



Reprinted
April 5, 2017

ENGROSSED SENATE BILL No. 1

DIGEST OF SB 1 (Updated April 4, 2017 3:28 pm - DI 107)

Citations Affected: IC 7.1-7; noncode.

Synopsis: E-liquids. Limits the applicability of e-liquids statutes for a manufacturer of a closed system vapor product. 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) Consent for the alcohol and tobacco commission (ATC) to conduct inspections. (6) 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
(Continued next page)

Effective: Upon passage; July 1, 2017.

**Head, Alting, Boots, Holdman,
Merritt, Doriot, Bohacek, Smith J,
Walker, Becker, Charbonneau, Kruse,
Raatz, Young M, Zay, Messmer,
Mishler, Tomes, Lanane, Bassler, Ford**
(HOUSE SPONSORS — LEHMAN, STEUERWALD, SMALTZ, MAHAN,
GIAQUINTA, AUSTIN)

January 17, 2017, read first time and referred to Committee on Judiciary.
February 23, 2017, amended, reported favorably — Do Pass.
February 27, 2017, read second time, amended, ordered engrossed.
February 28, 2017, engrossed. Read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

March 6, 2017, read first time and referred to Committee on Public Policy.
March 30, 2017, amended, reported — Do Pass.
April 4, 2017, read second time, amended, ordered engrossed.

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Digest Continued

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. Removes language concerning security protocol confidentiality. Removes specific requirements concerning remotely monitored security systems. Removes the following 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 may or may not contain nicotine. Provides that an electronic cigarette uses a sealed nonrefillable cartridge. Provides that a retailer who: (1) knowingly or intentionally sell e-liquid to a minor; (2) fails to verify the age of a person less than 27 years of age and sells the person e-liquid; or (3) knowingly and intentionally sells e-liquid to a person and the sale does not occur in a direct, face-to-face exchange; 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-liquids 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 certain rules relating to the manufacture, distribution, and sale of e-liquids are void. Requires the ATC to adopt certain rules to implement the e-liquids statutes. Provides that flavoring may be only added to e-liquids if the flavoring has not been prohibited by the FDA. Prohibits a manufacturer named on a permit from having a felony conviction. Provides certain restrictions and procedures for manufacturers, distributors, and retailers.



Reprinted
April 5, 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.

ENGROSSED 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 7.1-7-1-1, AS ADDED BY P.L.176-2015,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. **(a) Except as provided in subsection (b),**
4 this article applies to the following:
5 (1) The commercial manufacturing, bottling, selling, bartering, or
6 importing of e-liquid in Indiana.
7 (2) The sale, possession, and use of e-liquid products in Indiana.
8 **(b) This article does not apply to a manufacturer of a closed**
9 **system vapor product, except as specifically provided in this**
10 **article.**
11 SECTION 2. IC 7.1-7-1-2, AS ADDED BY P.L.176-2015,
12 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 UPON PASSAGE]: Sec. 2. The purpose of this article is ~~in the absence~~
14 ~~of federal regulations~~, to protect public health and safety by:
15 (1) ensuring the safety and security of e-liquid manufactured for

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1 sale in Indiana;

2 (2) ensuring that e-liquid manufactured or sold in Indiana
3 conforms to appropriate standards of identity, strength, quality,
4 and purity; and

5 (3) ensuring that e-liquid is not contaminated or adulterated by
6 the inclusion of ingredients or other substances that might pose
7 unreasonable threats to public health and safety.

8 SECTION 3. IC 7.1-7-2-3 IS REPEALED [EFFECTIVE UPON
9 PASSAGE]. Sec. 3: "Audit" means a procedure performed by the
10 commission; including inspection of manufacturing facilities and
11 preparation areas; review of required records; compliance checks; and
12 auditing of samples of e-liquid:

13 SECTION 4. IC 7.1-7-2-4 IS REPEALED [EFFECTIVE UPON
14 PASSAGE]. Sec. 4: "Clean room" refers to the part of an e-liquid
15 manufacturing facility where:

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

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

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

26 SECTION 5. IC 7.1-7-2-9, AS ADDED BY P.L.176-2015,
27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 UPON PASSAGE]: Sec. 9. "Electronic cigarette" means a powered
29 vaporizer that:

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

31 (2) (1) uses a sealed nonrefillable cartridge; ~~containing not more~~
32 ~~than four (4) milliliters of a liquid;~~ and

33 (3) (2) is intended to be vaporized and inhaled.

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

35 SECTION 6. IC 7.1-7-2-10, AS ADDED BY P.L.176-2015,
36 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 UPON PASSAGE]: Sec. 10. "E-liquid" means a substance that:

38 (1) **may or may not contain nicotine;**

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

41 (3) (3) specifically excludes substances contained in nonrefillable
42 sealed cartridges. ~~of four (4) milliliters or less used in electronic~~



1 cigarettes.

