



February 20, 2015

HOUSE BILL No. 1432

DIGEST OF HB 1432 (Updated February 18, 2015 4:51 pm - DI 107)

Citations Affected: IC 7.1-1; IC 7.1-7 .

Synopsis: Regulation of e-liquids. Requires a manufacturer that manufactures, bottles, or stores e-liquid to have a permit issued by the alcohol and tobacco commission (commission). Establishes requirements to obtain a permit to manufacture e-liquid. Establishes penalties for not complying with the terms of the permit. Prohibits a
(Continued next page)

Effective: July 1, 2015.

**Mahan, VanNatter, Morris, Wright,
Dermody, Gutwein, Truitt, Ziemke, Judy,
Braun, Eberhart, McNamara, Kirchhofer,
Heaton, Lucas, Carbaugh, Bacon, DeVon,
Ubelhor, Speedy, Lehe, Smith M, Cherry,
Lehman, Miller D, Negele, Klinker, Summers,
Austin, Brown C, Errington, Niezgodski,
Hale, GiaQuinta, Pryor, Torr, Arnold L, Fine,
Olthoff, Wesco, Karickhoff, Cook, Beumer,
Steuerwald, Baird, Davisson, Brown T,
Thompson, Borders, Richardson**

January 14, 2015, read first time and referred to Committee on Public Policy.
February 19, 2015, amended, reported — Do Pass.

HB 1432—LS 7390/DI 77



Digest Continued

retailer from selling e-liquid: (1) to a minor; (2) that is purchased from a manufacturer that does not have a permit; or (3) that has been altered or tampered with. Allows a permit holder to bring a civil action for violations of the e-liquids laws. Provides that e-liquid manufacturing equipment must be cleaned and sanitized to the same standard as commercial kitchens. Allows the commission to approve not less than three, independent laboratories for e-liquid sample testing. Requires manufacturing facilities to create and maintain clean room space where all mixing, bottling, and packaging of e-liquids must occur. Requires manufacturers to store and maintain three, 10 milliliter samples of e-liquid from each production batch for a period of not less than three years. Requires existing e-liquid inventory to be sold or removed prior to July 1, 2016. Requires all manufacturers to obtain a valid tobacco sales certificate, an e-liquid manufacturing permit, or a distributor's license by July 1, 2016.

HB 1432—LS 7390/DI 77



February 20, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1432

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 7.1-1-3-5.5, AS ADDED BY P.L.94-2008,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 5.5. (a) "Applicant", for purposes of
4 IC 7.1-3-18.5, means a person who applies for a tobacco sales
5 certificate.
6 (b) "Applicant", for purposes of IC 7.1-7, has the meaning set
7 forth in IC 7.1-7-2-2.
8 SECTION 2. IC 7.1-1-3-13 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. ~~Container. The term~~
10 (a) "Container", **except as provided in subsection (b)**, means a
11 receptacle in which an alcoholic beverage is immediately contained
12 and with which the alcoholic beverage contained in it is in immediate
13 contact.
14 (b) "Container", for purposes of IC 7.1-7, has the meaning set
15 forth in IC 7.1-7-2-5.
16 SECTION 3. IC 7.1-1-3-14.5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14.5. ~~Department. The~~
 2 ~~term (a) "Department", except as provided in subsection (b),~~ means
 3 the Indiana Department of State Revenue.

4 **(b) "Department", for purposes of IC 7.1-7, has the meaning set**
 5 **forth in IC 7.1-7-2-6.**

6 SECTION 4. IC 7.1-1-3-15.5, AS ADDED BY P.L.20-2013,
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2015]: Sec. 15.5. **(a) "Electronic cigarette", except as**
 9 **provided in subsection (b),** has the meaning set forth in
 10 IC 35-46-1-1.5.

11 **(b) "Electronic cigarette", for purposes of IC 7.1-7, has the**
 12 **meaning set forth in IC 7.1-7-2-7.**

13 SECTION 5. IC 7.1-1-3-25 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 25. ~~Minor. The term (a)~~
 15 ~~"Minor", except as provided in subsection (b),~~ means a person less
 16 than twenty-one (21) years of age.

