substance; ~~or~~

(B) is contaminated by any added poisonous or added deleterious substance that may render the product injurious to health; ~~and or~~

(C) is a foreign adversary product (as defined in IC 7.1-7-2-12.5); and

(2) "tamper evident package" means a package having at least one (1) indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

(b) A manufacturing facility shall comply with the following requirements:

(1) An e-liquid container must use a child proof cap that has the child resistant effectiveness set forth in the federal poison prevention packaging standards, 16 CFR 1700.15(b)(1).

(2) An e-liquid container must use a tamper evident package. The tamper evident package feature must be designed to and remain intact when handled in a reasonable manner during the manufacture, distribution, and retail display of the e-liquid container.

(3) The label on an e-liquid container must meet the nicotine addictiveness warning statement requirements set forth in 21 CFR 1143.3.

(4) The manufacturer, **wholesaler**, or retailer may not add an adulterated product to any e-liquid produced for sale in Indiana.

(5) The manufacturer must submit to random site visits by the commission.

(6) The manufacturer may:

(A) own and control both the e-liquid manufacturing process and the bottling process; or

(B) subcontract with another manufacturer for the performance of the e-liquid manufacturing service, the bottling services, or both services.

However, both the manufacturer performing a service under clause (B) and the manufacturer for which the service is performed must meet the requirements of this article, **including obtaining a permit. A manufacturer may not be located in or source any ingredient or substance used in an e-liquid product from a nation governed by a foreign government listed in 15 CFR 791.4.**

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(7) A manufacturer may use a flavoring, as defined by IC 7.1-7-2-12, as an ingredient in an e-liquid.

(8) The manufacturer or any person listed on the permit application may not have been convicted within ten (10) years before the date of application of:

(A) a federal crime having a sentence of at least one (1) year;

(B) an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014);

(C) a crime in a state other than Indiana having a penalty equal to the penalty for an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014);

(D) an Indiana Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014); or

(E) a crime in a state other than Indiana similar to a Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014).

SECTION 24. IC 7.1-7-4-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 8. (a) This section does not apply to:**

(1) a vapor device (as defined in IC 7.1-7-2-23), including:

(A) a part to be utilized in an open or closed system to convert e-liquid to a vapor for inhalation; or

(B) an e-liquid product that includes a vapor device sourced from or manufactured by a foreign adversary; and

(2) an e-liquid product that is manufactured by or sourced from a foreign adversary, if the e-liquid product has been specifically approved for distribution and sale in the United States by the federal Food and Drug Administration.

(b) A manufacturer of e-liquid that is permitted or required to be permitted under this chapter may not manufacture or source a foreign adversary product.

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1 (c) A retailer that holds or is required to hold a tobacco sales
2 certificate under IC 7.1-3-18.5-1 may not possess, sell, or otherwise
3 distribute a foreign adversary product.

4 (d) A wholesaler that holds or is required to hold a wholesale
5 tobacco sales certificate under IC 7.1-3-18.5-1.5 may not possess,
6 sell, or otherwise distribute a foreign adversary product.

7 SECTION 25. IC 7.1-7-5-1.1, AS AMENDED BY P.L.220-2023,
8 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2026]: Sec. 1.1. (a) A retailer must have a valid sales
10 certificate issued by the commission in accordance with
11 IC 7.1-3-18.5-1 that contains a separate box to check for identifying a
12 retailer that sells e-liquids.

13 (b) A retailer may purchase e-liquid only from an Indiana e-liquid
14 manufacturing permit holder or an Indiana ~~distributor~~ **wholesaler**
15 permit holder.

16 (c) A retailer shall retain all invoices for e-liquid that the retailer
17 purchases for two (2) years.

18 (d) A retailer shall not allow the self-service sale for individuals
19 purchasing an e-liquid.

20 (e) A retailer may not sell an e-liquid that contains more than
21 seventy-five (75) milligrams per milliliter of nicotine.

22 (f) A manufacturer must have an e-liquid manufacturing permit
23 issued under IC 7.1-7-4.

24 (g) A ~~distributor~~ **wholesaler** that does not have a valid e-liquid
25 manufacturing permit issued under IC 7.1-7-4 must have a valid
26 ~~distributor's license~~ **wholesale tobacco sales certificate** issued under
27 ~~IC 6-7-2-8~~ **IC 7.1-3-18.5-1.5**.

