

SENATE BILL No. 1

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-7.

Synopsis: E-liquids. Removes date restrictions in the e-liquids statutes. Removes the following requirements for an initial e-liquids manufacturing permit: (1) Construction and operation plans for manufacturing facilities. (2) Service agreements. (3) Security firm specifications. (4) Projected e-liquid production outputs. (5) Manufacturing process verifications. (6) Consent for the alcohol and tobacco commission (ATC) to conduct inspections. Requires a manufacturer to verify that it complies with manufacturing practices and ingredient listing requirements required by federal law. Removes the following renewal application requirements: (1) E-liquids production outputs. (2) Security certifications. (3) Consent for the ATC to conduct inspections. Requires a manufacturer to: (1) ensure that an e-liquid does not become adulterated; and (2) comply with registration requirements required by federal law. Removes language concerning security protocol confidentiality. Removes specific requirements concerning remotely monitored security systems. Removes requirements regarding a manufacturer keeping sample bottles from each batch of e-liquids produced. Provides that the ATC shall cover the cost of criminal history background checks. Removes e-liquid ingredient restrictions. Requires a manufacturer to submit a list of ingredients used in the manufacturer's e-liquid production to the ATC. Adds to the definition of "e-liquid" that an e-liquid is a substance that contains nicotine. Provides that an electronic cigarette uses a sealed nonrefillable cartridge containing not more than 5 milliliters of a liquid. Provides that a retailer who fails to verify the age of a person less than
(Continued next page)

Effective: July 1, 2017.

Head

January 17, 2017, read first time and referred to Committee on Judiciary.



Digest Continued

27 years of age and sells the person e-liquids commits a Class C infraction. Provides that the federal Food and Drug Administration has sole jurisdiction to enforce a manufacturer to comply with certain federal laws.



Introduced

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 1

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 7.1-7-1-2, AS ADDED BY P.L.176-2015,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 2. The purpose of this article is ~~in the absence of~~
4 ~~federal regulations~~; to protect public health and safety by:
5 (1) ensuring the safety and security of e-liquid manufactured for
6 sale in Indiana;
7 (2) ensuring that e-liquid manufactured or sold in Indiana
8 conforms to appropriate standards of identity, strength, quality,
9 and purity; and
10 (3) ensuring that e-liquid is not contaminated or adulterated by
11 the inclusion of ingredients or other substances that might pose
12 unreasonable threats to public health and safety.
13 SECTION 2. IC 7.1-7-2-3 IS REPEALED [EFFECTIVE JULY 1,
14 2017]. Sec. 3: "Audit" means a procedure performed by the
15 commission; including inspection of manufacturing facilities and

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1 preparation areas, review of required records, compliance checks, and
2 auditing of samples of e-liquid:

3 SECTION 3. IC 7.1-7-2-4 IS REPEALED [EFFECTIVE JULY 1,
4 2017]. Sec. 4. "Clean room" refers to the part of an e-liquid
5 manufacturing facility where:

6 (1) the mixing and bottling activities are conducted in secure and
7 sanitary conditions in a space that is kept in repair sufficient to
8 prevent e-liquid from becoming contaminated;

9 (2) equipment used in the manufacturing process is easily
10 cleanable, as defined in 410 IAC 7-24-27(a), in such a way that it
11 protects against contamination of e-liquid, e-liquid containers, or
12 e-liquid packaging materials; and

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

16 SECTION 4. IC 7.1-7-2-6, AS ADDED BY P.L.176-2015,
17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2017]: Sec. 6. "Cooperative" means any group of people who
19 join together to manufacture e-liquids. **The term does not mean a**
20 **member of a distribution chain or component parts supplier.**

21 SECTION 5. IC 7.1-7-2-9, AS ADDED BY P.L.176-2015,
22 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2017]: Sec. 9. "Electronic cigarette" means a powered
24 vaporizer that:

25 (1) is the size and shape of a traditional cigarette;

26 (2) uses a sealed nonrefillable cartridge containing not more than
27 ~~four~~ **(4) five (5)** milliliters of a liquid; and

28 (3) is intended to be vaporized and inhaled.