17 **(b) "Minor", for purposes of IC 7.1-7, has the meaning set forth**
 18 **in IC 7.1-7-2-15.**

19 SECTION 6. IC 7.1-1-3-29 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 29. ~~Permit. The term~~
 21 ~~(a) "Permit", except as provided in subsection (b),~~ means a written
 22 authorization issued by the commission entitling its holder to
 23 manufacture, rectify, distribute, transport, sell, or otherwise deal in
 24 alcoholic beverages, all as provided in this title.

25 **(b) "Permit", for purposes of IC 7.1-7, has the meaning set forth**
 26 **in IC 7.1-7-2-16.**

27 SECTION 7. IC 7.1-1-3-30 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 30. ~~Permittee. The term~~
 29 ~~(a) "Permittee", except as provided in subsection (b),~~ means

30 ~~(a) a person who is the holder of a valid permit under this title, and;~~

31 ~~(b) Also includes including~~ an agent, servant, or employee of, or
 32 other person acting on behalf of, a permittee, whenever a permittee is
 33 prohibited from doing a certain act under this title.

34 **(b) "Permittee", for purposes of IC 7.1-7, has the meaning set**
 35 **forth in IC 7.1-7-2-17.**

36 SECTION 8. IC 7.1-1-3-47.5 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 47.5. **(a) "Tobacco**
 38 **product", except as provided in subsection (b),** has the meaning set
 39 forth in IC 7.1-6-1-3.

40 **(b) "Tobacco product", for purposes of IC 7.1-3-18.5, means a**
 41 **product that:**

42 **(1) contains tobacco, including e-liquid (as defined by**



1 **IC 7.1-7-2-8); and**
 2 **(2) is intended for human consumption.**
 3 SECTION 9. IC 7.1-7 IS ADDED TO THE INDIANA CODE AS A
 4 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
 5 **2015]:**
 6 **ARTICLE 7. VAPOR PENS AND E-LIQUID**
 7 **Chapter 1. Applicability**
 8 **Sec. 1. This article applies to the following:**
 9 **(1) The commercial manufacturing, bottling, selling,**
 10 **bartering, or importing of e-liquid in Indiana.**
 11 **(2) The sale, possession, and use of e-liquid products in**
 12 **Indiana.**
 13 **Sec. 2. This article does not limit the powers or duties of the**
 14 **commission under IC 7.1-2.**
 15 **Sec. 3. This article may not be construed to restrict or limit any**
 16 **law under IC 35-48.**
 17 **Chapter 2. Definitions**
 18 **Sec. 1. The definitions contained in this chapter apply**
 19 **throughout this article unless the context clearly requires**
 20 **otherwise.**
 21 **Sec. 2. "Applicant" means a person who applies for a permit**
 22 **under this article.**
 23 **Sec. 3. "Audit" means a procedure performed by the**
 24 **commission, including inspection of manufacturing facilities and**
 25 **preparation areas, review of required records, compliance checks,**
 26 **review of personnel working knowledge and training, and taking**
 27 **samples of e-liquid.**
 28 **Sec. 4. "Clean room" refers to the part of an e-liquid**
 29 **manufacturing facility where:**
 30 **(1) the mixing, bottling, and packaging activities are**
 31 **conducted in secure and sanitary conditions in a space that is**
 32 **kept in repair sufficient to prevent e-liquid from becoming**
 33 **contaminated;**
 34 **(2) equipment used in the manufacturing process is easily**
 35 **cleanable as defined in 410 IAC 7-24-27(a), in such a way that**
 36 **it is conducted in a manner that reasonably protects against**
 37 **contamination of e-liquid, e-liquid containers, or e-liquid**
 38 **packaging materials; and**
 39 **(3) the cleaning and sanitizing of equipment is consistent with**
 40 **the Indiana standards for public health and cleanliness that**
 41 **apply to commercial kitchens in the state.**
 42 **Sec. 5. "Container" means any receptacle that contains e-liquid.**