2 SECTION 7. IC 7.1-7-2-12, AS ADDED BY P.L.176-2015,

3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

4 UPON PASSAGE]: Sec. 12. "~~Flavorings~~" "**Flavoring**" means a food

5 grade additive or synthetic flavoring substance that is used to add

6 flavor, that is **approved not prohibited** by the federal Food and Drug

7 Administration as a permissible flavoring, and that is not prohibited by

8 law.

9 SECTION 8. IC 7.1-7-2-13 IS REPEALED [EFFECTIVE UPON

10 PASSAGE]. Sec. 13: "~~Key system~~" means a licensed or patented key

11 design used to prevent unauthorized duplication of keys for use in high

12 security installations; and that is prospectively exclusive to the security

13 firm for a period of at least ten (10) years.

14 SECTION 9. IC 7.1-7-2-14 IS REPEALED [EFFECTIVE UPON

15 PASSAGE]. Sec. 14: "~~Locksmith~~" means a person who, or a firm that

16 employs at least one (1) employee who, for the previous one (1) year

17 period has been certified as a certified professional locksmith by the

18 Associated Locksmiths of America.

19 SECTION 10. IC 7.1-7-2-15, AS ADDED BY P.L.176-2015,

20 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

21 UPON PASSAGE]: Sec. 15. "Manufacturer" means a person, ~~or~~

22 ~~cooperative~~, located inside or outside Indiana, that is engaged in

23 manufacturing e-liquid.

24 SECTION 11. IC 7.1-7-2-15.5 IS ADDED TO THE INDIANA

25 CODE AS A NEW SECTION TO READ AS FOLLOWS

26 [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. "Manufacturer of a**

27 **closed system vapor product" means a manufacturer of vapor**

28 **products whose closed system vapor products are for sale in**

29 **Indiana, but does not produce open system vapor products that are**

30 **for sale in Indiana.**

31 SECTION 12. IC 7.1-7-2-16, AS ADDED BY P.L.176-2015,

32 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

33 UPON PASSAGE]: Sec. 16. "Manufacturing" means the process by

34 which an e-liquid is mixed, bottled, ~~and~~ packaged. ~~and stored.~~

35 SECTION 13. IC 7.1-7-2-17.5 IS ADDED TO THE INDIANA

36 CODE AS A NEW SECTION TO READ AS FOLLOWS

37 [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. "Modified risk tobacco**

38 **product" means a tobacco product that is marketed as having**

39 **lower health risks than other tobacco products.**

40 SECTION 14. IC 7.1-7-2-20 IS REPEALED [EFFECTIVE UPON

41 PASSAGE]. Sec. 20: "~~Quick response code~~" means a two (2)

42 dimensional bar code that is used to provide easy access to information



1 through a smartphone or other electronic mobile device.

2 SECTION 15. IC 7.1-7-2-22 IS REPEALED [EFFECTIVE UPON
3 PASSAGE]. Sec. 22. "Security firm" means an entity that:

- 4 (1) is independent from an applicant and manufacturer;
5 (2) has experience in the security business; and
6 (3) as of July 1, 2015:

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

8 (B) is a locksmith; and

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

11 SECTION 16. IC 7.1-7-2-23, AS ADDED BY P.L.176-2015,
12 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 UPON PASSAGE]: Sec. 23. "Vapor pen" **product**" means a powered
14 vaporizer, other than an electronic cigarette, that converts e-liquid to
15 a vapor intended for inhalation.

16 SECTION 17. IC 7.1-7-3-2, AS ADDED BY P.L.176-2015,
17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 UPON PASSAGE]: Sec. 2. (a) The commission has the following
19 duties and responsibilities:

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

22 (2) To issue permits.

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

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

27 (5) ~~To audit random samples maintained by the manufacturer to~~
28 ~~ensure the safety and quality of the e-liquid and that the e-liquid~~
29 ~~meets the requirements in this article.~~

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

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

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

40 SECTION 18. IC 7.1-7-3-3, AS ADDED BY P.L.176-2015,
41 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2017]: Sec. 3. (a) Not later than December 31, 2015, The



1 commission shall adopt rules under IC 4-22-2, including emergency
 2 rules under IC 4-22-2-37.1, to implement this article, **including rules**
 3 **concerning e-liquid manufacturing permits.**

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

7 SECTION 19. IC 7.1-7-4-1, AS AMENDED BY P.L.214-2016,
 8 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 1. (a) A manufacturer of e-liquid ~~shall obtain~~
 10 ~~a permit from the commission before mixing, bottling, packaging, or~~
 11 ~~selling may not mix, bottle, package, or sell~~ e-liquid to retailers,
 12 ~~consumers, or distributors in Indiana without a permit issued by the~~
 13 ~~commission under this article.~~

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

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

20 (c) A manufacturing permit issued by the commission is valid for
 21 five (5) years. A **manufacturing permit issued by the commission**
 22 **under this article before July 1, 2017, shall not expire before July**
 23 **1, 2020.**

24 (d) An initial application for a manufacturing permit must include
 25 the following:

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

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

30 (B) capable of meeting all of the security requirements
 31 contained in this article.