28 (h) A ~~distributor~~ **wholesaler** shall purchase and distribute e-liquid
29 from an:

30 (1) Indiana e-liquid manufacturer that has a valid e-liquid
31 manufacturing permit under IC 7.1-7-4; or

32 (2) Indiana e-liquid ~~distributor~~ **wholesaler** that has a valid:

33 (A) e-liquid manufacturing permit issued under IC 7.1-7-4;

34 or

35 (B) ~~distributor's license~~ **wholesale tobacco sales certificate**
36 under ~~IC 6-7-2-8~~ **IC 7.1-3-18.5-1.5**.

37 (i) A ~~distributor~~ **wholesaler** shall retain all invoices to a retailer or
38 from a manufacturer for at least two (2) years.

39 (j) A manufacturer, ~~distributor~~, **wholesaler**, or retailer may not
40 market e-liquid as a modified risk tobacco product, as defined by
41 IC 7.1-7-2-17.5, that has not been designated as a modified risk



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1 tobacco product by the federal Food and Drug Administration.

2 (k) Except as provided in subsection (m), a manufacturer ~~including~~
3 ~~a manufacturer of a closed system vapor product,~~ **permitted or**
4 **required to be permitted under IC 7.1-7-4** shall annually submit a
5 report to the commission setting forth:

6 (1) each new product that the manufacturer is producing and is
7 sold in Indiana with a list of the contents and ingredients by
8 volume; and

9 (2) whether the manufacturer has stopped producing products
10 previously produced and sold in Indiana.

11 A report under this subsection is confidential, and the commission may
12 not disclose it to another person.

13 (l) A manufacturer **permitted or required to be permitted under**
14 **IC 7.1-7-4** shall annually submit a report to the commission setting
15 forth:

16 (1) the milligrams per milliliter of nicotine in each product the
17 manufacturer produces; and

18 (2) the milliliters of each product sold that current year.

19 A report under this subsection is confidential, and the ATC may not
20 disclose it to another person.

21 (m) A manufacturer is not required to submit a report described in
22 subsection (k) if the manufacturer submits to the commission a
23 certification, by October 1 of each year, that each of the manufacturer's
24 vapor ~~products~~ **devices** sold in Indiana has been filed with the federal
25 Food and Drug Administration.

26 SECTION 26. IC 7.1-7-5-2, AS ADDED BY P.L.176-2015,
27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2026]: Sec. 2. (a) A manufacturer of e-liquid may file a
29 request with the **Indiana** department **of health** for approval of an
30 ingredient to be allowed in the composition of e-liquid.

31 (b) The **Indiana** department **of health** may approve the request
32 filed under subsection (a) if the department determines that the
33 ingredient will not pose an unreasonable threat to public health and
34 safety.

35 SECTION 27. IC 7.1-7-6-1, AS AMENDED BY P.L.206-2017,
36 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2026]: Sec. 1. (a) If a manufacturer, ~~distributor,~~ **wholesaler,**
38 or retailer violates **any provision of** this article, the manufacturer,
39 ~~distributor,~~ **wholesaler,** or retailer may be reprimanded, assessed a
40 civil penalty, or have the manufacturer's permit, ~~distributor's license,~~
41 **wholesaler's tobacco sales certificate,** or retailer's tobacco sales

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1 certificate suspended **by the commission.**

2 (b) Any provision in this article that requires a manufacturer,
3 **wholesaler, or retailer** to comply with the federal Food, Drug, and
4 Cosmetic Act or a federal rule promulgated under the federal Food,
5 Drug, and Cosmetic Act is under the ~~sole~~ **dual** jurisdiction of the
6 federal Food and Drug Administration **and the commission and may**
7 **be enforced through action by the federal Food and Drug**
8 **Administration and the commission.** If the federal Food and Drug
9 Administration seeks court enforcement of any section of the federal
10 Food, Drug, and Cosmetic Act cited in this article and a civil monetary
11 penalty is assessed against the manufacturer, the act or omission for
12 which the penalty was assessed constitutes a violation of this article
13 **and may result in a reprimand or civil penalty or a revocation by**
14 **the commission of the license or sales certificate of the**
15 **manufacturer, wholesaler, or retailer.**

16 (c) The commission may assess a civil penalty against a
17 manufacturer, ~~distributor,~~ **wholesaler,** or retailer for a violation of this
18 article in an amount that does not exceed ten thousand dollars
19 (\$10,000). A civil penalty may be assessed in addition to other
20 penalties allowed under this article.