- 1 **Sec. 5.5. "Cooperative"** means a group of people.
- 2 **Sec. 6. "Department"** means the Indiana state department of
3 health.
- 4 **Sec. 6.5. "Distributor"** means a person who is licensed under
5 IC 6-7-2-8 that:
- 6 (1) distributes, sells, barter, or exchanges e-liquid in Indiana
7 to retail dealers for the purpose of resale; or
8 (2) purchases e-liquid directly from the manufacturer for the
9 purpose of resale.
- 10 **Sec. 7. "Electronic cigarette"** means a powered vaporizer that:
- 11 (1) is the size and shape of a traditional cigarette;
12 (2) uses a sealed nonrefillable cartridge containing not more
13 than four (4) milliliters of a liquid; and
14 (3) is intended to be vaporized and inhaled.
- 15 The term does not include a vapor pen.
- 16 **Sec. 8. "E-liquid"** means a substance that:
- 17 (1) is intended to be vaporized and inhaled using a vapor pen;
18 and
19 (2) specifically excludes substances contained in non-refillable
20 sealed cartridges of four (4) milliliters or less used in
21 e-cigarettes.
- 22 **Sec. 9. "Employee"** means a person who works directly in the
23 service of another person under an express or implied contract of
24 hire, and the employer has the direct right to control the details of
25 work performance. The term does not include a person who works
26 for any independent subcontractor, temporary service provider, or
27 an entity or person not under the direct full control of the
28 employer.
- 29 **Sec. 10. "Flavorings"** means a certified food grade additive used
30 to add flavor and that is not prohibited by law.
- 31 **Sec. 11. "Key system"** means a licensed or patented key design
32 used to prevent unauthorized duplication of keys for use in high
33 security installations, and that is prospectively exclusive to the
34 security firm for a period of at least ten (10) years.
- 35 **Sec. 12. "Locksmith"** means a person or firm who is or employs
36 at least one (1) individual who for the previous one (1) year period
37 has been certified as both of the following:
- 38 (1) a certified professional locksmith; and
39 (2) a certified registered locksmith;
40 by the Associated Locksmiths of America.
- 41 **Sec. 13. "Manufacturer"** means a person or cooperative, located
42 inside or outside of Indiana, who has been issued a permit.



1 **Sec. 14. "Manufacturing"** means the process by which an
2 e-liquid is mixed, bottled, packaged, and stored.

3 **Sec. 15. "Minor"** means an individual who is less than eighteen
4 (18) years of age.

5 **Sec. 16. "Permit"** means a written authorization issued by the
6 commission entitling the holder to manufacture, sell, or otherwise
7 deal in e-liquid, as provided in this article.

8 **Sec. 17. "Permittee"** means a person who holds a valid permit
9 under this article, including an agent of, employee of, or other
10 person acting on behalf of, a permittee.

11 **Sec. 18. "Retailer"** means a person, other than a manufacturer,
12 who in the ordinary course of the person's regular trade or
13 business:

14 (1) acquires any form of e-liquid for the purpose of resale;
15 and

16 (2) transfers the e-liquid to another person for money or other
17 consideration.

18 **Sec. 19. "Security firm"** means an entity, that is independent
19 from an applicant and manufacturer, with experience in the
20 security business who as of July 1, 2015:

21 (1) meets the qualifications under IC 7.1-7-4-1(d)(3);

22 (2) is a locksmith; and

23 (3) provides services necessary to ensure the safety and
24 security of e-liquid manufactured for sale in Indiana.

25 **Sec. 20. "Vapor pen"** means a powered vaporizer, other than an
26 electronic cigarette, that converts e-liquid to a vapor intended for
27 inhalation.

28 **Chapter 3. Duties and Responsibilities of the Alcohol and
29 Tobacco Commission**

30 **Sec. 1.** The commission is responsible for the enforcement and
31 administration of this article.

32 **Sec. 2.** The commission has the following duties and
33 responsibilities:

34 (1) To require the submission of information reports, plans,
35 and specifications that are necessary to implement this article.

36 (2) To issue permits.

37 (3) To audit facilities that manufacture or sell e-liquid.

38 (4) To charge fees to cover the costs of administering this
39 article, but not to exceed the actual costs of the commission.

40 (5) To audit random samples maintained by the manufacturer
41 to ensure the safety and quality of the e-liquid and that the
42 e-liquid meets the requirements in this article.



1 **(6) To ensure, in coordination with the department, that the**
 2 **e-liquid manufactured or sold in Indiana conforms to**
 3 **appropriate standards of identity, strength, quality, and**
 4 **purity.**

5 **(7) To approve not less than three (3) different independent**
 6 **testing laboratories to which a manufacturer may choose to**
 7 **send any e-liquid sample for testing, at the manufacturer's**
 8 **expense, as part of any audit, as directed by the commission.**

9 **Sec. 3. The commission shall adopt rules, under IC 4-22-2, that**
 10 **are necessary to administer this article.**