29 The term does not include a vapor ~~pen~~ **product**.

30 SECTION 6. IC 7.1-7-2-10, AS ADDED BY P.L.176-2015,
31 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2017]: Sec. 10. "E-liquid" means a substance that:

33 (1) **contains nicotine;**

34 (2) is intended to be vaporized and inhaled using a vapor ~~pen~~;
35 **product;** and

36 (2) ~~(3)~~ specifically excludes substances contained in nonrefillable
37 sealed cartridges of ~~four~~ **(4) five (5)** milliliters or less used in
38 electronic cigarettes.

39 SECTION 7. IC 7.1-7-2-12 IS REPEALED [EFFECTIVE JULY 1,
40 2017]. Sec. 12. "Flavorings" means a food grade additive or synthetic
41 flavoring substance that is used to add flavor; that is approved by the
42 federal Food and Drug Administration as a permissible flavoring; and



1 that is not prohibited by law.

2 SECTION 8. IC 7.1-7-2-13 IS REPEALED [EFFECTIVE JULY 1,
3 2017]. Sec. ~~13~~: "Key system" means a licensed or patented key design
4 used to prevent unauthorized duplication of keys for use in high
5 security installations; and that is prospectively exclusive to the security
6 firm for a period of at least ten (10) years.

7 SECTION 9. IC 7.1-7-2-14 IS REPEALED [EFFECTIVE JULY 1,
8 2017]. Sec. ~~14~~: "Locksmith" means a person who; or a firm that
9 employs at least one (1) employee who; for the previous one (1) year
10 period has been certified as a certified professional locksmith by the
11 Associated Locksmiths of America.

12 SECTION 10. IC 7.1-7-2-16, AS ADDED BY P.L.176-2015,
13 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2017]: Sec. 16. "Manufacturing" means the process by which
15 an e-liquid is mixed, bottled, **and** packaged. ~~and stored.~~

16 SECTION 11. IC 7.1-7-2-20 IS REPEALED [EFFECTIVE JULY
17 1, 2017]. Sec. ~~20~~: "Quick response code" means a two (2) dimensional
18 bar code that is used to provide easy access to information through a
19 smartphone or other electronic mobile device.

20 SECTION 12. IC 7.1-7-2-22 IS REPEALED [EFFECTIVE JULY
21 1, 2017]. Sec. ~~22~~: "Security firm" means an entity that:

22 (1) is independent from an applicant and manufacturer;

23 (2) has experience in the security business; and

24 (3) as of July 1, 2015:

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

26 (B) is a locksmith; and

27 (C) provides services necessary to ensure the safety and
28 security of e-liquid manufactured for sale in Indiana.

29 SECTION 13. IC 7.1-7-2-23, AS ADDED BY P.L.176-2015,
30 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2017]: Sec. 23. "Vapor ~~pen~~ **product**" means a powered
32 vaporizer, other than an electronic cigarette, that converts e-liquid to
33 a vapor intended for inhalation.

34 SECTION 14. IC 7.1-7-3-2, AS ADDED BY P.L.176-2015,
35 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2017]: Sec. 2. (~~a~~) The commission has the following duties
37 and responsibilities:

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

40 (2) To issue permits.

41 (3) To charge fees as set forth in this article. The fees charged
42 under this subdivision may not exceed the actual costs incurred by



1 the commission.

2 (4) To audit facilities that manufacture or sell e-liquid.

3 (5) To audit random samples maintained by the manufacturer to
4 ensure the safety and quality of the e-liquid and that the e-liquid
5 meets the requirements in this article:

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

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

13 (b) All records subject to audit by the commission under subsection
14 (a) are declared confidential for the purposes of IC 5-14-3-4(a)(1) and
15 are not subject to inspection or copying by the public.

16 SECTION 15. IC 7.1-7-3-3, AS ADDED BY P.L.176-2015,
17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2017]: Sec. 3. (a) ~~Not later than December 31, 2015,~~ The
19 commission shall adopt rules under IC 4-22-2, including emergency
20 rules under IC 4-22-2-37.1, to implement this article.