21 **(d) The commission has full authority to enforce all provisions**
22 **of this article, including those that require compliance with federal**
23 **law.**

24 SECTION 28. IC 24-3-2-2, AS AMENDED BY P.L.217-2017,
25 SECTION 154, IS AMENDED TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2026]: Sec. 2. Unless the context in this chapter
27 requires otherwise, the term:

28 (a) "Cigarette" shall mean and include any roll for smoking made
29 wholly or in part of tobacco, irrespective of size or shape and
30 irrespective of tobacco being flavored, adulterated, or mixed with any
31 other ingredient, where such roll has a wrapper or cover made of paper
32 or any other material; provided the definition in this paragraph shall not
33 be construed to include cigars.

34 (b) "Person" or the term "company", used in this chapter
35 interchangeably, means and includes any individual, assignee, receiver,
36 commissioner, fiduciary, trustee, executor, administrator, institution,
37 bank, consignee, firm, partnership, limited liability company, joint
38 vendor, pool, syndicate, bureau, association, cooperative association,
39 society, club, fraternity, sorority, lodge, corporation, municipal
40 corporation, or other political subdivision of the state engaged in
41 private or proprietary activities or business, estate, trust, or any other

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group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" shall mean and include every person who sells, barter, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases for resale cigarettes from a manufacturer of cigarettes or from a wholesaler, jobber, or distributor outside the state of Indiana who is not a distributor holding a registration certificate issued under the provisions of IC 6-7-1.

(d) "Retailer" shall mean every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes to consumers or to any person for any purpose other than resale, irrespective of quantity or amount or the number of sales.

(e) "Sell at retail", "sale at retail", and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of the seller's business to the purchaser for consummation or use.

(f) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of a distributor's business.

(g) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or distributor, as the case may be, or the replacement cost of cigarettes to the retailer or distributor, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased, whichever is the lower, less all trade discounts and customary discounts for cash, plus the cost at full face value of any stamps which may be required by IC 6-7-1, if not included by the manufacturer in his selling price to the distributor.

(h) "Department" shall mean the alcohol and tobacco commission or its duly authorized assistants and employees.

(i) "Cost to the retailer" shall mean the basic cost of cigarettes to the retailer, plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses paid or incurred and must include without limitation labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; however, any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon

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purchases by a retailer, but also, in whole or in part, discounts ordinarily allowed on purchases by a distributor shall, in determining costs to the retailer pursuant to this section, add the cost to the distributor, as defined in paragraph (j), to the basic cost of cigarettes to said retailer as well as the cost of doing business by the retailer. In the absence of proof of a lesser or higher cost of doing business:

(1) by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be the following percent of the basic cost of cigarettes to the retailer:

(A) Until January 1, 2018, twelve percent (12%).

(B) During 2018, twelve and twenty-five hundredths percent (12.25%).

(C) During 2019, twelve and five tenths percent (12.5%).

(D) During 2020, twelve and seventy-five hundredths percent (12.75%).

(E) During 2021, thirteen percent (13%).

(F) During 2022, thirteen and twenty-five hundredths percent (13.25%).

(G) During 2023, thirteen and five tenths percent (13.5%).

(H) During 2024, thirteen and seventy-five hundredths percent (13.75%).

(I) After 2024, fourteen percent (14%).

(2) by the retailer, who in connection with the retailer's purchase receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, the discounts ordinarily allowed upon purchases by a distributor, shall be presumed to be the following percent of the sum of the basic cost of cigarettes plus the cost of doing business by the distributor:

(A) Until January 1, 2018, twelve percent (12%).

(B) During 2018, twelve and twenty-five hundredths percent (12.25%).

(C) During 2019, twelve and five tenths percent (12.5%).

(D) During 2020, twelve and seventy-five hundredths percent (12.75%).

(E) During 2021, thirteen percent (13%).

(F) During 2022, thirteen and twenty-five hundredths percent (13.25%).

(G) During 2023, thirteen and five tenths percent (13.5%).

(H) During 2024, thirteen and seventy-five hundredths percent (13.75%).



(I) After 2024, fourteen percent (14%).

