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## SENATE BILL No. 290

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-1; IC 7.1-3-18.5; IC 35-46-1.

**Synopsis:** Tobacco retailer permit. Requires tobacco retailers to have permits to sell tobacco products. Authorizes the alcohol and tobacco commission to issue and enforce permits. Amends laws concerning the sale and distribution of tobacco products. Repeals a prohibition on certain tobacco billboard advertisements.

**Effective:** July 1, 2003.

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January 15, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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## SENATE BILL No. 290



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

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

- 1 SECTION 1. IC 7.1-1-1-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~General Purposes:~~
- 3 The **following are the** general purposes of this title: ~~are:~~
- 4 (a) **(1)** To protect the economic welfare, health, peace, and morals
- 5 of the people of this state.
- 6 (b) **(2)** To regulate and limit the manufacture, sale, possession,
- 7 and use of alcohol and alcoholic beverages. ~~and;~~
- 8 (c) **(3)** To regulate the sale, possession, and distribution of
- 9 tobacco products.
- 10 (d) **(4)** To provide for the raising of revenue.
- 11 SECTION 2. IC 7.1-1-2-2, AS AMENDED BY P.L.213-2001,
- 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 13 JULY 1, 2003]: Sec. 2. Except as provided in IC 7.1-5-1-3 and
- 14 IC 7.1-5-1-6, this title applies to the **following:**
- 15 (1) **The** commercial manufacturing, bottling, selling, bartering,
- 16 importing, transporting, delivering, furnishing, or possessing of
- 17 alcohol, alcoholic beverages, industrial alcohol, malt, malt syrup,



1 malt extract, liquid malt, or wort.

2 **(2) The sale, possession, and distribution of tobacco products.**

3 SECTION 3. IC 7.1-1-3-29 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. ~~Permit. The term~~  
5 "Permit" means a written authorization issued by the commission  
6 entitling its holder to manufacture, rectify, distribute, transport, sell, or  
7 otherwise deal in alcoholic beverages **or tobacco products**, all as  
8 provided in this title.

9 SECTION 4. IC 7.1-1-3-47.5 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2003]: **Sec. 47.5. "Tobacco product" has the**  
12 **meaning set forth in IC 7.1-6-1-3.**

13 SECTION 5. IC 7.1-2-3-33, AS ADDED BY P.L.177-1999,  
14 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1,2003]: Sec. 33. The commission is authorized to:

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

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

20 SECTION 6. IC 7.1-3-18.5 IS ADDED TO THE INDIANA CODE  
21 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE  
22 JULY 1, 2003]:

23 **Chapter 18.5. Tobacco Sales Permit**

24 **Sec. 1. (a) A person may not sell or distribute a tobacco product**  
25 **at retail without a valid tobacco sales permit issued by the**  
26 **commission.**

27 **(b) A tobacco sales permit may be issued only to a person who**  
28 **owns or operates at least one (1) of the following:**

29 **(1) The location where the tobacco product is sold or**  
30 **distributed.**

31 **(2) A cigarette vending machine (as defined by IC 35-43-4-7).**

32 **Sec. 2. (a) A person who desires a tobacco sales permit must**  
33 **provide the following to the commission:**

34 **(1) The applicant's name and mailing address, and the**  
35 **address of the location for which permit is being issued.**

36 **(2) A fee of one hundred dollars (\$100).**

37 **(b) A separate permit is required for each location where the**  
38 **tobacco products are sold or distributed.**

39 **Sec. 3. (a) A tobacco sales permit issued by the commission**  
40 **under this chapter must contain the following information:**

41 **(1) The permit number.**

42 **(2) The permit holder's address.**

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(3) The location of the business or vending machine for which the permit is issued.

(4) The expiration date of the permit.

(b) A tobacco sales permit is:

(1) valid for one (1) year from the date of issuance, unless the commission revokes the permit; and

(2) nontransferable.

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

Sec. 5. (a) Subject to subsection (b), the commission may suspend or revoke the permit of a person who violates this title, IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.5, or IC 35-46-1-11.7.

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

Sec. 6. If a tobacco sales permit has been revoked under section 5 of this chapter, the commission may not reissue a permit for that business location or permit holder for one (1) year.

Sec. 7. (a) If a tobacco sales permit is renewed before the permit expires, the fee for the renewal of a tobacco sales permit is one hundred dollars (\$100).

(b) If a tobacco sales permit has expired, been suspended, or been revoked, the fee for the reinstatement of the permit is two hundred dollars (\$200).

Sec. 8. A person who is required to have a tobacco sales permit under this chapter and who sells or distributes tobacco products without a valid tobacco sales permit commits a Class B misdemeanor. Each violation of this section constitutes a separate offense.

SECTION 7. IC 35-46-1-10, AS AMENDED BY P.L.204-2001, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: 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

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

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

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

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

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

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

19 (1) agriculture;

20 (2) processing;

21 (3) transporting;

22 (4) wholesaling; or

23 (5) retailing.