32 (2) A service agreement that:

33 (A) the applicant has entered into with a security firm;

34 (B) is valid for a period of five (5) years after the date of the
 35 permit application;

36 (C) provides for the security firm to provide service and
 37 support to meet the security requirements established by this
 38 article;

39 (D) requires the security firm to certify that the manufacturer
 40 meets all requirements set forth in IC 7.1-7-4-6(10) through
 41 IC 7.1-7-4-6(15);

42 (E) prohibits the security firm from withholding its



- 1 certification as described in clause (D) because the security
 2 equipment of the applicant is not sold by or proprietary to the
 3 security firm; and
 4 (F) is renewable for the entire length of time that the applicant
 5 holds a permit issued by the commission:
 6 (3) Verified documents satisfactory to the commission from the
 7 security firm demonstrating that the security firm meets the
 8 following requirements:
 9 (A) The security firm has continuously employed for not less
 10 than the previous one (1) year period; both of the following:
 11 (i) At least one (1) employee who is accredited or certified
 12 by the Door and Hardware Institute as an Architectural
 13 Hardware Consultant.
 14 (ii) At least one (1) employee who is accredited or certified
 15 as a certified Rolling Steel Fire Door Technician by the
 16 International Door Association or the Institute of Door
 17 Dealer Education and Accreditation:
 18 However, the security firm meets the requirements of this
 19 clause if the security firm continuously employed; for not less
 20 than the previous one (1) year period; one (1) employee who
 21 is accredited or certified under both item (i) and item (ii).
 22 (B) The security firm has at least one (1) year of commercial
 23 experience; in the preceding year; with the following:
 24 (i) Video surveillance system design and installation with
 25 remote viewing capability from a secure facility.
 26 (ii) Owning and operating a security monitoring station with
 27 ownership control and use of a redundant offsite backup
 28 security monitoring station.
 29 (iii) Operating a facility that modifies commercial hollow
 30 metal doors, frames, and borrowed lights with authorization
 31 to apply the Underwriters Laboratories label.
 32 (4) (1) The name, telephone number, and address of the applicant.
 33 (5) (2) The name, telephone number, and address of the
 34 manufacturing facility.
 35 (6) The projected output in liters per year of e-liquid of the
 36 manufacturing facility.
 37 (7) (3) The name, telephone number, title, and address of the
 38 person responsible for the manufacturing facility.
 39 (8) (4) Verification that the facility will comply with
 40 proper manufacturing processes: **applicable tobacco products**
 41 **good manufacturing practices promulgated under 21 U.S.C.**
 42 **387f(e) of the federal Food, Drug, and Cosmetic Act.**



1 **(5) Verification that the manufacturer has complied with the**
 2 **applicable ingredient listing required by 21 U.S.C. 387d(a)(1)**
 3 **of the federal Food, Drug, and Cosmetic Act.**

4 ~~(9)~~ **(6)** Written consent allowing the state police department to
 5 conduct a state or national criminal history background check on
 6 any person listed on the application.

7 ~~(10)~~ Written consent allowing the commission, after a permit is
 8 issued to the applicant, to enter during normal business hours the
 9 premises where the e-liquid is manufactured to conduct physical
 10 inspections; sample the product to ensure the e-liquid meets the
 11 requirements for e-liquid set forth in this article; and perform an
 12 audit.

13 ~~(11)~~ **(7)** A nonrefundable initial application fee of one thousand
 14 dollars (\$1,000).

15 ~~(12)~~ Any other information required by the commission for
 16 purposes of administering this article.

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

20 SECTION 20. IC 7.1-7-4-2, AS ADDED BY P.L.176-2015,
 21 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 UPON PASSAGE]: Sec. 2. (a) A manufacturing permit that is renewed
 23 by the commission is valid for five (5) years.

24 (b) A renewal application for a manufacturing permit must include
 25 the following:

26 (1) The name, telephone number, and address of the applicant.

27 (2) The name, telephone number, and address of the
 28 manufacturing facility.

29 ~~(3)~~ The annual output in liters of e-liquid of the manufacturing
 30 facility for the five (5) years preceding the year of the application.

31 ~~(4)~~ **(3)** The name, telephone number, title, and address of the
 32 person responsible for the manufacturing facility.

33 ~~(5)~~ Certification by the applicant that the applicant will continue
 34 to use the security protocol approved by the commission with the
 35 applicant's initial application. However, if the applicant desires to
 36 change the previously approved security protocol, the applicant
 37 shall submit the suggested changes to the commission for
 38 approval.

39 ~~(6)~~ Certification by the security firm with which the manufacturer
 40 has a security agreement that the manufacturer meets all security
 41 requirements set forth in section 6(10) through 6(15) of this
 42 chapter and that the security firm will not withhold its



1 certification because the security equipment of the manufacturer
2 is not sold by or proprietary to the security firm.

3 (7) Verification that the facility uses proper manufacturing
4 processes:

5 (8) (4) Written consent allowing the state police department to
6 conduct a state or national criminal history background check on
7 any person listed on the application.

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

13 (10) (5) A nonrefundable renewal application fee of five hundred
14 dollars (\$500).