21 (b) The commission shall adopt rules as described in subsection (a)
22 to establish minimum eligibility requirements for testing e-liquids
23 under this article:

24 SECTION 16. IC 7.1-7-4-1, AS AMENDED BY P.L.214-2016,
25 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2017]: Sec. 1. (a) A manufacturer of e-liquid shall obtain a
27 permit from the commission before mixing, bottling, packaging, or
28 selling **may not mix, bottle, package, or sell** e-liquid to retailers or
29 distributors in Indiana **without a permit issued by the commission**
30 **under this article.**

31 (b) The commission shall accept initial applications and issue
32 manufacturing permits until June 30, 2016.

33 (c) (b) A manufacturing permit issued by the commission is valid
34 for five (5) years.

35 (d) (c) An initial application for a manufacturing permit must
36 include the following:

37 (1) Plans for the construction and operation of the manufacturing
38 facility that demonstrate that the facility design is:

39 (A) designed to include a clean room space where all mixing
40 and bottling activities will occur; and

41 (B) capable of meeting all of the security requirements
42 contained in this article:



- 1 (2) A service agreement that:
 2 (A) the applicant has entered into with a security firm;
 3 (B) is valid for a period of five (5) years after the date of the
 4 permit application;
 5 (C) provides for the security firm to provide service and
 6 support to meet the security requirements established by this
 7 article;
 8 (D) requires the security firm to certify that the manufacturer
 9 meets all requirements set forth in IC 7.1-7-4-6(10) through
 10 IC 7.1-7-4-6(15);
 11 (E) prohibits the security firm from withholding its
 12 certification as described in clause (D) because the security
 13 equipment of the applicant is not sold by or proprietary to the
 14 security firm; and
 15 (F) is renewable for the entire length of time that the applicant
 16 holds a permit issued by the commission.
- 17 (3) Verified documents satisfactory to the commission from the
 18 security firm demonstrating that the security firm meets the
 19 following requirements:
 20 (A) The security firm has continuously employed for not less
 21 than the previous one (1) year period, both of the following:
 22 (i) At least one (1) employee who is accredited or certified
 23 by the Door and Hardware Institute as an Architectural
 24 Hardware Consultant;
 25 (ii) At least one (1) employee who is accredited or certified
 26 as a certified Rolling Steel Fire Door Technician by the
 27 International Door Association or the Institute of Door
 28 Dealer Education and Accreditation.
 29 However, the security firm meets the requirements of this
 30 clause if the security firm continuously employed, for not less
 31 than the previous one (1) year period, one (1) employee who
 32 is accredited or certified under both item (i) and item (ii).
 33 (B) The security firm has at least one (1) year of commercial
 34 experience, in the preceding year, with the following:
 35 (i) Video surveillance system design and installation with
 36 remote viewing capability from a secure facility.
 37 (ii) Owning and operating a security monitoring station with
 38 ownership control and use of a redundant offsite backup
 39 security monitoring station.
 40 (iii) Operating a facility that modifies commercial hollow
 41 metal doors, frames, and borrowed lights with authorization
 42 to apply the Underwriters Laboratories label.



- 1 ~~(4)~~ (1) The name, telephone number, and address of the applicant.
- 2 ~~(5)~~ (2) The name, telephone number, and address of the
- 3 manufacturing facility.
- 4 ~~(6)~~ The projected output in liters per year of e-liquid of the
- 5 manufacturing facility.
- 6 ~~(7)~~ (3) The name, telephone number, title, and address of the
- 7 person responsible for the manufacturing facility.
- 8 ~~(8)~~ (4) Verification that the facility ~~will comply~~ **complies** with
- 9 proper manufacturing processes. **applicable tobacco products**
- 10 **good manufacturing practices promulgated under 21 U.S.C.**
- 11 **387f(e) of the federal Food, Drug, and Cosmetic Act.**
- 12 **(5) Verification that the manufacturer has complied with the**
- 13 **applicable ingredient listing required by 21 U.S.C. 387d(a)(1)**
- 14 **of the federal Food, Drug, and Cosmetic Act.**
- 15 ~~(9)~~ (6) Written consent allowing the state police department to
- 16 conduct a state or national criminal history background check on
- 17 any person listed on the application.
- 18 ~~(10)~~ Written consent allowing the commission, after a permit is
- 19 issued to the applicant, to enter during normal business hours the
- 20 premises where the e-liquid is manufactured to conduct physical
- 21 inspections; sample the product to ensure the e-liquid meets the
- 22 requirements for e-liquid set forth in this article; and perform an
- 23 audit.
- 24 ~~(11)~~ (7) A nonrefundable initial application fee of one thousand
- 25 dollars (\$1,000).
- 26 ~~(12)~~ (8) Any other information required by the commission for
- 27 purposes of administering this article.
- 28 SECTION 17. IC 7.1-7-4-2, AS ADDED BY P.L.176-2015,
- 29 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 30 JULY 1, 2017]: Sec. 2. (a) A manufacturing permit that is renewed by
- 31 the commission is valid for five (5) years.
- 32 (b) A renewal application for a manufacturing permit must include
- 33 the following:
- 34 (1) The name, telephone number, and address of the applicant.
- 35 (2) The name, telephone number, and address of the
- 36 manufacturing facility.
- 37 ~~(3)~~ The annual output in liters of e-liquid of the manufacturing
- 38 facility for the five (5) years preceding the year of the application.
- 39 ~~(4)~~ (3) The name, telephone number, title, and address of the
- 40 person responsible for the manufacturing facility.
- 41 ~~(5)~~ Certification by the applicant that the applicant will continue
- 42 to use the security protocol approved by the commission with the



