



February 24, 2017

SENATE BILL No. 1

DIGEST OF SB 1 (Updated February 22, 2017 4:14 pm - DI 107)

Citations Affected: IC 7.1-7; noncode.

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. (7) Any other information required by the ATC. 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. (4) Any other information required by the ATC. 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.
(Continued next page)

Effective: Upon passage.

**Head, Alting, Boots, Holdman,
Merritt, Doriot, Bohacek, Smith J,
Walker, Becker, Charbonneau, Kruse,
Raatz, Young M, Zay, Messmer,
Lanane, Tomes, Mishler, Bassler, Ford**

January 17, 2017, read first time and referred to Committee on Judiciary.
February 23, 2017, amended, reported favorably — Do Pass.

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Digest Continued

Removes requirements regarding a manufacturer: (1) Keeping sample bottles from each batch of e-liquids produced. (2) Ensuring that e-liquid ingredients are stored in a secure area. (3) Ensuring that authorized personnel only have certain secured access. 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 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. Provides that e-liquid manufacturer permit fees be deposited in the enforcement and administration fund of the alcohol and tobacco commission. Provides that e-liquids manufactured by an e-liquids manufacturer approved by the alcohol and tobacco commission prior to July 1, 2017, may be distributed and sold for retail until the expiration date of the e-liquids. Provides that rules relating to the manufacture, distribution, and sale of e-liquids are void.

SB 1—LS 7523/DI 107



February 24, 2017

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 UPON PASSAGE]: Sec. 2. The purpose of this article is ~~in the absence~~
4 ~~of 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 UPON
14 PASSAGE]. 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 UPON
4 PASSAGE]. 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 UPON PASSAGE]: Sec. 6. "Cooperative" means any group of people
19 who join together to manufacture e-liquids. **The term does not mean**
20 **a member of a distribution chain or a 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 UPON PASSAGE]: 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 UPON PASSAGE]: 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 UPON
40 PASSAGE]. Sec. ~~12~~. "Flavorings" means a food grade additive or
41 synthetic flavoring substance that is used to add flavor, that is approved
42 by the federal Food and Drug Administration as a permissible



1 flavoring, and that is not prohibited by law.

2 SECTION 8. IC 7.1-7-2-13 IS REPEALED [EFFECTIVE UPON
3 PASSAGE]. Sec. 13: "Key system" means a licensed or patented key
4 design 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 UPON
8 PASSAGE]. 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 UPON PASSAGE]: Sec. 16. "Manufacturing" means the process by
15 which an e-liquid is mixed, bottled, **and** packaged. ~~and stored.~~

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

20 SECTION 12. IC 7.1-7-2-22 IS REPEALED [EFFECTIVE UPON
21 PASSAGE]. 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 UPON PASSAGE]: 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 UPON PASSAGE]: Sec. 2. (a) The commission has the following
37 duties 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 IS REPEALED [EFFECTIVE UPON
17 PASSAGE]. Sec. 3: (a) Not later than December 31, 2015, the
18 commission shall adopt rules under IC 4-22-2, including emergency
19 rules under IC 4-22-2-37.1, to implement this article:

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

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

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

32 (b) All e-liquids manufactured by an e-liquids manufacturer
33 approved by the commission under IC 7.1-7-4 prior to July 1, 2017,
34 may be distributed and sold for retail until the expiration date of
35 the e-liquids.

36 (c) A manufacturing permit issued by the commission is valid for
37 five (5) years.

38 (d) An initial application for a manufacturing permit must include
39 the following:

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

42 (A) designed to include a clean room space where all mixing



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



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



1 (3) The annual output in liters of e-liquid of the manufacturing
2 facility for the five (5) years preceding the year of the application:

3 ~~(4)~~ (3) The name, telephone number, title, and address of the
4 person responsible for the manufacturing facility.