11 **Chapter 4. Permit Requirements**

12 **Sec. 1. (a) A manufacturer of e-liquid shall obtain a permit from**
 13 **the commission before mixing, bottling, packaging, or selling**
 14 **e-liquid to retailers or distributors in Indiana.**

15 **(b) The commission shall accept initial applications and issue**
 16 **manufacturing permits until June 30, 2016.**

17 **(c) A manufacturing permit issued by the commission is valid**
 18 **for five (5) years.**

19 **(d) An initial application for a manufacturing permit must**
 20 **include the following:**

21 **(1) Plans for the construction and operation of the**
 22 **manufacturing facility that demonstrate that the facility**
 23 **design is:**

24 **(A) designed to include a clean room space where all**
 25 **mixing, bottling, and packaging activities will occur; and**

26 **(B) capable of meeting all of the security requirements**
 27 **contained in this article.**

28 **(2) A service agreement entered into with a security firm that**
 29 **is valid for a period of five (5) years from the date of the**
 30 **application and that provides for service and support for the**
 31 **security requirements of this article. The service agreement**
 32 **must be renewable the entire length of time that the applicant**
 33 **holds a permit issued by the commission. The security firm**
 34 **shall certify that the manufacturer meets all security**
 35 **requirements found in section 6(10) through 6(15) of this**
 36 **chapter.**

37 **(3) Verified documents satisfactory to the commission from**
 38 **the security firm demonstrating that the security firm meets**
 39 **the following requirements:**

40 **(A) The security firm has continuously employed not less**
 41 **than one (1) employee for not less than the previous one (1)**
 42 **year period who is accredited or certified by both:**



- 1 (i) the Door and Hardware Institute as an Architectural
 2 Hardware Consultant; and
 3 (ii) the International Door Association as a certified
 4 Rolling Steel Fire Door Technician.
 5 (B) The security firm has at least one (1) year of
 6 commercial experience, in the preceding year, with the
 7 following:
 8 (i) Video surveillance system design and installation with
 9 remote viewing capability from a secure facility.
 10 (ii) Owning and operating a security monitoring station
 11 with ownership control and use of a redundant offsite
 12 backup security monitoring station.
 13 (iii) Operating a facility that modifies commercial hollow
 14 metal doors, frames, and borrowed lights with
 15 authorization to apply the Underwriters Laboratories
 16 label.
 17 (4) The name, telephone number, and address of the
 18 applicant.
 19 (5) The name, telephone number, and address of the
 20 manufacturing facility.
 21 (6) The projected output in liters per year of e-liquid of the
 22 manufacturing facility.
 23 (7) The name, telephone number, title, and address of the
 24 person responsible for the manufacturing facility.
 25 (8) Verification that the facility will comply with proper
 26 manufacturing processes.
 27 (9) Written consent allowing the state police department to
 28 conduct a state or national criminal history background check
 29 on any person listed on the application.
 30 (10) Written consent allowing the commission, if a permit is
 31 issued to the applicant, to enter the premises during normal
 32 business hours where the e-liquid is manufactured to conduct
 33 physical inspections, sample the product to ensure the e-liquid
 34 meets the requirements for e-liquid set forth in this article,
 35 and perform an audit.
 36 (11) A nonrefundable initial application fee of one thousand
 37 dollars (\$1,000).
 38 (12) Any other information required by the commission.
 39 Sec. 2. (a) A manufacturing permit that is renewed by the
 40 commission is valid for five (5) years.
 41 (b) A renewal application for a manufacturing permit must
 42 include the following:



- 1 (1) The name, telephone number, and address of the
2 applicant.
- 3 (2) The name, telephone number, and address of the
4 manufacturing facility.
- 5 (3) The output in liters per year of e-liquid of the
6 manufacturing facility.
- 7 (4) The name, telephone number, title, and address of the
8 person responsible for the manufacturing facility.
- 9 (5) Certification by the applicant that the applicant will
10 continue to use the security protocol approved by the
11 commission with the applicant's initial application. However,
12 if the applicant desires to change the previously approved
13 security protocol, the applicant shall submit the suggested
14 changes to the commission for approval.
- 15 (6) The security firm shall certify that the manufacturer
16 meets all security requirements found in section 6(10) through
17 6(15) of this chapter.
- 18 (7) Verification that the facility uses proper manufacturing
19 processes.
- 20 (8) Written consent allowing the state police department to
21 conduct a state or national criminal history background check
22 on any person listed on the application.
- 23 (9) Written consent allowing the commission, if a permit is
24 renewed to the applicant, to enter the premises where the
25 e-liquid is manufactured to conduct physical inspections,
26 sample the product to ensure the e-liquid meets the
27 requirements of e-liquid set forth in this article, and perform
28 an audit.
- 29 (10) A nonrefundable renewal application fee of five hundred
30 dollars (\$500).
- 31 (11) Any other information required by the commission.
- 32 **Sec. 3. The security protocol that is employed at the applicant's**
33 **facility is confidential.**
- 34 **Sec. 4. (a) A permit may not be transferred:**
- 35 (1) from the permit holder to another person; or
- 36 (2) from the location where the permit was approved or
37 renewed to another location;
- 38 **unless approved by the commission.**
- 39 **(b) The commission shall allow a permit to be transferred under**
40 **subsection (a) if the permit has not been suspended or revoked and**
41 **the new permit holder or location meets the requirements under**
42 **this article.**



1 **Sec. 5. If the information required for the initial or renewal**
2 **permit changes, the permit holder shall notify the commission**
3 **within three (3) business days of the change. If any change in the**
4 **information required for an application results in a violation of this**
5 **article, the commission may impose a penalty as provided in this**
6 **article.**

7 **Sec. 6. A manufacturing facility shall comply with the following**
8 **requirements:**

9 **(1) An e-liquid container must use a child proof cap.**

10 **(2) An e-liquid container must be secured using either ring**
11 **seals or plastic wrap.**

12 **(3) The label on an e-liquid container must identify the active**
13 **ingredients.**

14 **(4) The label must include a separate designation if the**
15 **product contains nicotine.**

16 **(5) The label must include a manufacturing date and batch**
17 **number.**

18 **(6) The label must include a scannable encryption code tied to**
19 **the batch number as proscribed by the commission.**

20 **(7) An e-liquid container must be distributed and sold within**
21 **two (2) years of the date of manufacture.**

22 **(8) The manufacturing facility must conduct all mixing,**
23 **bottling, and packaging activities in a clean room.**

24 **(9) The manufacturer must take reasonable steps to ensure**
25 **that an unauthorized ingredient is not included in any e-liquid**
26 **produced for sale in Indiana.**

27 **(10) The manufacturer must take reasonable steps to ensure**
28 **that all ingredients used in the production of e-liquid are**
29 **stored in a secure area accessible only by authorized**
30 **personnel.**

31 **(11) The manufacturer shall have a remotely monitored**
32 **security system at the facility in areas where e-liquid is mixed,**
33 **bottled, packaged, and stored.**

34 **(12) The manufacturer shall have an exclusive high security**
35 **key system that limits access to areas where e-liquid is mixed,**
36 **bottled, packaged, and stored to authorized personnel only.**

37 **(13) The manufacturer's facility must be subject to**
38 **twenty-four (24) hour video recording where e-liquid is**
39 **mixed, bottled, packaged, and stored. The video recordings**
40 **must be retained for at least thirty (30) days.**

41 **(14) The manufacturer must take reasonable steps to ensure**
42 **that only authorized personnel have access to secured areas of**



1 the facility where e-liquid is mixed, bottled, and packaged.

2 (15) The manufacturer must store and maintain three (3) ten
3 (10) milliliter sample bottles from each production batch for
4 a period of not less than three (3) years in a secure, limited
5 access area with recorded video surveillance.

6 (16) The manufacturer must submit to random audits of the
7 facility and the manufacturer's records by the commission.

8 (17) The manufacturer must submit to random site visits by
9 the commission.

10 (18) The manufacturer may own and control both the e-liquid
11 manufacturing and bottling process or subcontract with
12 another manufacturer to perform these services. All
13 manufacturers must meet the requirements of this chapter.

14 (19) The manufacturer or anyone having a financial interest
15 in a manufacturer may not have been convicted of a felony or
16 an offense involving a controlled substance.

17 Sec. 7. (a) On receipt of a completed permit application, the
18 commission shall forward a copy of the application to the state
19 police department. The state police department shall perform a
20 state or national criminal history background check of the
21 applicant and return the application to the commission along with
22 the state police department's findings from the state or national
23 background check.

