

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 ENROLLED ACT No. 1

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AN ACT to amend the Indiana Code concerning alcohol and tobacco.

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

SECTION 1. IC 7.1-1-3-15.5, AS AMENDED BY P.L.176-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) "Electronic cigarette", **except as provided in subsection (b)**, has the meaning set forth in IC 35-46-1-1.5.

(b) "Electronic cigarette", **for purposes of IC 7.1-7, has the meaning set forth in IC 7.1-7-2-9**.

SECTION 2. 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.**

SECTION 3. IC 7.1-7-1-2, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The purpose of this article is **in the absence**



of federal regulations, to protect public health and safety by:

- (1) ensuring the safety and security of e-liquid manufactured for sale in Indiana;
- (2) ensuring that e-liquid manufactured or sold in Indiana conforms to appropriate standards of identity, strength, quality, and purity; and
- (3) ensuring that e-liquid is not contaminated or adulterated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety.

SECTION 4. IC 7.1-7-2-3 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 3: "Audit" means a procedure performed by the commission, including inspection of manufacturing facilities and preparation areas, review of required records, compliance checks, and auditing of samples of e-liquid:

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 IC 7.1-7-2-4 IS REPEALED [EFFECTIVE UPON PASSAGE].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

- (1) the mixing and bottling activities are conducted in secure and sanitary conditions in a space that is kept in repair sufficient to prevent e-liquid from becoming contaminated;
- (2) equipment used in the manufacturing process is easily cleanable, as defined in 410 IAC 7-24-27(a), in such a way that it protects against contamination of e-liquid, e-liquid containers, or e-liquid packaging materials; and
- (3) the cleaning and sanitizing of equipment is consistent with the Indiana standards for public health and cleanliness that apply to commercial kitchens in the state.

SECTION 6. IC 7.1-7-2-6.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.3. "Delivery sale" means a sale of e-liquids to a purchaser in Indiana in which the purchaser submits the order for the sale:

- (1) by telephone;
- (2) over the Internet; or
- (3) through the mail or another delivery system;

and the e-liquids are shipped through a delivery service. "Delivery sale" does not include a sale of e-liquids not for personal consumption to a person who is a retailer.

SECTION 7. IC 7.1-7-2-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6.7. "Delivery service" means a person, including the United States Postal Service, that is engaged in the delivery of



**letters, packages, or containers.**

SECTION 8. IC 7.1-7-2-9 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 9: "Electronic cigarette" means a powered vaporizer that:

- (1) is the size and shape of a traditional cigarette;
- (2) uses a sealed nonrefillable cartridge containing not more than four (4) milliliters of a liquid; and
- (3) is intended to be vaporized and inhaled.

The term does not include a vapor pen.

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

- (1) **may or may not contain nicotine; and**
- (2) is intended to be vaporized and inhaled using a vapor pen; **product. and**
- (2) **specifically excludes substances contained in nonrefillable sealed cartridges of four (4) milliliters or less used in electronic cigarettes.**

SECTION 10. 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 **and** that is **approved not prohibited** by the federal Food and Drug Administration as a **permissible flavoring**; and that is **not prohibited by law: an additive in vapor products.**

SECTION 11. IC 7.1-7-2-13 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 13: "Key system" means a licensed or patented key design used to prevent unauthorized duplication of keys for use in high security installations; and that is prospectively exclusive to the security firm for a period of at least ten (10) years.

SECTION 12. IC 7.1-7-2-14 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 14: "Locksmith" means a person who; or a firm that employs at least one (1) employee who; for the previous one (1) year period has been certified as a certified professional locksmith by the Associated Locksmiths of America.

SECTION 13. 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 14. 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 that does not produce open system vapor products that are for sale in Indiana.**

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

SECTION 16. 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 any tobacco product that is sold or distributed to reduce harm or the risk of tobacco related disease associated with commercially marketed tobacco products.**

SECTION 17. 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.~~

SECTION 18. IC 7.1-7-2-22 IS REPEALED [EFFECTIVE UPON PASSAGE]. ~~Sec. 22. "Security firm" means an entity that:~~

- ~~(1) is independent from an applicant and manufacturer;~~
- ~~(2) has experience in the security business; and~~
- ~~(3) as of July 1, 2015:~~
  - ~~(A) meets the qualifications under IC 7.1-7-4-1(d)(3);~~
  - ~~(B) is a locksmith; and~~
  - ~~(C) provides services necessary to ensure the safety and security of e-liquid manufactured for sale in Indiana.~~

SECTION 19. IC 7.1-7-2-22.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 22.5. "Shipping documents" means a bill of lading, airbill, or any document used to evidence that a delivery occurred by a delivery service.**

SECTION 20. IC 7.1-7-2-23, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. "Vapor ~~pen~~ **product**" means a powered vaporizer ~~other than an electronic cigarette~~; that converts e-liquid to a vapor intended for inhalation.