5 (5) Certification by the applicant that the applicant will continue
6 to use the security protocol approved by the commission with the
7 applicant's initial application. However, if the applicant desires to
8 change the previously approved security protocol, the applicant
9 shall submit the suggested changes to the commission for
10 approval:

11 (6) Certification by the security firm with which the manufacturer
12 has a security agreement that the manufacturer meets all security
13 requirements set forth in section 6(10) through 6(15) of this
14 chapter and that the security firm will not withhold its
15 certification because the security equipment of the manufacturer
16 is not sold by or proprietary to the security firm:

17 ~~(7)~~ (4) Verification that the facility uses proper manufacturing
18 processes: **complies with all tobacco products good**
19 **manufacturing practices:**

20 (A) set forth in; and

21 (B) promulgated in federal rules under;

22 **21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food,**
23 **Drug, and Cosmetic Act.**

24 ~~(8)~~ (5) Written consent allowing the state police department to
25 conduct a state or national criminal history background check on
26 any person listed on the application.

27 ~~(9)~~ Written consent allowing the commission, if a permit is
28 renewed to the applicant, to enter the premises where the e-liquid
29 is manufactured to conduct physical inspections, sample the
30 product to ensure the e-liquid meets the requirements of e-liquid
31 set forth in this article; and perform an audit.

32 ~~(10)~~ (6) A nonrefundable renewal application fee of five hundred
33 dollars (\$500).

34 ~~(11)~~ Any other information required by the commission for
35 purposes of administering this article:

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

39 SECTION 18. IC 7.1-7-4-3 IS REPEALED [EFFECTIVE UPON
40 PASSAGE]. Sec. 3: The security protocol that is employed at the
41 applicant's facility is confidential under IC 5-14-3-4.

42 SECTION 19. IC 7.1-7-4-6, AS ADDED BY P.L.231-2015,



1 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 6. (a) As used in this section, "tamper evident
3 package" means a package having at least one (1) indicator or barrier
4 to entry that, if breached or missing, can reasonably be expected to
5 provide visible evidence to consumers that tampering has occurred.

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

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

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

16 (3) The label on an e-liquid container must ~~identify the active~~
17 ~~ingredients; meet the nicotine addictiveness warning statement~~
18 **requirements set forth in 21 CFR 1143.3.**

19 (4) ~~The label must include a separate designation if the product~~
20 ~~contains nicotine.~~

21 ~~(5)~~ **(4)** The label or container must include a:

22 (A) ~~batch number; lot code;~~ and

23 (B) means for the commission to obtain the manufacturing
24 date.

25 ~~(6) The label must include a scannable code; including a quick~~
26 ~~response code; tied to the batch number as prescribed by the~~
27 ~~commission.~~

28 ~~(7) An e-liquid container must be distributed by the manufacturer~~
29 ~~and sold by the manufacturer or the retailer by the earlier of~~
30 ~~either:~~

31 ~~(A) the expiration or "best if used by" date; or~~

32 ~~(B) two (2) years of the date of manufacture.~~

33 ~~(8) The manufacturing facility must conduct all mixing and~~
34 ~~bottling activities in a clean room.~~

35 ~~(9) The manufacturer must take reasonable steps to ensure that an~~
36 ~~unauthorized ingredient is not included in any e-liquid produced~~
37 ~~for sale in Indiana.~~

38 **(5) The manufacturer must comply with all tobacco products**
39 **good manufacturing practices:**

40 **(A) set forth in; and**

41 **(B) promulgated in federal rules under;**

42 **21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food,**



1 **Drug, and Cosmetic Act.**

2 **(6) The manufacturer shall take commercially reasonable**
 3 **steps to ensure that an e-liquid has not become adulterated as**
 4 **described in 21 U.S.C. 387b(1) through 21 U.S.C. 387b(3) of**
 5 **the federal Food, Drug, and Cosmetic Act.**

6 (+10) The manufacturer must take reasonable steps to ensure that
 7 all ingredients used in the production of e-liquid are stored in a
 8 secure area accessible only by authorized personnel.

9 (+11) The manufacturer shall have a remotely monitored security
 10 system at the facility: in areas where e-liquid is mixed; bottled;
 11 packaged; and stored.

12 (+12) The manufacturer shall have an exclusive high security key
 13 system that limits access to areas where e-liquid is mixed; bottled;
 14 packaged; and stored to authorized personnel only.

15 (+13) The manufacturer's facility must be subject to twenty-four
 16 (24) hour video recording where e-liquid is mixed; bottled;
 17 packaged; and stored: The video recordings must be retained for
 18 at least thirty (30) days.