24 (b) The commission shall review the permit application after it
25 is returned from the state police department under subsection (a).
26 The commission shall grant or deny a completed application for a
27 permit within sixty (60) days of receipt of the application. If the
28 commission determines that:

- 29 (1) all the requirements under this article have been met;
30 (2) the applicant is of good character; and
31 (3) the applicant has not been convicted of a felony;

32 the commission shall approve the application for issuance of the
33 permit.

34 (c) If the completed application for a permit is denied, the
35 commission must state the reasons for the denial. If a completed
36 application is denied under this section, the applicant may reapply
37 at any time.

38 **Chapter 5. Manufacturing and Safety Requirements**

39 Sec. 1. (a) E-liquid distributed and sold within Indiana may be
40 comprised of any of the following ingredients:

- 41 (1) Vegetable glycerol or vegetable glycerin.
42 (2) Propylene glycol.



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- (3) Nicotine.
- (4) Flavorings.
- (5) Water.
- (6) Other ingredients approved by the department under section 2 of this chapter or any ingredient specifically approved for inclusion in e-liquid by the federal Food and Drug Administration.

(b) A person may not purchase, sell, use, or possess any substance intended to be vaporized and inhaled in a vapor pen that contains any ingredient other than an ingredient allowed under subsection (a).

(c) All e-liquid retailers, distributors, and manufacturers who mix, bottle, or sell in Indiana prior to July 1, 2015, shall have until July 1, 2016, to:

- (1) sell or remove from retail all inventory of e-liquid manufactured prior to July 1, 2015; and
- (2) acquire either a valid tobacco sales certificate issued by the commission in accordance with IC 7.1-3-18.5-1, an e-liquid manufacturing permit issued under IC 7.1-7-4-1, or a distributor's license issued under IC 6-7-2-8.

Sec. 2. (a) A manufacturer of e-liquid may file a request with the department for approval of an ingredient to be allowed in the composition of e-liquid.

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

Chapter 6. Violations and Penalties

Sec. 1. (a) If a manufacturer violates this article, the manufacturer may be reprimanded, assessed a civil penalty, or have the manufacturer's permit suspended, or in the case of gross or willful misconduct, the permit holder may have the manufacturer's permit revoked for a period of up to one (1) year. At the end of the revocation period, the manufacturer may apply to the commission for reinstatement of the permit.

(b) The commission may assess a civil penalty against a manufacturer for a violation of this article in an amount that does not exceed ten thousand dollars (\$10,000). A civil penalty may be assessed in addition to other penalties allowed under this article.

Sec. 2. (a) If a retailer knowingly sells e-liquid:

- (1) to a minor;
- (2) purchased from a manufacturer that does not have a permit; or



1 **(3) that has been altered or tampered with;**
 2 **the retailer commits a Class C infraction. For a sale to take place**
 3 **under this section, the buyer must pay the retail establishment for**
 4 **the e-liquid.**

5 **(b) Notwithstanding IC 34-28-5-4(c), a civil judgment for an**
 6 **infraction committed under this section must be imposed as**
 7 **follows:**

8 **(1) If the retail establishment at that specific business location**
 9 **has not been issued a citation or summons for a violation of**
 10 **this section in the previous one hundred eighty (180) days, a**
 11 **civil penalty of up to two hundred dollars (\$200).**

12 **(2) If the retail establishment at that specific business location**
 13 **has had one (1) citation or summons issued for a violation of**
 14 **this section in the previous one hundred eighty (180) days, a**
 15 **civil penalty of up to four hundred dollars (\$400).**

16 **(3) If the retail establishment at that specific business location**
 17 **has had two (2) citations or summonses issued for a violation**
 18 **of this section in the previous one hundred eighty (180) days,**
 19 **a civil penalty of up to seven hundred dollars (\$700).**

20 **(4) If the retail establishment at that specific business location**
 21 **has had three (3) or more citations or summonses issued for**
 22 **a violation of this section in the previous one hundred eighty**
 23 **(180) days, a civil penalty of up to one thousand dollars**
 24 **(\$1,000).**

25 **A retail establishment may not be issued a citation or summons for**
 26 **a violation of this section more than once every twenty-four (24)**
 27 **hours for each specific business location.**

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

30 **(d) The following defenses are available to a retail establishment**
 31 **accused of selling or distributing e-liquid to a person who is less**
 32 **than eighteen (18) years of age:**

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

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

41 **(3) The appearance of the purchaser or recipient was such**
 42 **that an ordinary prudent person would believe that the**