(j) "Cost to the distributor" shall mean the basic cost of cigarettes to the distributor, plus the cost of doing business by the distributor as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include without limitation labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. In the absence of proof of a lesser or higher cost of doing business by the distributor making the sale, the cost of doing business by the wholesaler shall be presumed to be four percent (4%) of the basic cost of cigarettes to the distributor, plus cartage to the retail outlet, if performed or paid for by the distributor, which cartage cost, in the absence of proof of a lesser or higher cost, shall be deemed to be one-half of one percent (0.5%) of the basic cost of cigarettes to the distributor.

(k) "Registration certificate" refers to the registration certificate issued to cigarette distributors by the department of state revenue under IC 6-7-1-16.

(l) "Buydown" means any payment or compensation given by a cigarette manufacturer to a cigarette distributor or retailer to promote the sale of cigarettes and for which the manufacturer requires that either:

(1) the distributor pass the resulting price reduction on to the retailer; or

(2) the retailer pass the resulting price reduction on to the consumer.

SECTION 29. IC 24-3-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 9. (a) In determining cost to the retailer and cost to the distributor, the court or the department, as the case may be, shall receive and consider as bearing on the bona fides of such cost evidence tending to show that any person complained against under any of the provisions of this chapter purchased cigarettes with respect to the sale of which complaint is made at a fictitious price, or upon terms, or in such manner, or under such invoices, as to conceal the true cost, discounts, or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis or payment made to a retailer or distributor for display, or advertising, or promotion purposes, or

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otherwise shall not be considered in determining the cost of cigarettes to the retailer or distributor.

(c) A buydown must be considered in determining the cost to the retailer or the cost to the distributor, as applicable, provided that the sum of any buydown and consideration paid by the purchaser is not below the cost to the retailer or distributor.

SECTION 30. IC 35-45-6-1, AS AMENDED BY P.L.186-2025, SECTION 240, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

(c) "Enterprise" means:

- (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or
- (2) a union, an association, or a group, whether a legal entity or merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

- (1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.
- (2) A violation of IC 35-45-9.
- (3) A violation of IC 35-47.
- (4) A violation of IC 35-49-3.
- (5) Murder (IC 35-42-1-1).
- (6) Battery as a Class C felony before July 1, 2014, or a Level 5 felony after June 30, 2014 (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- (9) Child exploitation (IC 35-42-4-4).
- (10) Robbery (IC 35-42-5-1).

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- 1 (11) Carjacking (IC 35-42-5-2) (before its repeal).
- 2 (12) Arson (IC 35-43-1-1).
- 3 (13) Burglary (IC 35-43-2-1).
- 4 (14) Theft (IC 35-43-4-2).
- 5 (15) Receiving stolen property (IC 35-43-4-2) (before its
- 6 amendment on July 1, 2018).
- 7 (16) Forgery (IC 35-43-5-2).
- 8 (17) An offense under IC 35-43-5.
- 9 (18) Bribery (IC 35-44.1-1-2).
- 10 (19) Official misconduct (IC 35-44.1-1-1).
- 11 (20) Conflict of interest (IC 35-44.1-1-4).
- 12 (21) Perjury (IC 35-44.1-2-1).
- 13 (22) Obstruction of justice (IC 35-44.1-2-2).
- 14 (23) Intimidation (IC 35-45-2-1).
- 15 (24) Promoting prostitution (IC 35-45-4-4).
- 16 (25) Professional gambling (IC 35-45-5-3).
- 17 (26) Maintaining a professional gambling site
- 18 (IC 35-45-5-3.5(b)).
- 19 (27) Promoting professional gambling (IC 35-45-5-4).
- 20 (28) Dealing in or manufacturing cocaine or a narcotic drug
- 21 (IC 35-48-4-1).
- 22 (29) Dealing in methamphetamine (IC 35-48-4-1.1).
- 23 (30) Manufacturing methamphetamine (IC 35-48-4-1.2).
- 24 (31) Dealing in a schedule I, II, or III controlled substance
- 25 (IC 35-48-4-2).
- 26 (32) Dealing in a schedule IV controlled substance
- 27 (IC 35-48-4-3).
- 28 (33) Dealing in a schedule V controlled substance
- 29 (IC 35-48-4-4).
- 30 (34) Dealing in marijuana, hash oil, hashish, or salvia
- 31 (IC 35-48-4-10).
- 32 (35) Money laundering (IC 35-45-15-5).
- 33 (36) A violation of IC 35-47.5-5.
- 34 (37) A violation of any of the following:
- 35 (A) IC 23-14-48-9.
- 36 (B) IC 30-2-9-7(b).
- 37 (C) IC 30-2-10-9(b).
- 38 (D) IC 30-2-13-38(f).
- 39 (38) Practice of law by a person who is not an attorney
- 40 (IC 33-43-2-1).
- 41 (39) An offense listed in IC 35-48-4 involving the manufacture