1 applicant's initial application. However, if the applicant desires to
 2 change the previously approved security protocol, the applicant
 3 shall submit the suggested changes to the commission for
 4 approval.

5 (6) Certification by the security firm with which the manufacturer
 6 has a security agreement that the manufacturer meets all security
 7 requirements set forth in section 6(10) through 6(15) of this
 8 chapter and that the security firm will not withhold its
 9 certification because the security equipment of the manufacturer
 10 is not sold by or proprietary to the security firm.

11 (7) (4) Verification that the facility uses proper manufacturing
 12 processes.

13 (8) (5) Written consent allowing the state police department to
 14 conduct a state or national criminal history background check on
 15 any person listed on the application.

16 (9) Written consent allowing the commission, if a permit is
 17 renewed to the applicant, to enter the premises where the e-liquid
 18 is manufactured to conduct physical inspections, sample the
 19 product to ensure the e-liquid meets the requirements of e-liquid
 20 set forth in this article, and perform an audit.

21 (10) (6) A nonrefundable renewal application fee of five hundred
 22 dollars (\$500).

23 (11) (7) Any other information required by the commission for
 24 purposes of administering this article.

25 SECTION 18. IC 7.1-7-4-3 IS REPEALED [EFFECTIVE JULY 1,
 26 2017]. Sec. 3: The security protocol that is employed at the applicant's
 27 facility is confidential under IC 5-14-3-4.

28 SECTION 19. IC 7.1-7-4-6, AS ADDED BY P.L.231-2015,
 29 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2017]: Sec. 6. (a) As used in this section, "tamper evident
 31 package" means a package having at least one (1) indicator or barrier
 32 to entry that, if breached or missing, can reasonably be expected to
 33 provide visible evidence to consumers that tampering has occurred.

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

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

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



- 1 container.
- 2 (3) The label on an e-liquid container must ~~identify the active~~
 3 ~~ingredients; meet the nicotine addictiveness warning statement~~
 4 ~~requirements set forth in 21 CFR 1143.3.~~
- 5 (4) The label must include a separate designation if the product
 6 contains nicotine.
- 7 (5) (4) The label or container must include a:
 8 (A) ~~batch number; lot code;~~ and
 9 (B) means for the commission to obtain the manufacturing
 10 date.
- 11 (6) The label must include a scannable code, including a quick
 12 response code, tied to the batch number as prescribed by the
 13 commission.
- 14 (7) An e-liquid container must be distributed by the manufacturer
 15 and sold by the manufacturer or the retailer by the earlier of
 16 either:
 17 (A) the expiration or "best if used by" date; or
 18 (B) two (2) years of the date of manufacture.
- 19 (8) The manufacturing facility must conduct all mixing and
 20 bottling activities in a clean room.
- 21 (9) The manufacturer must take reasonable steps to ensure that an
 22 unauthorized ingredient is not included in any e-liquid produced
 23 for sale in Indiana.
- 24 (5) The manufacturer must comply with all tobacco products
 25 good manufacturing practices:
 26 (A) set forth in; and
 27 (B) promulgated in federal rules under;
 28 21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food,
 29 Drug, and Cosmetic Act.
- 30 (6) The manufacturer shall take commercially reasonable
 31 steps to ensure that an e-liquid has not become adulterated as
 32 required by 21 U.S.C. 387b(1) through 21 387b(3) of the
 33 federal Food, Drug, and Cosmetic Act.
- 34 (10) (7) The manufacturer must take reasonable steps to ensure
 35 that all ingredients used in the production of e-liquid are stored in
 36 a secure area accessible only by authorized personnel.
- 37 (11) (8) The manufacturer shall have a remotely monitored
 38 security system at the facility. ~~in areas where e-liquid is mixed;~~
 39 ~~bottled; packaged; and stored.~~
- 40 (12) The manufacturer shall have an exclusive high security key
 41 system that limits access to areas where e-liquid is mixed, bottled,
 42 packaged, and stored to authorized personnel only.