- 1 purchaser or recipient was not less than the age that complies
 2 with regulations promulgated by the federal Food and Drug
 3 Administration.
- 4 (e) It is a defense that the accused retail establishment sold or
 5 delivered e-liquid to a person who acted in the ordinary course of
 6 employment or a business concerning e-liquid:
- 7 (1) agriculture;
 8 (2) processing;
 9 (3) transporting;
 10 (4) wholesaling; or
 11 (5) retailing.
- 12 (f) As used in this section, "distribute" means to give e-liquid to
 13 another person as a means of promoting, advertising, or marketing
 14 e-liquid to the general public.
- 15 (g) Unless a person buys or receives e-liquid under the direction
 16 of a law enforcement officer as part of an enforcement action, a
 17 retail establishment that sells or distributes e-liquid is not liable for
 18 a violation of this section unless the person less than eighteen (18)
 19 years of age who bought or received the e-liquid is issued a citation
 20 or summons in violation of this article.
- 21 (h) Notwithstanding IC 34-28-5-5(c), civil penalties collected
 22 under this section must be deposited in the Richard D. Doyle youth
 23 tobacco education and enforcement fund (IC 7.1-6-2-6).
- 24 (i) A person who violates subsection (a) at least six (6) times in
 25 any one hundred eighty (180) day period commits habitual illegal
 26 sale of e-liquid, a Class B infraction.
- 27 **Sec. 3. (a)** Except as otherwise permitted by this article, a person
 28 may not purchase, receive, manufacture, import, or transport, or
 29 cause to be imported or transported from another state, territory,
 30 or country into Indiana, or transport, ship, barter, give away,
 31 exchange, furnish, or otherwise handle or dispose of e-liquid, or to
 32 possess e-liquid for purpose of sale.
- 33 (b) A person may not knowingly receive or acquire e-liquid
 34 from a person or authorized distributor who does not hold a valid
 35 permit under this article to sell, deliver, furnish, or give the
 36 e-liquid.
- 37 (c) A person who violates this section commits a Class A
 38 infraction.
- 39 **Sec. 4.** A permittee may bring a civil action against any person
 40 or entity who violates this article. A permittee may bring the civil
 41 action in a court with jurisdiction in Indiana:
- 42 (1) based on a violation of this article or the rules adopted by



1 **the commission to enjoin the violation; and**
2 **(2) to recover for actual monetary loss from the violation.**
3 **The court shall award attorney's fees to the prevailing party.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1432, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 33, delete "and".

Page 3, line 34, delete "the cleaning and sanitizing of".

Page 3, line 34, after "equipment" insert **"used in the manufacturing process is easily cleanable as defined in 410 IAC 7-24-27(a), in such a way that it"**.

Page 3, line 36, delete "." and insert **"; and**

(3) the cleaning and sanitizing of equipment is consistent with the Indiana standards for public health and cleanliness that apply to commercial kitchens in the state."

Page 3, line 37, delete "refillable and unsealed receptacles" and insert **"any receptacle that contains e-liquid."**

Page 3, delete lines 38 through 41.

Page 3, between lines 41 and 42, begin a new paragraph and insert: **"Sec. 5.5. "Cooperative" means a group of people."**

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"Sec. 6.5. "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 the manufacturer for the purpose of resale."

Page 4, line 5, delete "two (2)" and insert **"four (4)"**.

Page 4, line 8, delete "is".

Page 4, line 9, after "(1)" insert **"is"**.

Page 4, line 11, delete "manufactured and sold in a refillable or unsealed" and insert **"specifically excludes substances contained in non-refillable sealed cartridges of four (4) milliliters or less used in e-cigarettes."**

Page 4, delete line 12.

Page 4, line 28, delete "a:" and insert **"both of the following:"**.

Page 4, line 29, after "(1)" insert **"a"**.

Page 4, line 30, after "(2)" insert **"a"**.

Page 4, line 32, after "person" insert **"or cooperative, located inside or outside of Indiana,"**.

Page 5, line 11, delete "and that:" and insert **"who as of July 1, 2015:"**.



Page 5, line 27, delete "and charge fees".

Page 5, between lines 28 and 29, begin a new line block indented and insert:

(4) To charge fees to cover the costs of administering this article, but not to exceed the actual costs of the commission."

Page 5, line 29, delete "(4)" and insert "(5)".

Page 5, line 29, delete "take" and insert "audit".