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or sale of a synthetic drug (as defined in IC 35-31.5-2-321), a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5 (before its repeal on July 1, 2019)) under IC 35-48-4-10.5 (before its repeal on July 1, 2019), a controlled substance analog (as defined in IC 35-48-1.1-8), or a substance represented to be a controlled substance (as described in IC 35-48-4-4.6).

(40) Dealing in a controlled substance resulting in death (IC 35-42-1-1.5).

(41) Organized retail theft (IC 35-43-4-2.2).

(42) Sale of alcohol without a permit (IC 7.1-5-10-5).

SECTION 31. IC 35-46-1-10.2, AS AMENDED BY P.L.163-2025, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 10.2. (a) A person may not be charged with a violation under this section and a violation under IC 7.1-7-6-5.

(b) A retail establishment that sells or distributes a tobacco product to a person less than 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.

(c) 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 (1) year, a civil penalty of up to four hundred dollars (\$400).

(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 (1) year, a civil penalty of up to eight hundred dollars (\$800).

(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 (1) year, a civil penalty of up to one thousand four hundred dollars (\$1,400).

(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 (1) year, a civil penalty of up to two thousand dollars (\$2,000).

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.

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

(e) The following defenses are available to a retail establishment accused of selling or distributing a tobacco product to a person who is less than 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 thirty (30) years of age.

(f) It is a defense that the accused retail establishment sold or delivered the tobacco product to a person who acted in the ordinary course of employment or a business concerning tobacco products for the following activities:

(1) Agriculture.

(2) Processing.

(3) Transporting.

(4) Wholesaling.

(5) Retailing.

(g) 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.

(h) Unless a person buys or receives a tobacco product under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes a tobacco product is not liable for a violation of this section unless the person less than twenty-one (21) years of age who bought or received the tobacco product is issued a citation or summons under section 10.5 of this chapter.

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

(j) A person who violates subsection (b) at least ~~six (6)~~ **three (3)** times in any one (1) year commits habitual illegal sale of tobacco, a Class B infraction.

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SECTION 32. IC 35-46-1-11.7, AS AMENDED BY P.L.163-2025, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 11.7. (a) A retail establishment in which tobacco products account for at least eighty-five percent (85%) of the retail establishment's gross sales may not allow an individual who is less than twenty-one (21) years of age to enter the retail establishment.

(b) An individual who is less than 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 21 years old 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 Indiana 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 (1) year, a civil penalty of up to four hundred dollars (\$400).

(2) If the person has had one (1) violation in the previous one (1) year, a civil penalty of up to eight hundred dollars (\$800).

(3) If the person has had two (2) violations in the previous one (1) year, a civil penalty of up to one thousand four hundred dollars (\$1,400).

(4) If the person has had three (3) or more violations in the previous one (1) year, a civil penalty of up to two thousand dollars (\$2,000).

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 tobacco education and enforcement fund established under IC 7.1-6-2-6.

(f) A person who violates subsection (a) at least ~~six (6)~~ **three (3)** times in any one (1) year period commits habitual illegal entrance by a minor, a Class B infraction.

SECTION 33. IC 35-46-6-3, AS AMENDED BY P.L.163-2025,

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SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3. (a) A person who knowingly or intentionally uses or distributes nitrous oxide with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses of another person, unless the nitrous oxide is to be used for medical purposes, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(b) Except as provided in subsection (c), a person who knowingly or intentionally sells, uses, or distributes flavored nitrous oxide commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(c) The prohibition on the sale, **use, or distribution** of flavored nitrous oxide in subsection (b) does not apply to:

(1) a retail or wholesale restaurant supply company that sells or distributes flavored nitrous oxide to a person for use in food and beverage preparation or other culinary purposes; ~~or~~

(2) a person that uses flavored nitrous oxide in food and beverage recipes or for other legitimate culinary purposes; **or**

(3) a law enforcement agency that is disposing of flavored nitrous oxide by donation to a nonprofit organization.

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