15 (11) Any other information required by the commission for
16 purposes of administering this article.

17 (c) **The fees collected under subsection (b)(5) shall be deposited**
18 **in the enforcement and administration fund established under**
19 **IC 7.1-4-10.**

20 SECTION 21. IC 7.1-7-4-3 IS REPEALED [EFFECTIVE UPON
21 PASSAGE]. Sec. 3: The security protocol that is employed at the
22 applicant's facility is confidential under IC 5-14-3-4.

23 SECTION 22. IC 7.1-7-4-6, AS ADDED BY P.L.231-2015,
24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 UPON PASSAGE]: Sec. 6. (a) As used in this section:

26 (1) "adulterated" means a product that:

27 (A) consists in whole or in part of any filthy, putrid, or
28 decomposed substance; or

29 (B) is contaminated by any added poisonous or added
30 deleterious substance that may render the product
31 injurious to health; and

32 (2) "tamper evident package" means a package having at least one

33 (1) indicator or barrier to entry that, if breached or missing, can
34 reasonably be expected to provide visible evidence to consumers
35 that tampering has occurred.

36 (b) A manufacturing facility shall comply with the following
37 requirements:

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

41 (2) An e-liquid container must use a tamper evident package. The
42 tamper evident package feature must be designed to and remain



- 1 intact when handled in a reasonable manner during the
 2 manufacture, distribution, and retail display of the e-liquid
 3 container.
- 4 (3) The label on an e-liquid container must ~~identify the active~~
 5 ~~ingredients; meet the nicotine addictiveness warning statement~~
 6 **requirements set forth in 21 CFR 1143.3.**
- 7 (4) The label must include a separate designation if the product
 8 contains nicotine.
- 9 (5) The label or container must include: a:
- 10 (A) ~~batch number;~~ **an identifiable and trackable code;** and
 11 (B) ~~means for the commission to obtain the manufacturing~~
 12 ~~date;~~
 13 (C) **the Indiana e-liquid manufacturer permit number;** and
 14 (D) **beginning May 31, 2018, and until specific rules are**
 15 **adopted by the commission, the following statement if**
 16 **nicotine is in the product: "WARNING: THIS PRODUCT**
 17 **CONTAINS NICOTINE. NICOTINE IS AN ADDICTIVE**
 18 **CHEMICAL."**
- 19 (6) ~~The label must include a scannable code, including a quick~~
 20 ~~response code, tied to the batch number as prescribed by the~~
 21 ~~commission.~~
- 22 (7) (6) An e-liquid container must be ~~distributed by the~~
 23 ~~manufacturer and sold by the manufacturer or the retailer by the~~
 24 ~~earlier of either:~~
- 25 (A) the expiration or "best if used by" date; or
 26 (B) two (2) years of the date of manufacture.
- 27 (8) ~~The manufacturing facility must conduct all mixing and~~
 28 ~~bottling activities in a clean room.~~
- 29 (9) (7) The manufacturer **and retailer must take reasonable steps**
 30 **to ensure that an unauthorized ingredient is not included may not**
 31 **use adulterated products** in any e-liquid produced for sale in
 32 Indiana.
- 33 (10) ~~The manufacturer must take reasonable steps to ensure that~~
 34 ~~all ingredients used in the production of e-liquid are stored in a~~
 35 ~~secure area accessible only by authorized personnel.~~
- 36 (11) ~~The manufacturer shall have a remotely monitored security~~
 37 ~~system at the facility. in areas where e-liquid is mixed, bottled,~~
 38 ~~packaged, and stored.~~
- 39 (12) ~~The manufacturer shall have an exclusive high security key~~
 40 ~~system that limits access to areas where e-liquid is mixed, bottled,~~
 41 ~~packaged, and stored to authorized personnel only.~~
- 42 (13) ~~The manufacturer's facility must be subject to twenty-four~~



- 1 (24) hour video recording where e-liquid is mixed, bottled,
 2 packaged, and stored. The video recordings must be retained for
 3 at least thirty (30) days.
- 4 (14) The manufacturer must take reasonable steps to ensure that
 5 only authorized personnel have access to secured areas of the
 6 facility where e-liquid is mixed, bottled, and packaged.
- 7 (15) The manufacturer must store and maintain three (3) ten (10)
 8 milliliter sample bottles from each production batch of more than
 9 two (2) liters for a period of not less than three (3) years in a
 10 secure, limited access area with recorded video surveillance.
- 11 (16) The manufacturer must submit to random audits of the
 12 facility and the manufacturer's samples and records by the
 13 commission.
- 14 (17) (8) The manufacturer must submit to random site visits by
 15 the commission.
- 16 (18) (9) The manufacturer may:
 17 (A) own and control both the e-liquid manufacturing process
 18 and the bottling process; or
 19 (B) subcontract with another manufacturer for the performance
 20 of the e-liquid manufacturing service, the bottling services, or
 21 both services.
- 22 However, both the manufacturer performing a service under
 23 clause (B) and the manufacturer for which the service is
 24 performed must meet the requirements of this article.
- 25 **(10) A manufacturer may use a flavoring, as defined by**
 26 **IC 7.1-7-2-12, as an ingredient in an e-liquid.**
- 27 (19) (12) The manufacturer or any person listed on the permit
 28 application may not have been convicted of a felony. ~~or an offense~~
 29 ~~involving a controlled substance.~~
- 30 **(c) A manufacturer of a closed system vapor product must**
 31 **comply with subsection (b)(5)(A).**
- 32 SECTION 23. IC 7.1-7-4-7, AS ADDED BY P.L.176-2015,
 33 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 UPON PASSAGE]: 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 24. IC 7.1-7-5-1 IS REPEALED [EFFECTIVE UPON
 19 PASSAGE]. Sec. 1: (a) E-liquid distributed and sold within Indiana
 20 may be comprised of any of the following ingredients:

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

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

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

- 36 (1) sell or remove from retail all inventory of e-liquid
 37 manufactured before July 1, 2015, that was not manufactured,
 38 mixed, bottled, packaged, stored, or sold in compliance with this
 39 article; or
- 40 (2) acquire:
 - 41 (A) a valid tobacco sales certificate issued by the commission
 42 in accordance with IC 7.1-3-18.5-1 that contains a separate



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

5 SECTION 25. IC 7.1-7-5-1.1 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE UPON PASSAGE]: **Sec. 1.1. (a) A retailer must have**
 8 **a valid sales certificate issued by the commission in accordance**
 9 **with IC 7.1-3-18.5-1 that contains a separate box to check for**
 10 **identifying a retailer that sells e-liquids.**

11 **(b) A retailer may purchase e-liquid only from an Indiana**
 12 **e-liquid manufacturing permit holder or an Indiana distributor**
 13 **permit holder.**

14 **(c) A retailer shall retain all invoices for e-liquid that the**
 15 **retailer purchases for two (2) years.**

16 **(d) A retailer shall not allow the self-service sale for individuals**
 17 **purchasing e-liquid.**

18 **(e) A retailer may not sell an electronic cigarette or an e-liquid**
 19 **that contains more than seventy-five (75) milligrams per milliliter**
 20 **of nicotine.**

21 **(f) A manufacturer must have an e-liquid manufacturing permit**
 22 **issued under IC 7.1-7-4.**

23 **(g) A distributor that does not have a valid e-liquid**
 24 **manufacturing permit issued under IC 7.1-7-4 must have a valid**
 25 **distributor's license issued under IC 6-7-2-8.**

26 **(h) A distributor shall retain all invoices to a retailer or from a**
 27 **manufacturer for at least two (2) years.**

28 **(i) A manufacturer shall annually submit a report to the**
 29 **commission setting forth:**

- 30 **(1) each new product that the manufacturer is producing with**
 31 **a list of the contents and ingredients by volume; and**
 32 **(2) whether the manufacturer has stopped producing**
 33 **products previously produced.**

34 **(j) A manufacturer shall annually submit a report to the**
 35 **commission setting forth:**

- 36 **(1) the milligrams per milliliter of nicotine in each product the**
 37 **manufacturer produces; and**
 38 **(2) the milliliters of each product sold that current year.**

39 **A report under this subsection is confidential and the ATC may not**
 40 **disclose it to another person.**

41 **(k) A manufacturer, distributor, or retailer may not market**
 42 **e-liquid as a modified risk tobacco product, as defined by**



1 IC 7.1-7-2-17.5, that has not been designated as a "modified risk
2 tobacco product" by the federal Food and Drug Administration.

3 (l) Except as provided in subsection (m), a manufacturer,
4 including a manufacturer of a closed system vapor product, shall
5 annually submit a list of the ingredients used in each product the
6 manufacturer produces and that is sold in Indiana.

7 (m) A manufacturer of a closed system vapor product is not
8 required to submit a report described in subsection (l) if the
9 manufacturer submits to the commission a certification, by
10 October 1 of each year, that each of the manufacturer's vapor
11 products sold in Indiana has been filed with the federal Food and
12 Drug Administration.

13 SECTION 26. IC 7.1-7-6-1, AS ADDED BY P.L.176-2015,
14 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 UPON PASSAGE]: Sec. 1. (a) If a manufacturer, **distributor, or**
16 **retailer** violates this article, the manufacturer, **distributor, or retailer**
17 may be reprimanded, assessed a civil penalty, or have the
18 manufacturer's permit, **distributor's license, or retailer's tobacco**
19 **sales certificate** suspended. ~~In the case of gross or willful misconduct,~~
20 ~~the permit holder may have the manufacturer's permit suspended for a~~
21 ~~period of up to one (1) year. At the end of the suspension period, the~~
22 ~~manufacturer may apply to the commission for reinstatement of the~~
23 ~~permit.~~

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

33 ~~(b)~~ (c) The commission may assess a civil penalty against a
34 manufacturer, **distributor, or retailer** for a violation of this article in
35 an amount that does not exceed ten thousand dollars (\$10,000). A civil
36 penalty may be assessed in addition to other penalties allowed under
37 this article.