19 (+14) The manufacturer must take reasonable steps to ensure that
 20 only authorized personnel have access to secured areas of the
 21 facility where e-liquid is mixed; bottled; and packaged.

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

26 (+16) The manufacturer must submit to random audits of the
 27 facility and the manufacturer's samples and records by the
 28 commission.

29 (+17) The manufacturer must submit to random site visits by the
 30 commission.

31 **(7) A manufacturer must comply with the registration**
 32 **requirements required by 21 U.S.C. 387e(a) through (e) and**
 33 **21 U.S.C. 387e(i) of the federal Food, Drug, and Cosmetic Act.**

34 (+18) (8) The manufacturer may:

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

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

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



1 ~~(19)~~ **(9)** The manufacturer or any person listed on the permit
 2 application may not have been convicted of a felony or an offense
 3 involving a controlled substance.

4 SECTION 20. IC 7.1-7-4-7, AS ADDED BY P.L.176-2015,
 5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 UPON PASSAGE]: Sec. 7. (a) On receipt of a completed permit
 7 application, the commission shall forward a copy of the application to
 8 the state police department.

9 **(b)** The state police department shall perform a state or national
 10 criminal history background check of the applicant and return the
 11 application to the commission along with the state police department's
 12 findings from the state or national background check. ~~The applicant is~~
 13 ~~responsible for the cost of a state or national criminal history~~
 14 ~~background check conducted under this article. The commission is~~
 15 **responsible for the cost of a state or national criminal history**
 16 **background check.**

17 ~~(b)~~ **(c)** The commission shall review the permit application after it
 18 is returned from the state police department under subsection ~~(a)~~: **(b)**.
 19 The commission shall grant or deny a completed application for a
 20 permit within sixty (60) days of receipt of the application. If the
 21 commission determines that:

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

25 the commission shall approve the application for issuance of the
 26 permit.

27 ~~(c)~~ **(d)** If the completed application for a permit is denied, the
 28 commission must state the reasons for the denial. If a completed
 29 application is denied under this section, the applicant may reapply
 30 within thirty (30) days after the date of the denial. There is no
 31 application fee for a reapplication under this subsection.

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

- 36 ~~(1) Vegetable glycerol or vegetable glycerin.~~
 37 ~~(2) Propylene glycol.~~
 38 ~~(3) Nicotine.~~
 39 ~~(4) Flavorings.~~
 40 ~~(5) Water.~~
 41 **(6) Other ingredients approved by the department under section**
 42 **2 of this chapter or any ingredient specifically approved for**



1 inclusion in e-liquid by the federal Food and Drug
 2 Administration:

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

6 (c) All e-liquid retailers, distributors, and manufacturers who mix,
 7 bottle, or sell e-liquid in Indiana before July 1, 2015, shall before July
 8 1, 2016:

9 (1) sell or remove from retail all inventory of e-liquid
 10 manufactured before July 1, 2015, that was not manufactured;
 11 mixed; bottled; packaged; stored; or sold in compliance with this
 12 article; or

13 (2) acquire:

14 (A) (1) a valid tobacco sales certificate issued by the commission
 15 in accordance with IC 7.1-3-18.5-1 that contains a separate box
 16 to check for identifying a retailer that sells e-liquids;

17 (B) (2) an e-liquid manufacturing permit issued under IC 7.1-7-4;
 18 or

19 (C) (3) a distributor's license issued under IC 6-7-2-8.

20 SECTION 22. IC 7.1-7-6-1, AS ADDED BY P.L.176-2015,
 21 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 UPON PASSAGE]: Sec. 1. (a) If a manufacturer violates this article,
 23 the manufacturer may be reprimanded, assessed a civil penalty, or have
 24 the manufacturer's permit suspended. In the case of gross or willful
 25 misconduct, the permit holder may have the manufacturer's permit
 26 suspended for a period of up to one (1) year. At the end of the
 27 suspension period, the manufacturer may apply to the commission for
 28 reinstatement of the permit.