1 ~~(13)~~ The manufacturer's facility must be subject to twenty-four
 2 ~~(24)~~ hour video recording where e-liquid is mixed, bottled,
 3 packaged, and stored. The video recordings must be retained for
 4 at least thirty ~~(30)~~ days.

5 ~~(14)~~ **(9)** The manufacturer must take reasonable steps to ensure
 6 that only authorized personnel have access to secured areas of the
 7 facility where e-liquid is mixed, bottled, and packaged.

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

12 ~~(16)~~ The manufacturer must submit to random audits of the
 13 facility and the manufacturer's samples and records by the
 14 commission.

15 ~~(17)~~ The manufacturer must submit to random site visits by the
 16 commission.

17 **(10)** A manufacturer must comply with the registration
 18 requirements required by 21 U.S.C. 387e(a) through (e) and
 19 21 U.S.C. 387e(i) of the federal Food, Drug, and Cosmetic Act.

20 ~~(18)~~ **(11)** The manufacturer may:

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

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

26 However, both the manufacturer performing a service under
 27 clause (B) and the manufacturer for which the service is
 28 performed must meet the requirements of this article.

29 ~~(19)~~ **(12)** The manufacturer or any person listed on the permit
 30 application may not have been convicted of a felony or an offense
 31 involving a controlled substance.

32 SECTION 20. IC 7.1-7-4-7, AS ADDED BY P.L.176-2015,
 33 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2017]: Sec. 7. (a) On receipt of a completed permit
 35 application, the commission shall forward a copy of the application to
 36 the state police department.

37 **(b)** The state police department shall perform a state or national
 38 criminal history background check of the applicant and return the
 39 application to the commission along with the state police department's
 40 findings from the state or national background check. ~~The applicant is~~
 41 responsible for the cost of a state or national criminal history
 42 background check conducted under this article. ~~The commission is~~



1 **responsible for the cost of a state or national criminal history**
 2 **background check.**

3 ~~(b)~~ (c) The commission shall review the permit application after it
 4 is returned from the state police department under subsection ~~(a)~~: (b).
 5 The commission shall grant or deny a completed application for a
 6 permit within sixty (60) days of receipt of the application. If the
 7 commission determines that:

- 8 (1) all the requirements under this article have been met; and
 9 (2) the applicant has not been convicted of a felony involving a
 10 controlled substance;

11 the commission shall approve the application for issuance of the
 12 permit.

13 ~~(c)~~ (d) If the completed application for a permit is denied, the
 14 commission must state the reasons for the denial. If a completed
 15 application is denied under this section, the applicant may reapply
 16 within thirty (30) days after the date of the denial. There is no
 17 application fee for a reapplication under this subsection.