38 SECTION 27. IC 7.1-7-6-2, AS ADDED BY P.L.176-2015,
39 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 UPON PASSAGE]: Sec. 2. (a) If a retailer: ~~knowingly sells e-liquid:~~

41 (1) **knowingly and intentionally sells e-liquid** to a minor;

42 (2) ~~purchased from a manufacturer that does not have a permit; or~~



- 1 ~~(2)~~ (2) that has been altered or tampered with; knowingly,
- 2 intentionally, or negligently fails to verify the age of a person
- 3 who appears to be less than twenty-seven (27) years of age by
- 4 checking a government issued identification and sells the
- 5 person e-liquid; or
- 6 (3) knowingly and intentionally sells e-liquid to a person and
- 7 the sale does not occur in a direct, face-to-face exchange;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

28 SECTION 28. IC 7.1-7-6-3 IS REPEALED [EFFECTIVE UPON
 29 PASSAGE]. Sec. 3: (a) Except as otherwise permitted by this article,
 30 a person may not purchase, receive, manufacture, import, or transport;
 31 or cause to be imported or transported from another state, territory, or
 32 country into Indiana; or transport, ship, barter, give away, exchange,
 33 furnish, or otherwise handle or dispose of e-liquid; or to possess
 34 e-liquid for purpose of sale.

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

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

39 SECTION 29. IC 7.1-7-6-4 IS REPEALED [EFFECTIVE UPON
 40 PASSAGE]. Sec. 4: (a) A permittee may bring a civil action against
 41 any:

- 42 (†) producer of e-liquid; or



1 (2) other person or entity;
2 that distributes an e-liquid not approved for sale in Indiana to a retailer
3 for the purposes of resale.
4 (b) A permittee may bring the civil action described in subsection
5 (a) in a court with jurisdiction in Indiana:
6 (1) based on a violation of this article or the rules adopted by the
7 commission to enjoin the violation; and
8 (2) to recover for actual monetary loss from the violation.
9 The court shall award attorney's fees to the prevailing party.
10 SECTION 30. [EFFECTIVE UPON PASSAGE] **(a) 905 IAC 1-48**
11 **(Regulations Relating to Manufacture, Distribution, and Sale of**
12 **E-liquids) is void. The publisher of the Indiana Administrative**
13 **Code and Indiana Register shall remove this provision from the**
14 **Indiana Administrative Code.**
15 **(b) This SECTION expires July 1, 2018.**
16 SECTION 31. 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.

SENATE MOTION

Madam President: I move that Senate Bill 1 be amended to read as
follows:

Page 4, line 37, after "years." insert "**A manufacturing permit
issued by the commission under this article before July 1, 2017,
shall not expire before July 1, 2020.**"

(Reference is to SB 1 as printed February 24, 2017.)

HEAD



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 1, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 7.1-7-1-1, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **(a) Except as provided in subsection (b),** this article applies to the following:

(1) The commercial manufacturing, bottling, selling, bartering, or importing of e-liquid in Indiana.

(2) The sale, possession, and use of e-liquid products in Indiana.

(b) This article does not apply to a manufacturer of a closed system vapor product, except as specifically provided in this article."

Page 2, delete lines 16 through 20.

Page 2, strike line 25.

Page 2, line 26, strike "(2)" and insert "**(1)**".

Page 2, line 26, after "cartridge" insert ";".

Page 2, line 26, strike "containing not more than".

Page 2, line 27, delete "**five (5)**".

Page 2, line 27, strike "milliliters of liquid;".

Page 2, line 28, strike "(3)" and insert "**(2)**".

Page 2, line 33, delete "contains" and insert "**may or may not contain**".

Page 2, delete lines 39 through 42, begin a new paragraph and insert:

"SECTION 7. IC 7.1-7-2-12, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. ~~"Flavorings"~~ "**Flavoring**" means a food grade additive or synthetic flavoring substance that is used to add flavor, that is ~~approved~~ **not prohibited** by the federal Food and Drug Administration as a permissible flavoring, and that is not prohibited by law."

Page 3, delete line 1.

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 10. IC 7.1-7-2-15, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. "Manufacturer" means a person, ~~or cooperative~~, located inside or outside Indiana, that is engaged in



manufacturing e-liquid.

SECTION 11. IC 7.1-7-2-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. "Manufacturer of a closed system vapor product" means a manufacturer of vapor products whose closed system vapor products are for sale in Indiana, but does not produce open system vapor products that are for sale in Indiana."**

Page 3, delete lines 16 through 19, begin a new paragraph and insert:

"SECTION 11. IC 7.1-7-2-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. "Modified risk tobacco product" means a tobacco product that is marketed as having lower health risks than other tobacco products."**

Page 4, delete lines 16 through 22, begin a new paragraph and insert:

"SECTION 17. IC 7.1-7-3-3, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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, **including rules concerning e-liquid manufacturing permits and labeling of e-liquids.**

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

Page 6, line 20, delete "(6)".

Page 6, line 20, strike "Written consent allowing the state police department to".