SECTION 21. IC 7.1-7-3-2, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~(a)~~ The commission has the following duties and responsibilities:



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

(2) To issue permits.

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

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

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

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

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

**(4) To approve or deny a permit application made under IC 7.1-7-4 within sixty (60) days of receiving the application.**

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

SECTION 22. 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.

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

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

(b) All e-liquids manufactured by an e-liquids manufacturer approved by the commission under this article before July 1, 2017, may be distributed and sold for retail until the expiration date of the e-liquids.



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

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

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

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

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

(2) A service agreement that:

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

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

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

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

(E) prohibits the security firm from withholding its certification as described in clause (D) because the security equipment of the applicant is not sold by or proprietary to the security firm; and

(F) is renewable for the entire length of time that the applicant holds a permit issued by the commission:

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

(A) The security firm has continuously employed, for not less than the previous one (1) year period, both of the following:

(i) At least one (1) employee who is accredited or certified by the Door and Hardware Institute as an Architectural Hardware Consultant.

(ii) At least one (1) employee who is accredited or certified as a certified Rolling Steel Fire Door Technician by the International Door Association or the Institute of Door Dealer Education and Accreditation.

However, the security firm meets the requirements of this clause if the security firm continuously employed, for not less



than the previous one (1) year period; one (1) employee who is accredited or certified under both item (i) and item (ii):

(B) The security firm has at least one (1) year of commercial experience; in the preceding year; with the following:

(i) Video surveillance system design and installation with remote viewing capability from a secure facility:

(ii) Owning and operating a security monitoring station with ownership control and use of a redundant offsite backup security monitoring station:

(iii) Operating a facility that modifies commercial hollow metal doors, frames, and borrowed lights with authorization to apply the Underwriters Laboratories label:

~~(4)~~ (1) The name, telephone number, and address of the applicant.

~~(5)~~ (2) The name, telephone number, and address of the manufacturing facility.

~~(6)~~ The projected output in liters per year of e-liquid of the manufacturing facility.

~~(7)~~ (3) The name, telephone number, title, and address of the person responsible for the manufacturing facility.

~~(8)~~ (4) Verification that the facility will comply with proper manufacturing processes: **applicable tobacco products good manufacturing practices promulgated under 21 U.S.C. 387f(e) of the federal Food, Drug, and Cosmetic Act.**

~~(5)~~ Verification that the manufacturer will comply with the applicable ingredient listing required by 21 U.S.C. 387d(a)(1) of the federal Food, Drug, and Cosmetic Act.

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

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

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

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

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



SECTION 24. IC 7.1-7-4-2, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A manufacturing permit that is renewed by the commission is valid for five (5) years.

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

- (1) The name, telephone number, and address of the applicant.
- (2) The name, telephone number, and address of the manufacturing facility.
- ~~(3) The annual output in liters of e-liquid of the manufacturing facility for the five (5) years preceding the year of the application.~~
- ~~(4)~~ **(3)** The name, telephone number, title, and address of the person responsible for the manufacturing facility.
- ~~(5) Certification by the applicant that the applicant will continue to use the security protocol approved by the commission with the applicant's initial application. However, if the applicant desires to change the previously approved security protocol, the applicant shall submit the suggested changes to the commission for approval.~~
- ~~(6) Certification by the security firm with which the manufacturer has a security agreement that the manufacturer meets all security requirements set forth in section 6(10) through 6(15) of this chapter and that the security firm will not withhold its certification because the security equipment of the manufacturer is not sold by or proprietary to the security firm.~~
- ~~(7)~~ **(4)** Verification that the facility uses proper manufacturing processes: **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.**
- ~~(8)~~ **(5)** Written consent allowing the state police department to conduct a state or national criminal history background check on any person listed on the application.
- ~~(9) Written consent allowing the commission, if a permit is renewed to the applicant, to enter the premises where the e-liquid is manufactured to conduct physical inspections; sample the product to ensure the e-liquid meets the requirements of e-liquid set forth in this article; and perform an audit.~~
- ~~(10)~~ **(6)** A nonrefundable renewal application fee of five hundred dollars (\$500).





