

IC 7.1-2-3-33

Investigations and penalties for violations of statutes relating to tobacco

Sec. 33. The commission is authorized to:

- (1) investigate a violation of; and
- (2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.3, IC 35-46-1-11.5, or IC 35-46-1-11.7.

As added by P.L.177-1999, SEC.5.

IC 7.1-6

ARTICLE 6. YOUTH TOBACCO SALES AND ENFORCEMENT

IC 7.1-6-1

Chapter 1. Definitions

IC 7.1-6-1-1

Applicability of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-1-2

"Person"

Sec. 2. "Person" has the meaning set forth in IC 35-41-1-22.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-1-3

"Tobacco product"

Sec. 3. "Tobacco product" means a product that contains tobacco and is intended for human consumption.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2

Chapter 2. Youth Tobacco Law Enforcement Authority

IC 7.1-6-2-1

Enforcement

Sec. 1. The commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may enforce this article to the extent necessary to ensure the state's compliance with:

- (1) Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26); and
- (2) implementing regulations promulgated by the United States Department of Health and Human Services.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-2

Unannounced inspections

Sec. 2. The division of mental health and addiction established under IC 12-21 shall coordinate the conduct of random unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this article. Only the commission, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off-duty law enforcement officers to conduct inspections under this section.

As added by P.L.256-1996, SEC.2. Amended by P.L.215-2001, SEC.13.

IC 7.1-6-2-3

Sale of cigarettes without health warning prohibited

Sec. 3. (a) It is unlawful for a person to sell cigarettes other than in an unopened package originating with the manufacturer that bears the health warning required by federal law.

(b) A person who violates this section commits a Class C infraction.

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-4

Participation by minor in enforcement action

Sec. 4. (a) An enforcement officer vested with full police powers and duties may engage a person less than eighteen (18) years of age as part of an enforcement action under this article if the initial or contemporaneous receipt or purchase of a tobacco product by a person less than eighteen (18) years of age occurs under the direction of an enforcement officer vested with full police powers and duties and is part of the enforcement action.

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

(1) recruit or attempt to recruit a person less than eighteen (18) years of age to participate in an enforcement action under subsection (a) at the scene of a violation of section 2 of this chapter; or

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

As added by P.L.256-1996, SEC.2.

IC 7.1-6-2-5

Annual report

Sec. 5. The division of mental health and addiction established under IC 12-21 shall annually prepare for submission to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26) and implementing regulations promulgated under that act.

As added by P.L.256-1996, SEC.2. Amended by P.L.215-2001, SEC.14.

IC 7.1-6-2-6

Youth tobacco education and enforcement fund

Sec. 6. (a) The youth tobacco education and enforcement fund is established. The fund shall be administered by the commission.

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund shall be used for the following purposes:

(1) For youth smoking prevention education. The commission may contract with the state department of health or the office of the secretary of family and social services for youth smoking prevention education programs.

(2) For education and training of retailers who sell tobacco products. The commission may contract with education and training programs of the office of the secretary of family and social services, the division of mental health and addiction, enforcement officers, or a program approved by the commission.

(3) For the commission, for enforcement of youth tobacco laws.

As added by P.L.177-1999, SEC.9. Amended by P.L.204-2001, SEC.57; P.L.215-2001, SEC.15; P.L.1-2002, SEC.36.

IC 7.1-6-2-7

Reserved

IC 7.1-6-2-8

Payment of civil penalties; late penalties; interest

Sec. 8. (a) This section applies whenever a civil penalty payable to the youth tobacco education and enforcement fund is imposed.

(b) The person liable for the civil penalty shall pay the full amount of the civil penalty to the commission within thirty (30) days after final judgment.

(c) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for a late penalty equal to the greater of the following:

(1) Twenty-five percent (25%) of the amount of the civil penalty imposed under IC 35-46-1.

(2) The lesser of the following:

(A) Twenty-five dollars (\$25) multiplied by the number of days that have elapsed after the date that the civil penalty was imposed by a court.

(B) Five thousand dollars (\$5,000).

(d) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for interest on the unpaid amount of the:

(1) civil penalty imposed by a court; and

(2) late penalty imposed under this section.

The interest rate is the adjusted rate of interest as determined under IC 6-8.1-10-1 payable from the date that payment of the amount was due.

(e) A person who fails to pay a civil penalty within the time specified in subsection (b) is liable for the reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(f) The commission shall collect the following:

(1) Civil penalties imposed by a court.

(2) Late penalties imposed under this section.

(3) Interest imposed under this section.

(4) Reasonable documented out-of-pocket expenses incurred in pursuing collection efforts.

(g) Late penalties and interest imposed under this section shall be deposited in the youth tobacco education and enforcement fund established by section 6 of this chapter.

As added by P.L.204-2001, SEC.58.