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

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

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

36 SECTION 8. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001,  
37 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or  
39 distributes tobacco to a person less than eighteen (18) years of age  
40 commits a Class C infraction. For a sale to take place under this  
41 section, the buyer must pay the retail establishment for the tobacco  
42 product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an

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1       infraction committed under this section must be imposed as follows:

2           (1) If the retail establishment at that specific business location has  
3           not been issued a citation or summons for a violation of this  
4           section in the previous ninety (90) days; a civil penalty of fifty  
5           dollars (\$50).

6           (2) If the retail establishment at that specific business location has  
7           had one (1) citation or summons issued for a violation of this  
8           section in the previous ninety (90) days; a civil penalty of one  
9           hundred dollars (\$100).

10          (3) If the retail establishment at that specific business location has  
11          had two (2) citations or summonses issued for a violation of this  
12          section in the previous ninety (90) days; a civil penalty of two  
13          hundred fifty dollars (\$250).

14          (4) If the retail establishment at that specific business location has  
15          had three (3) or more citations or summonses issued for a  
16          violation of this section in the previous ninety (90) days; a civil  
17          penalty of five hundred dollars (\$500).

18       A retail establishment may not be issued a citation or summons for a  
19       violation of this section more than once every twenty-four (24) hours  
20       for each specific business location:

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

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

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

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

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

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

40           (1) agriculture;

41           (2) processing;

42           (3) transporting;

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1           ~~(4) wholesaling; or~~

2           ~~(5) retailing.~~

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

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

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

15           SECTION 9. IC 35-46-1-11.2 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.2. ~~(a) This section~~  
17 ~~does not apply to a tobacco business:~~

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

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

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

27           ~~(c) (b)~~ A person who violates this section commits a Class C  
28 misdemeanor.

29           SECTION 10. IC 35-46-1-11.5, AS AMENDED BY P.L.1-2001,  
30 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2003]: Sec. 11.5. (a) Except for a coin machine that is placed  
32 in or directly adjacent to an entranceway or an exit, or placed in a  
33 hallway, a restroom, or another common area that is accessible to  
34 persons who are less than eighteen (18) years of age, this section does  
35 not apply to a coin machine that is located in the following:

36           (1) That part of a licensed premises (as defined in IC 7.1-1-3-20)  
37 where entry is limited to persons who are at least eighteen (18)  
38 years of age.

39           (2) Private industrial or office locations that are customarily  
40 accessible only to persons who are at least eighteen (18) years of  
41 age.

42           (3) Private clubs if the membership is limited to persons who are

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1 at least eighteen (18) years of age.

2 (4) Riverboats where entry is limited to persons who are at least  
3 twenty-one (21) years of age and on which lawful gambling is  
4 authorized.

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

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

9 (1) distribute or sell tobacco by use of a coin machine; or

10 (2) install or maintain a coin machine that is intended to be used  
11 for the sale or distribution of tobacco.

12 (d) An owner of a retail establishment who violates this section  
13 commits a Class C infraction. A citation or summons issued under this  
14 section must provide notice that the coin machine must be moved  
15 within two (2) business days. ~~Notwithstanding IC 34-28-5-4(c), a civil~~  
16 ~~judgment for an infraction committed under this section must be~~  
17 ~~imposed as follows:~~

18 (1) ~~If the owner of the retail establishment has not been issued a~~  
19 ~~citation or summons for a violation of this section in the previous~~  
20 ~~ninety (90) days, a civil penalty of fifty dollars (\$50):~~

21 (2) ~~If the owner of the retail establishment has had one (1) citation~~  
22 ~~or summons issued for a violation of this section in the previous~~  
23 ~~ninety (90) days, a civil penalty of two hundred fifty dollars~~  
24 ~~(\$250):~~

25 (3) ~~If the owner of the retail establishment has had two (2)~~  
26 ~~citations or summonses issued for a violation of this section in the~~  
27 ~~previous ninety (90) days for the same machine, the coin machine~~  
28 ~~shall be removed or impounded by a law enforcement officer~~  
29 ~~having jurisdiction where the violation occurs:~~

30 ~~An owner of a retail establishment may not be issued a citation or~~  
31 ~~summons for a violation of this section more than once every two (2)~~  
32 ~~business days for each business location:~~

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

36 SECTION 11. IC 35-46-1-11.7, AS AMENDED BY P.L.1-2001,  
37 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2003]: Sec. 11.7. (a) A retail establishment that has as its  
39 primary purpose the sale of tobacco products may not allow an  
40 individual who is less than eighteen (18) years of age to enter the retail  
41 establishment.

42 (b) An individual who is less than eighteen (18) years of age may

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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.

SECTION 12. IC 35-46-1-11.3 IS REPEALED [EFFECTIVE JULY 1, 2003].

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