29 (b) Any provision in this article that requires a manufacturer to
 30 comply with the federal Food, Drug, and Cosmetic Act or a federal
 31 rule promulgated under the federal Food, Drug, and Cosmetic Act
 32 is under the sole jurisdiction of the federal Food and Drug
 33 Administration. If the federal Food and Drug Administration seeks
 34 court enforcement of any section of the federal Food, Drug, and
 35 Cosmetic Act cited in this article and a civil monetary penalty is
 36 assessed against the manufacturer, the penalty constitutes a
 37 violation of this article.

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

42 SECTION 23. IC 7.1-7-6-2, AS ADDED BY P.L.176-2015,



1 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 2. (a) If a retailer: ~~knowingly sells e-liquid:~~

- 3 (1) **knowingly sells e-liquid** to a minor; **or**
4 ~~(2) purchased from a manufacturer that does not have a permit; or~~
5 ~~(3) (2) that has been altered or tampered with; knowingly,~~
6 **intentionally, or negligently fails to verify the age of a person**
7 **who appears to be less than twenty-seven (27) years of age by**
8 **checking a government issued identification and sells the**
9 **person e-liquid;**

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

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

- 14 (1) If the retail establishment at that specific business location has
15 not been issued a citation or summons for a violation of this
16 section in the previous one hundred eighty (180) days, a civil
17 penalty of up to two hundred dollars (\$200).
18 (2) If the retail establishment at that specific business location has
19 had one (1) citation or summons issued for a violation of this
20 section in the previous one hundred eighty (180) days, a civil
21 penalty of up to four hundred dollars (\$400).
22 (3) If the retail establishment at that specific business location has
23 had two (2) citations or summonses issued for a violation of this
24 section in the previous one hundred eighty (180) days, a civil
25 penalty of up to seven hundred dollars (\$700).
26 (4) If the retail establishment at that specific business location has
27 had three (3) or more citations or summonses issued for a
28 violation of this section in the previous one hundred eighty (180)
29 days, a civil penalty of up to one thousand dollars (\$1,000).

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

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

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

- 38 (1) The buyer or recipient produced a driver's license bearing the
39 purchaser's or recipient's photograph showing that the purchaser
40 or recipient was of legal age to make the purchase.
41 (2) The buyer or recipient produced a photographic identification
42 card issued under IC 9-24-16-1 or a similar card issued under the



1 laws of another state or the federal government showing that the
2 purchaser or recipient was of legal age to make the purchase.

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

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

- 10 (1) agriculture;
11 (2) processing;
12 (3) transporting;
13 (4) wholesaling; or
14 (5) retailing.

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

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

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

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

30 SECTION 24. IC 7.1-7-6-3 IS REPEALED [EFFECTIVE UPON
31 PASSAGE]. Sec. 3: (a) Except as otherwise permitted by this article,
32 a person may not purchase, receive, manufacture, import, or transport,
33 or cause to be imported or transported from another state, territory, or
34 country into Indiana; or transport, ship, barter, give away, exchange,
35 furnish, or otherwise handle or dispose of e-liquid; or to possess
36 e-liquid for purpose of sale.

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

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

41 SECTION 25. IC 7.1-7-6-4 IS REPEALED [EFFECTIVE UPON
42 PASSAGE]. Sec. 4: (a) A permittee may bring a civil action against



1 any:
2 (1) producer of e-liquid; or
3 (2) other person or entity;
4 that distributes an e-liquid not approved for sale in Indiana to a retailer
5 for the purposes of resale:
6 (b) A permittee may bring the civil action described in subsection
7 (a) in a court with jurisdiction in Indiana:
8 (1) based on a violation of this article or the rules adopted by the
9 commission to enjoin the violation; and
10 (2) to recover for actual monetary loss from the violation.
11 The court shall award attorney's fees to the prevailing party.
12 SECTION 26. [EFFECTIVE UPON PASSAGE] (a) 905 IAC 1-48
13 (Regulations Relating to Manufacture, Distribution, and Sale of
14 E-liquids) is void. The publisher of the Indiana Administrative
15 Code and Indiana Register shall remove this provision from the
16 Indiana Administrative Code.
17 (b) This SECTION expires July 1, 2018.
18 SECTION 27. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 1, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 24 with "[EFFECTIVE UPON PASSAGE]".

Page 2, line 20, after "or" insert "a".