IC 35-46

ARTICLE 46. MISCELLANEOUS OFFENSES

IC 35-46-1

Chapter 1. Offenses Against the Family

IC 35-46-1-1

Definitions

Sec. 1. As used in this chapter:

"Dependent" means:

(1) an unemancipated person who is under eighteen (18) years of age; or

(2) a person of any age who is mentally or physically disabled.

"Endangered adult" has the meaning set forth in IC 12-10-3-2.

"Support" means food, clothing, shelter, or medical care.

"Tobacco business" means a sole proprietorship, corporation, partnership, or other enterprise in which:

(1) the primary activity is the sale of tobacco, tobacco products, and tobacco accessories; and

(2) the sale of other products is incidental.

As added by Acts 1976, P.L.148, SEC.6. Amended by Acts 1977, P.L.340, SEC.84; P.L.185-1984, SEC.2; P.L.208-1986, SEC.1; P.L.41-1987, SEC.19; P.L.2-1992, SEC.881; P.L.256-1996, SEC.10.

IC 35-46-1-1.7

"Tobacco" defined

Sec. 1.7. As used in this chapter, "tobacco" includes:

- (1) chewing tobacco;
- (2) cigars, cigarettes, and snuff that contain tobacco; and
- (3) pipe tobacco.

As added by P.L.318-1987, SEC.2.

IC 35-46-1-10

Sale or distribution of tobacco to minors; defenses

Sec. 10. (a) A person who knowingly:

- (1) sells or distributes tobacco to a person less than eighteen (18) years of age; or
- (2) purchases tobacco for delivery to another person who is less than eighteen (18) years of age; commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product.

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

(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

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

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

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

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

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

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

As added by Acts 1980, P.L.209, SEC.1. Amended by P.L.330-1983, SEC.1; P.L.318-1987, SEC.3; P.L.125-1988, SEC.4; P.L.177-1999, SEC.10; P.L.1-2001, SEC.37; P.L.204-2001, SEC.65.

IC 35-46-1-10.2

Retail establishment's sale or distribution of tobacco to minors; defenses

Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. 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 ninety (90) days, a civil penalty of fifty dollars (\$50).

(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 ninety (90) days, a civil penalty of one hundred dollars (\$100).

(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 ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(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 ninety (90) days, a civil penalty of five hundred dollars (\$500).

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 was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

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

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

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

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

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

(1) agriculture;

(2) processing;

(3) transporting;

(4) wholesaling; or

(5) retailing.

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

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco 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 youth tobacco education and enforcement fund (IC 7.1-6-2-6).

As added by P.L.177-1999, SEC.11. Amended by P.L.14-2000, SEC.72; P.L.1-2001, SEC.38.

IC 35-46-1-10.5

Purchase, acceptance, or possession of tobacco; defenses

Sec. 10.5. (a) A person less than eighteen (18) years of age who:

(1) purchases tobacco;

(2) accepts tobacco for personal use; or

(3) possesses tobacco on his person;
commits a Class C infraction.

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

(1) agriculture;

(2) processing;

(3) transporting;

- (4) wholesaling; or
- (5) retailing.

As added by P.L.125-1988, SEC.5. Amended by P.L.256-1996, SEC.13.

IC 35-46-1-11

Retail sale of tobacco; warning notices to minors required; failure to post; offenses

Sec. 11. (a) A tobacco vending machine that is located in a public place must bear a conspicuous notice:

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

(2) that:

(A) conveys a message substantially similar to the message described in subdivision (1); and

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

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

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

(2) fails to replace the notice within one (1) month after it is removed or defaced; commits a Class C infraction.

(c) An establishment selling tobacco at retail shall post and maintain in a conspicuous place a sign, printed in letters at least one-half (1/2) inch high, reading as follows: "The sale of tobacco to persons under 18 years of age is forbidden by Indiana law.

(d) A person who:

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

(2) fails to post and maintain the sign required by subsection (c); commits a Class C infraction.

As added by P.L.330-1983, SEC.2. Amended by P.L.318-1987, SEC.4; P.L.204-2001, SEC.66.

IC 35-46-1-11.2

Operation of tobacco business near school prohibited

Sec. 11.2. (a) This section does not apply to a tobacco business:

(1) operating as a tobacco business before April 1, 1996; or

(2) that begins operating as a tobacco business after April 1, 1996, if at the time the tobacco business begins operation the tobacco business is not located in an area prohibited under this section.

(b) A person may not operate a tobacco business within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes.

(c) A person who violates this section commits a Class C misdemeanor.

As added by P.L.256-1996, SEC.11.

IC 35-46-1-11.3

Advertisement of tobacco products on billboards

Sec. 11.3. (a) This section does not apply to advertisements that are less than fourteen (14) square feet and posted:

(1) at street level in the window or on the exterior of a business property or establishment where tobacco products are manufactured, distributed, or sold; or

(2) on vehicles.