Page 6, strike lines 21 through 22.

Page 6, line 29, delete "(7)" and insert "**(6)**".

Page 7, line 19, delete "(4)".

Page 7, line 19, strike "Verification that the facility".

Page 7, line 20, delete "complies with all tobacco products good".

Page 7, delete lines 21 through 25.

Page 7, line 26, delete "(5)" and insert "**(4)**".

Page 7, line 34, delete "(6)" and insert "**(5)**".

Page 8, line 4, delete "section," and insert "section:

(1) "adulterated" means a product containing any substance not identified on the product's label or that was manufactured in a filthy, putrid, or unsafe environment; and



(2)".

Page 8, reset in roman lines 21 through 22.

Page 8, line 23, reset in roman "(5)".

Page 8, line 23, delete "(4)".

Page 8, line 23, delete "include" and insert "include:".

Page 8, line 23, strike "a:".

Page 8, line 24, delete "lot code;" and insert "**identifiable and trackable code;**".

Page 8, line 24, strike "and".

Page 8, line 25, strike "means for the commission to obtain".

Page 8, line 26, delete "." and insert ";

**(C) the Indiana e-liquid manufacturer permit number; and
(D) beginning January 1, 2018, and until specific rules are adopted by the commission, the following statement if nicotine is in the product: "WARNING: THIS PRODUCT CONTAINS NICOTINE.""**

Page 8, reset in roman lines 27 through 29.

Page 8, line 30, reset in roman "(7) An e-liquid container must be".

Page 8, line 31, reset in roman "sold by the".

Page 8, line 31, reset in roman "retailer by the earlier of".

Page 8, reset in roman lines 32 through 34.

Page 8, line 37, delete "The" and insert "**(8)** The".

Page 8, line 37, after "manufacturer" insert "**retailer**".

Page 8, line 37, reset in roman "must take reasonable steps to ensure that an".

Page 8, reset in roman lines 38 through 39.

Page 8, delete lines 40 through 42.

Page 9, delete lines 1 through 7.

Page 9, line 31, after "(17)" insert "**(9)**".

Page 9, line 31, reset in roman "The manufacturer must submit to random site visits by the".

Page 9, reset in roman line 32.

Page 9, delete lines 33 through 35.

Page 9, line 36, delete "(8)" and insert "**(10)**".

Page 10, between lines 2 and 3, begin a new line block indented and insert:

"(11) A manufacturer may use a flavoring, as defined by IC 7.1-7-2-12, as an ingredient in an e-liquid."

Page 10, line 3, delete "(9)" and insert "**(12)**".

Page 10, line 4, after "felony" insert ".".

Page 10, line 4, strike "or an offense".

Page 10, strike line 5.



Page 10, between lines 5 and 6, begin a new paragraph and insert:
"(c) A manufacturer of a closed system vapor product must comply with subsection (b)(4)(A)."

Page 10, line 25, after "felony" insert ",".

Page 10, line 25, strike "involving a".

Page 10, strike line 26.

Page 10, delete lines 34 through 42, begin a new paragraph and insert:

"SECTION 22. IC 7.1-7-5-1 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 1: (a) E-liquid distributed and sold within Indiana may be comprised of any of the following ingredients:

(1) Vegetable glycerol or vegetable glycerin.

(2) Propylene glycol.

(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 e-liquid in Indiana before July 1, 2015, shall, before July 1, 2016:

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

(2) acquire:

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

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

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

SECTION 22. IC 7.1-7-5-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.1 (a) A retailer must have a valid sales certificate issued by the commission in accordance with IC 7.1-3-18.5-1 that contains a separate box to check for**



identifying a retailer that sells e-liquids.

(b) A retailer may purchase e-liquid only from an Indiana e-liquid manufacturing permit holder or an Indiana distributor permit holder.

(c) A retailer shall retain all invoices for e-liquid that the retailer purchases for two (2) years.

(d) A retailer shall not allow the self-service sale for individuals purchasing e-liquid.

(e) A retailer may not sell an electronic cigarette that contains more than seventy-five (75) milligrams per milliliter of nicotine.

(f) A manufacturer must have an e-liquid manufacturing permit issued under IC 7.1-7-4.

(g) A distributor that does not have a valid e-liquid manufacturing permit issued under IC 7.1-7-4 must have a valid distributor's license issued under IC 6-7-2-8.

(h) A distributor shall indicate on each invoice of a sale of an e-liquid product to an Indiana retailer or Indiana distributor if the e-liquid product sold was obtained from an Indiana manufacturer permit holder or from another Indiana distributor. A distributor shall retain all invoices described in this subsection for at least two (2) years.

(i) A manufacturer shall quarterly submit a report to the commission setting forth:

- (1) each new product that the manufacturer is producing with a list of the contents and ingredients by volume; and
- (2) whether the manufacturer has stopped producing products previously produced.

(j) A manufacturer shall annually submit a report to the commission setting forth:

- (1) the milligrams per milliliter of nicotine in each product the manufacturer produces; and
- (2) the milliliters of each product sold that current year.