Page 5, line 29, after "samples" insert **"maintained by the manufacturer"**.

Page 5, line 32, delete "(5)" and insert "(6)".

Page 5, between lines 35 and 36, begin a new line block indented and insert:

"(7) To approve not less than three (3) different independent testing laboratories to which a manufacturer may choose to send any e-liquid sample for testing, at the manufacturer's expense, as part of any audit, as directed by the commission."

Page 5, line 41, after "e-liquid" insert **"to retailers or distributors"**.

Page 6, delete lines 9 through 10, begin a new line double block indented and insert:

"(A) designed to include a clean room space where all mixing, bottling, and packaging activities will occur; and".

Page 6, line 18, after "commission." insert **"The security firm shall certify that the manufacturer meets all security requirements found in section 6(10) through 6(15) of this chapter."**

Page 6, line 19, delete "Documentation" and insert **"Verified documents satisfactory to the commission"**.

Page 6, line 23, delete "by:" and insert **"by both:"**.

Page 7, line 2, delete "gallons" and insert **"liters"**.

Page 7, line 12, after "premises" insert **"during normal business hours"**.

Page 7, line 17, delete "five" and insert **"one"**.

Page 7, line 18, delete "\$5,000)." and insert **"(\$1,000)."**

Page 7, line 28, delete "gallons" and insert **"liters"**.

Page 7, between lines 37 and 38, begin a new line block indented and insert:

"(6) The security firm shall certify that the manufacturer meets all security requirements found in section 6(10) through 6(15) of this chapter."

Page 7, line 38, delete "(6)" and insert "(7)".

Page 7, line 40, delete "(7)" and insert "(8)".

Page 8, line 1, delete "(8)" and insert "(9)".

Page 8, line 7, delete "(9)" and insert "(10)".



Page 8, line 7, delete "one thousand" and insert "**five hundred**".

Page 8, line 8, delete "(\$1,000)." and insert "**(\$500)**".

Page 8, line 9, delete "(10)" and insert "**(11)**".

Page 8, line 11, delete "confidential and not a public record under IC 5-14-3-4." and insert "**confidential**".

Page 8, line 42, delete "comply with reasonable" and insert "**conduct all mixing, bottling, and packaging activities in a clean room**".

Page 9, delete lines 1 through 2.

Page 9, line 10, delete "manufacturer's security firm" and insert "**manufacturer**".

Page 9, line 10, delete "install" and insert "**have**".

Page 9, line 13, delete "manufacturer's security firm" and insert "**manufacturer**".

Page 9, line 13, delete "install" and insert "**have**".

Page 9, line 18, delete "with remote viewing".

Page 9, line 19, delete "capability in areas".

Page 9, between lines 24 and 25, begin a new line block indented and insert:

"(15) The manufacturer must store and maintain three (3) ten (10) milliliter sample bottles from each production batch for a period of not less than three (3) years in a secure, limited access area with recorded video surveillance."

Page 9, line 25, delete "(15)" and insert "**(16)**".

Page 9, line 27, delete "(16)" and insert "**(17)**".

Page 9, line 29, delete "(17)" and insert "**(18)**".

Page 9, line 29, delete "must" and insert "**may**".

Page 9, line 30, after "bottling process" insert "**or subcontract with another manufacturer to perform these services. All manufacturers must meet the requirements of this chapter**".

Page 9, line 31, delete "(18)" and insert "**(19)**".

Page 9, line 33, delete "moral turpitude or".

Page 10, line 23, delete "chapter." and insert "**chapter or any ingredient specifically approved for inclusion in e-liquid by the federal Food and Drug Administration**".

Page 10, between lines 27 and 28, begin a new paragraph and insert:

"(c) All e-liquid retailers, distributors, and manufacturers who mix, bottle, or sell in Indiana prior to July 1, 2015, shall have until July 1, 2016, to:

- (1) sell or remove from retail all inventory of e-liquid manufactured prior to July 1, 2015; and**
- (2) acquire either a valid tobacco sales certificate issued by**



the commission in accordance with IC 7.1-3-18.5-1, an e-liquid manufacturing permit issued under IC 7.1-7-4-1, or a distributor's license issued under IC 6-7-2-8."

Page 12, line 41, after "person" insert "**or authorized distributor**".
and when so amended that said bill do pass.

(Reference is to HB 1432 as introduced.)

DERMODY

Committee Vote: yeas 9, nays 2.