18 SECTION 21. IC 7.1-7-5-1, AS ADDED BY P.L.176-2015,
 19 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2017]: Sec. 1. ~~(a) E-liquid distributed and sold within Indiana~~
 21 ~~may be comprised of any of the following ingredients:~~

- 22 ~~(1) Vegetable glycerol or vegetable glycerin.~~
 23 ~~(2) Propylene glycol.~~
 24 ~~(3) Nicotine.~~
 25 ~~(4) Flavorings.~~
 26 ~~(5) Water.~~
 27 ~~(6) Other ingredients approved by the department under section~~
 28 ~~2 of this chapter or any ingredient specifically approved for~~
 29 ~~inclusion in e-liquid by the federal Food and Drug~~
 30 ~~Administration.~~

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

34 ~~(c) All e-liquid retailers, distributors, and manufacturers who mix,~~
 35 ~~bottle, or sell e-liquid in Indiana before July 1, 2015, shall before July~~
 36 ~~1, 2016:~~

- 37 ~~(1) sell or remove from retail all inventory of e-liquid~~
 38 ~~manufactured before July 1, 2015, that was not manufactured;~~
 39 ~~mixed; bottled; packaged; stored; or sold in compliance with this~~
 40 ~~article; or~~
 41 ~~(2) acquire:~~
 42 ~~(A) (1) a valid tobacco sales certificate issued by the commission~~



1 in accordance with IC 7.1-3-18.5-1 that contains a separate box
 2 to check for identifying a retailer that sells e-liquids;
 3 ~~(B)~~ **(2)** an e-liquid manufacturing permit issued under IC 7.1-7-4;
 4 or
 5 ~~(C)~~ **(3)** a distributor's license issued under IC 6-7-2-8.

6 SECTION 22. IC 7.1-7-6-1, AS ADDED BY P.L.176-2015,
 7 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2017]: Sec. 1. (a) If a manufacturer violates this article, the
 9 manufacturer may be reprimanded, assessed a civil penalty, or have the
 10 manufacturer's permit suspended. ~~In the case of gross or willful~~
 11 ~~misconduct, the permit holder may have the manufacturer's permit~~
 12 ~~suspended for a period of up to one (1) year. At the end of the~~
 13 ~~suspension period, the manufacturer may apply to the commission for~~
 14 ~~reinstatement of the permit.~~

15 **(b) Any requirement in this article that a manufacturer must**
 16 **comply with the federal Food, Drug, and Cosmetic Act or a federal**
 17 **rule promulgated under the federal Food, Drug, and Cosmetic Act**
 18 **shall be the sole jurisdiction of the federal Food and Drug**
 19 **Administration. If the federal Food and Drug Administration seeks**
 20 **court enforcement of any section of the federal Food, Drug, and**
 21 **Cosmetic Act cited by this article and a civil monetary penalty is**
 22 **assessed against the manufacturer, the penalty constitutes a**
 23 **violation of this article.**

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

28 SECTION 23. IC 7.1-7-6-2, AS ADDED BY P.L.176-2015,
 29 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2017]: Sec. 2. (a) If a retailer: ~~knowingly sells e-liquid:~~

- 31 **(1) knowingly sells e-liquid to a minor; or**
 32 ~~(2) purchased from a manufacturer that does not have a permit; or~~
 33 ~~(3) (2) that has been altered or tampered with; knowingly,~~
 34 **intentionally, or negligently fails to verify the age of a person**
 35 **who appears to be less than twenty-seven (27) years of age by**
 36 **checking a government issued identification and sells the**
 37 **person e-liquid;**

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

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

- 42 (1) If the retail establishment at that specific business location has



1 not been issued a citation or summons for a violation of this
 2 section in the previous one hundred eighty (180) days, a civil
 3 penalty of up to two hundred dollars (\$200).

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

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

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

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

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

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

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

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

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

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

38 (1) agriculture;

39 (2) processing;

40 (3) transporting;

41 (4) wholesaling; or

42 (5) retailing.



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

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

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

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

16 SECTION 24. IC 7.1-7-6-3, AS ADDED BY P.L.176-2015,
 17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2017]: Sec. 3. (a) Except as otherwise permitted by this
 19 article, a person may not purchase, receive, manufacture, import, or
 20 transport, or cause to be imported or transported from another state,
 21 territory, or country into Indiana, or transport, ship, barter, give away,
 22 exchange, furnish, or otherwise handle or dispose of e-liquid, or to
 23 possess e-liquid for purpose of **retail sale in Indiana.**

24 (b) A person may not knowingly receive or acquire e-liquid from a
 25 person or authorized distributor who does not hold a valid permit under
 26 this article to sell, deliver, furnish, or give the e-liquid.

27 (c) A person who violates this section commits a Class A infraction.