(k) A manufacturer, distributor, or retailer may not market e-liquid as a modified risk tobacco product, as defined by IC 7.1-7-2-17.5, that has not been designated as a "modified risk tobacco product" by the federal Food and Drug Administration.

(l) Except as provided in subsection (m), a manufacturer, including a manufacturer of a closed system vapor product, shall annually submit a list of the ingredients used in each product the manufacturer produces and that is sold in Indiana.

(m) A manufacturer of a closed system vapor product is not required to submit a report described in subsection (l) if the manufacturer submits to the commission a certification that each



of the manufacturer's vapor products sold in Indiana has been filed with the federal Food and Drug Administration."

Page 11, delete lines 1 through 21.

Page 11, line 24, after "manufacturer" insert ", **distributor, or retailer**".

Page 11, line 25, after "manufacturer" insert ", **distributor, or retailer**".

Page 11, line 26, after "permit" insert ", **distributor's license, or retailer's tobacco sales certificate**".

Page 11, line 41, after "manufacturer" insert ", **distributor, or retailer**".

Page 12, line 5, after "knowingly" insert "**and intentionally**".

Page 12, line 5, delete "or".

Page 12, line 11, after "e-liquid;" insert "**or**

(3) knowingly and intentionally sells e-liquid to a person and the sale does not occur in a direct, face-to-face exchange;".

Page 12, line 12, strike "infraction." and insert "**misdemeanor.**".

Page 13, line 31, strike "infraction." and insert "**misdemeanor.**".

Page 14, between lines 13 and 14, begin a new paragraph and insert: "SECTION 26. IC 35-52-7-97 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 97. IC 7.1-7-6-2 defines a crime concerning e-liquids.**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 1 as reprinted February 28, 2017.)

SMALTZ

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 1 be amended to read as follows:

Page 2, line 42, after "cartridges" insert ".".

Page 2, line 42, strike "of".

Page 2, line 42, delete "five (5)".

Page 2, line 42, strike "milliliters or less used in".

Page 3, strike line 1.

Page 3, between lines 39 and 40, begin a new paragraph and insert:

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"SECTION 14. IC 7.1-7-2-20 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 20. "Quick response code" means a two (2) dimensional bar code that is used to provide easy access to information through a smartphone or other electronic mobile device."~~

Page 4, line 41, after "permits" insert ".".

Page 4, line 41, delete "and labeling of".

Page 4, delete line 42.

Page 7, line 1, after "(9)" insert "(6)".

Page 7, line 1, reset in roman "Written consent allowing the state police department to".

Page 7, reset in roman lines 2 through 3.

Page 7, line 10, delete "(6)" and insert "(7)".

Page 8, line 14, delete "(b)(6)" and insert "(b)(5)".

Page 8, line 23, delete "containing any substance" and insert "**that:**
(A) consists in whole or in part of any filthy, putrid, or decomposed substance; or
(B) is contaminated by any added poisonous or added deleterious substance that may render the product injurious to health; and".

Page 8, delete lines 24 through 25.

Page 9, line 4, after "number;" insert "an".

Page 9, line 8, delete "January 1," and insert "**May 31,**".

Page 9, line 11, after "NICOTINE." delete "" and insert "**NICOTINE IS AN ADDICTIVE CHEMICAL."**".

Page 9, strike lines 12 through 14.

Page 9, line 15, strike "(7)" and insert "(6)".

Page 9, line 22, delete "(8)" and insert "(7)".

Page 9, line 22, reset in roman "manufacturer".

Page 9, line 22, after "manufacturer" insert "and".

Page 9, line 22, strike "must take reasonable steps to".

Page 9, line 23, strike "ensure that an unauthorized ingredient is not included" and insert "**may not use adulterated products"**.

Page 10, line 6, delete "(9)" and insert "(8)".

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

Page 10, line 17, delete "(11)" and insert "(10)".

Page 10, line 23, delete "(b)(4)(A)" and insert "(b)(5)(A)".

Page 11, line 41, after "1.1" insert ".".

Page 12, line 10, after "cigarette" insert "**or an e-liquid"**.

Page 12, line 17, delete "A distributor shall indicate on each invoice of a sale of an".

Page 12, delete lines 18 through 19.

Page 12, line 20, delete "permit holder or from another Indiana



distributor."

Page 12, line 21, delete "described in this subsection" and insert "**to a retailer or from a manufacturer**".

Page 12, line 23, delete "quarterly" and insert "**annually**".

Page 12, between lines 33 and 34, begin a new line blocked left and insert:

"A report under this subsection is confidential and the ATC may not disclose it to another person."

Page 13, line 2, after "certification" insert ", **by October 1 of each year,**".

Page 13, line 42, reset in roman "infraction."

Page 13, line 42, delete "misdemeanor."

Page 15, line 20, reset in roman "infraction."

Page 15, line 20, delete "misdemeanor."

Page 16, delete lines 3 through 6.

Renumber all SECTIONS consecutively.

(Reference is to ESB 1 as printed March 31, 2017.)

LEHMAN