Page 4, delete lines 16 through 23, begin a new paragraph and insert:

"SECTION 15. IC 7.1-7-3-3 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 3: (a) ~~Not later than December 31, 2015, the commission shall adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this article.~~

(b) ~~The commission shall adopt rules as described in subsection (a) to establish minimum eligibility requirements for testing e-liquids under this article."~~

Page 4, line 28, after "retailers" insert ", consumers,".

Page 4, between lines 32 and 33, begin a new paragraph and insert:

"(b) All e-liquids manufactured by an e-liquids manufacturer approved by the commission under IC 7.1-7-4 prior to July 1, 2017, may be distributed and sold for retail until the expiration date of the e-liquids."

Page 4, line 33, reset in roman "(c)".

Page 4, line 33, delete "(b)".

Page 4, line 35, reset in roman "(d)".

Page 4, line 35, delete "(c)".

Page 6, line 26, delete "(8)".

Page 6, line 26, strike "Any other information required by the commission for".

Page 6, strike line 27.

Page 6, between lines 27 and 28, begin a new paragraph and insert:

"(e) The fees collected under subsection (d)(7) shall be deposited in the enforcement and administration fund established under IC 7.1-4-10."

Page 7, line 11, strike "uses proper manufacturing".

Page 7, line 12, strike "processes." and insert **"complies with all tobacco products good manufacturing practices:**

(A) set forth in; and

(B) promulgated in federal rules under;

21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food,



Drug, and Cosmetic Act."

Page 7, line 23, delete "(7)".

Page 7, line 23, strike "Any other information required by the commission for".

Page 7, strike line 24.

Page 7, between lines 24 and 25, begin a new paragraph and insert:

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

Page 8, line 32, delete "required by" and insert "**described in**".

Page 8, line 32, delete "21 387b(3)" and insert "**21 U.S.C. 387b(3)**".

Page 8, line 34, delete "(7)".

Page 8, line 34, strike "The manufacturer must take reasonable steps to ensure".

Page 8, strike lines 35 through 36.

Page 8, line 37, delete "(8)".

Page 8, line 37, strike "The manufacturer shall have a remotely monitored".

Page 8, line 38, strike "security system at the facility."

Page 9, line 5, delete "(9)".

Page 9, line 5, strike "The manufacturer must take reasonable steps to ensure".

Page 9, strike lines 6 through 7.

Page 9, line 17, delete "(10)" and insert "(7)".

Page 9, line 20, delete "(11)" and insert "(8)".

Page 9, line 29, delete "(12)" and insert "(9)".

Page 11, line 15, delete "requirement" and insert "**provision**".

Page 11, line 15, delete "a manufacturer must" and insert "**requires a manufacturer to**".

Page 11, line 18, delete "shall be" and insert "**is under**".

Page 11, line 21, delete "by" and insert "**in**".

Page 13, delete lines 16 through 27, begin a new paragraph and insert:

"SECTION 25. IC 7.1-7-6-3 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 3: (a) Except as otherwise permitted by this article, a person may not purchase, receive, manufacture, import, or transport, or cause to be imported or transported from another state, territory, or country into Indiana, or transport, ship, barter, give away, exchange, furnish, or otherwise handle or dispose of e-liquid, or to possess e-liquid for purpose of sale:

(b) A person may not knowingly receive or acquire e-liquid from a person or authorized distributor who does not hold a valid permit under



this article to sell; deliver; furnish; or give the e-liquid:

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

SECTION 26. IC 7.1-7-6-4 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 4. (a) A permittee may bring a civil action against any:

- (1) producer of e-liquid; or
- (2) other person or entity;

that distributes an e-liquid not approved for sale in Indiana to a retailer for the purposes of resale:

(b) A permittee may bring the civil action described in subsection

(a) in a court with jurisdiction in Indiana:

- (1) based on a violation of this article or the rules adopted by the commission to enjoin the violation; and
- (2) to recover for actual monetary loss from the violation.

The court shall award attorney's fees to the prevailing party:

SECTION 25. [EFFECTIVE UPON PASSAGE] (a) **905 IAC 1-48 (Regulations Relating to Manufacture, Distribution, and Sale of E-liquids) is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this provision from the Indiana Administrative Code.**

(b) **This SECTION expires July 1, 2018.**

SECTION 26. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 1 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.