(b) This section does not apply to advertisements that are placed on a fixed, permanent marquee sign that is located on the retailer's property where tobacco products are sold.

(c) A person may not advertise or cause to be advertised tobacco products on a billboard or an outdoor advertisement where the tobacco advertising occupies an area that exceeds fourteen (14) square feet. The alcohol and tobacco commission may adopt rules under IC 4-22-2 to determine how to measure the tobacco product advertising on a sign that contains both tobacco product advertising and advertising that is not tobacco related. The rules may not allow the frame of the sign or other structural parts that only serve to support the sign to be included in the tobacco advertising measurement.

(d) A person who violates this section commits a Class C infraction. An advertisement that is in violation of

this section must be removed not more than ten (10) days after a citation or summons has been issued. Notwithstanding IC 34-28-5-4(c), if an advertisement that is in violation of this section is not removed not more than ten (10) days after a citation or summons has been issued, a civil judgment for an infraction committed under this section must include a civil penalty of one hundred dollars (\$100) for each day that the advertisement was in violation of this section.

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

As added by P.L.256-1996, SEC.12. Amended by P.L.177-1999, SEC.12; P.L.1-2001, SEC.39; P.L.204-2001, SEC.67.

IC 35-46-1-11.5

Coin machines for sale or distribution of tobacco

Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

- (1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.
- (2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.
- (3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.
- (4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

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

- (1) distribute or sell tobacco 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.

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

As added by P.L.49-1990, SEC.20. Amended by P.L.177-1999, SEC.13; P.L.14-2000, SEC.73; P.L.1-2001, SEC.40.

IC 35-46-1-11.7

Minors prohibited from entering retail establishment that primarily sells tobacco products

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) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) 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 a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store."

(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 ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the person has had one (1) violation in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the person has had two (2) violations in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the person has had three (3) or more violations in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

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

As added by P.L.177-1999, SEC.14. Amended by P.L.14-2000, SEC.74; P.L.1-2001, SEC.41.

IC 35-46-1-12

Exploitation of dependent or endangered adult; financial exploitation of endangered adult; violation classification

Sec. 12. (a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:

(1) an endangered adult; or

(2) a dependent eighteen (18) years of age or older;

for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.

(b) The offense described in subsection (a) is a Class D felony if:

(1) the fair market value of the personal services or property is more than ten thousand dollars (\$10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(c) Except as provided in subsection (d), a person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult's or the dependent's benefits under the Social Security Act or other retirement program that the division of family and children or county office of family and children has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

(d) The offense described in subsection (c) is a Class D felony if:

(1) the amount of the proceeds is more than ten thousand dollars (\$10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

(f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:

(1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and

(2) was acting within the scope of the accused person's fiduciary responsibility.

As added by Acts 1981, P.L.299, SEC.3. Amended by P.L.185-1984, SEC.3; P.L.37-1990, SEC.26; P.L.2-1992, SEC.883; P.L.4-1993, SEC.327; P.L.5-1993, SEC.334; P.L.145-2001, SEC.1.

IC 35-46-1-13

Battery, neglect, or exploitation of endangered adult; failure to report; unlawful disclosure; referrals; retaliation

Sec. 13. (a) A person who:

(1) believes or has reason to believe that an endangered adult is the victim of battery, neglect, or exploitation as prohibited by this chapter, IC 35-42-2-1(2)(C), or IC 35-42-2-1(2)(F); and

(2) fails to report the facts supporting that belief to the division of disability, aging, and rehabilitative services, the adult protective services unit designated under IC 12-10-3, or a law enforcement agency

having jurisdiction over battery, neglect, or exploitation of an endangered adult; commits a Class A infraction.

(b) An officer or employee of the division or adult protective services unit who unlawfully discloses information contained in the records of the division of disability, aging, and rehabilitative services under IC 12-10-3-12 through IC 12-10-3-16 commits a Class C infraction.

(c) A law enforcement agency that receives a report that an endangered adult is or may be a victim of battery, neglect, or exploitation as prohibited by this chapter, IC 35-42-2-1(2)(C), or IC 35-42-2-1(2)(F) shall immediately communicate the report to the adult protective services unit designated under IC 12-10-3.

(d) An individual who discharges, demotes, transfers, prepares a negative work performance evaluation, reduces benefits, pay, or work privileges, or takes other action to retaliate against an individual who in good faith makes a report under IC 12-10-3-9 concerning an endangered individual commits a Class A infraction.

As added by Acts 1981, P.L.299, SEC.4. Amended by P.L.185-1984, SEC.4; P.L.39-1985, SEC.3; P.L.41-1987, SEC.20; P.L.42-1987, SEC.14; P.L.2-1992, SEC.884; P.L.4-1993, SEC.328; P.L.5-1993, SEC.335; P.L.2-1997, SEC.75.