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

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

SECTION 25. IC 7.1-7-4-3 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 3: ~~The security protocol that is employed at the applicant's facility is confidential under IC 5-14-3-4.~~

SECTION 26. IC 7.1-7-4-6, AS ADDED BY P.L.231-2015, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) As used in this section:

**(1) "adulterated" means a product 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**

**(2) "tamper evident package" means a package having at least one (1) indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.**

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

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

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

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

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

(5) The label or container must include: ~~at~~

**(A) batch number; an identifiable and trackable code; and**

**(B) means for the commission to obtain the manufacturing date;**

**(C) the Indiana e-liquid manufacturer permit number; and**

**(D) beginning May 31, 2018, and until specific rules are**



adopted by the commission, the following statement if nicotine is in the product: **"WARNING: THIS PRODUCT CONTAINS NICOTINE. NICOTINE IS AN ADDICTIVE CHEMICAL."**

- (6) The label must include a scannable code, including a quick response code, tied to the batch number as prescribed by the commission.
- (7) An e-liquid container must be distributed by the manufacturer and sold by the manufacturer or the retailer by the earlier of either:
  - (A) the expiration or "best if used by" date; or
  - (B) two (2) years of the date of manufacture.
- (8) The manufacturing facility must conduct all mixing and bottling activities in a clean room.
- (9) (6) The manufacturer **or retailer** must take reasonable steps to ensure that an unauthorized ingredient is not included **may not add an adulterated product in to** any e-liquid produced for sale in Indiana.
- (10) The manufacturer must take reasonable steps to ensure that all ingredients used in the production of e-liquid are stored in a secure area accessible only by authorized personnel.
- (11) The manufacturer shall have a remotely monitored security system at the facility in areas where e-liquid is mixed, bottled, packaged, and stored.
- (12) The manufacturer shall have an exclusive high security key system that limits access to areas where e-liquid is mixed, bottled, packaged, and stored to authorized personnel only.
- (13) The manufacturer's facility must be subject to twenty-four (24) hour video recording where e-liquid is mixed, bottled, packaged, and stored. The video recordings must be retained for at least thirty (30) days.
- (14) The manufacturer must take reasonable steps to ensure that only authorized personnel have access to secured areas of the facility where e-liquid is mixed, bottled, and packaged.
- (15) The manufacturer must store and maintain three (3) ten (10) milliliter sample bottles from each production batch of more than two (2) liters for a period of not less than three (3) years in a secure, limited access area with recorded video surveillance.
- (16) The manufacturer must submit to random audits of the facility and the manufacturer's samples and records by the commission.
- (17) (7) The manufacturer must submit to random site visits by



the commission.

~~(18)~~ **(8)** The manufacturer may:

- (A) own and control both the e-liquid manufacturing process and the bottling process; or
- (B) subcontract with another manufacturer for the performance of the e-liquid manufacturing service, the bottling services, or both services.

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

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

~~(19)~~ **(10)** The manufacturer or any person listed on the permit application may not have been convicted of a felony or an offense involving a controlled substance: **within ten (10) years before the date of application of:**

- (A) a federal crime having a sentence of at least one (1) year;**
- (B) an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014);**
- (C) a crime in a state other than Indiana having a penalty equal to the penalty for an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014);**
- (D) an Indiana Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014); or**
- (E) a crime in a state other than Indiana similar to a Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014).**

**(c) A manufacturer of a closed system vapor product must comply with subsection (b)(5)(A).**

SECTION 27. IC 7.1-7-4-7, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) On receipt of a completed permit



application, the commission shall forward a copy of the application to the state police department.

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

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

- (1) all the requirements under this article have been met; and
- (2) the applicant has not been convicted of a felony involving a controlled substance; **within ten (10) years before the date of application of:**

**(A) a federal crime having a sentence of at least one (1) year;**

**(B) an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014); or**

**(C) a crime in a state other than Indiana having a penalty equal to the penalty for an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014);**

**(D) an Indiana Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014); or**

**(E) a crime in a state other than Indiana similar to a Class D felony involving a controlled substance under IC 35-48-4 (for a crime committed before July 1, 2014) or a Level 6 felony involving a controlled substance under IC 35-48-4 (for a crime committed after June 30, 2014).**

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



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

SECTION 28. 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 29. 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 an e-liquid.

(e) A retailer may not sell an e-liquid 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 retain all invoices to a retailer or from a manufacturer for at least two (2) years.

(i) 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.

(j) Except as provided in subsection (l), a manufacturer, including a manufacturer of a closed system vapor product, shall annually submit a report to the commission setting forth:

(1) each new product that the manufacturer is producing and is sold in Indiana with a list of the contents and ingredients by volume; and

(2) whether the manufacturer has stopped producing products previously produced and sold in Indiana.

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

(k) 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.

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

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

SECTION 30. IC 7.1-7-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE



UPON PASSAGE]:

**Chapter 5.5. Delivery Sales**

**Sec. 1. A retailer may not make a delivery sale of e-liquid to a minor as set forth in IC 7.1-7-6-5.**

**Sec. 2. A retailer may not ship e-liquids without first making a good faith effort to verify the age of the purchaser of the e-liquids as set forth in IC 7.1-7-6-6.**

**Sec. 3. (a) Before e-liquids are shipped in a delivery sale, a retailer must be fully paid for the purchase and shall accept payment from the purchaser:**

- (1) by a check drawn on an account in the purchaser's name;**
- (2) by a credit card issued in the purchaser's name; or**
- (3) by a debit card issued in the purchaser's name.**

**(b) A retailer may ship e-liquids only to a purchaser.**

**Sec. 4. A retailer taking a delivery sale order may request the electronic mail address of the purchaser.**

**Sec. 5. A retailer who ships e-liquids from a delivery sale order shall include as part of the shipping documents a document with the following statement: "E-LIQUIDS: Indiana law prohibits the sale of this product to a person who is less than 18 years of age."**

SECTION 31. IC 7.1-7-6-1, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If a manufacturer, **distributor, or retailer** violates this article, the manufacturer, **distributor, or retailer** may be reprimanded, assessed a civil penalty, or have the manufacturer's permit, **distributor's license, or retailer's tobacco sales certificate** suspended. In the case of gross or willful misconduct, the permit holder may have the manufacturer's permit suspended for a period of up to one (1) year. At the end of the suspension period, the manufacturer may apply to the commission for reinstatement of the permit.

**(b) Any provision in this article that requires a manufacturer to comply with the federal Food, Drug, and Cosmetic Act or a federal rule promulgated under the federal Food, Drug, and Cosmetic Act is under the sole jurisdiction of the federal Food and Drug Administration. If the federal Food and Drug Administration seeks court enforcement of any section of the federal Food, Drug, and Cosmetic Act cited in this article and a civil monetary penalty is assessed against the manufacturer, the act or omission for which the penalty was assessed constitutes a violation of this article.**

**(c) The commission may assess a civil penalty against a manufacturer, distributor, or retailer for a violation of this article in**



an amount that does not exceed ten thousand dollars (\$10,000). A civil penalty may be assessed in addition to other penalties allowed under this article.

SECTION 32. IC 7.1-7-6-2, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **This subsection does not apply to a delivery sale as defined in IC 7.1-7-2-6.3.** If a retailer: ~~knowingly sells e-liquid:~~

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

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

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

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).
- (4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

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

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

(d) The following defenses are available to a retail establishment accused of selling or distributing e-liquid to a person who is less than





eighteen (18) years of age:

- (1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.
- (2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.
- (3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

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

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

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

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

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

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

SECTION 33. 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 34. 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 35. IC 7.1-7-6-5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 5. A person who knowingly or intentionally makes a delivery sale of e-liquids to a minor commits a Class C infraction.**

SECTION 36. IC 7.1-7-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec 6. (a) As used in this section, "good faith effort to verify the age of a purchaser of e-liquids" means:**

(1) verifying the age of the purchaser in a commercially available database; or

(2) obtaining a photocopy of a government issued identification;

that indicates the birth date or age of the purchaser.

(b) A person who knowingly or intentionally ships e-liquids without first making a good faith effort to verify the age of the purchaser of the e-liquids commits a Class C infraction.

SECTION 37. [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 38. **An emergency is declared for this act.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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