

SENATE BILL No. 45

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-2-3-33; IC 7.1-7; IC 35-46-1.

Synopsis: Prohibition on flavored e-liquids. Prohibits the sale of flavored e-liquid to a person of any age. Defines "flavored e-liquid" as e-liquid that contains a constituent ingredient that is added for the purpose of imparting a characterizing flavor. Provides that a manufacturer, distributor, or retailer may not manufacture, distribute, or market flavored e-liquid in Indiana. Authorizes the alcohol and tobacco commission to investigate and enforce penalties for certain violations involving flavored e-liquid.

Effective: July 1, 2021.

Grooms

January 4, 2021, read first time and referred to Committee on Health and Provider Services.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 45

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 7.1-2-3-33, AS AMENDED BY P.L.49-2020,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 33. The commission is authorized to:
4 (1) investigate a violation of; and
5 (2) enforce a penalty for a violation of;
6 **IC 35-46-1-9.7, IC 35-46-1-9.8, IC 35-46-1-10, IC 35-46-1-10.2,**
7 **IC 35-46-1-11, IC 35-46-1-11.2, IC 35-46-1-11.4, IC 35-46-1-11.5,**
8 **IC 35-46-1-11.7, or IC 35-46-1-11.8.**
9 SECTION 2. IC 7.1-7-2-12 IS REPEALED [EFFECTIVE JULY 1,
10 2021]. ~~Sec. 12. "Flavoring" means a food grade additive or synthetic~~
11 ~~flavoring substance that is used to add flavor and that is not prohibited~~
12 ~~by the federal Food and Drug Administration as an additive in vapor~~
13 ~~products.~~
14 SECTION 3. IC 7.1-7-2-12.1 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2021]: **Sec. 12.1. "Flavored e-liquid" means**
17 **e-liquid that contains a constituent ingredient, agent, or other**



1 **compound or concentrate that is added for the purpose of**
 2 **imparting a characterizing flavor.**

3 SECTION 4. IC 7.1-7-4-6, AS AMENDED BY P.L.17-2019,
 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2021]: Sec. 6. (a) As used in this section:

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

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

9 (B) is contaminated by any added poisonous or added
 10 deleterious substance that may render the product injurious to
 11 health; and

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

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

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

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

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

26 (3) The label on an e-liquid container must meet the nicotine
 27 addictiveness warning statement requirements set forth in 21 CFR
 28 1143.3.

29 (4) The manufacturer or retailer may not add an adulterated
 30 product to any e-liquid produced for sale in Indiana.

31 (5) The manufacturer must submit to random site visits by the
 32 commission.

33 (6) The manufacturer may:

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

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

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

42 ~~(7) A manufacturer may use a flavoring, as defined by~~



~~IC 7.1-7-2-12, as an ingredient in an e-liquid.~~

(8) (7) The manufacturer or any person listed on the permit application may not have been convicted 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).

SECTION 5. IC 7.1-7-5-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 0.5. (a) A manufacturer, distributor, or retailer may not manufacture, distribute, or market flavored e-liquid in Indiana.**

(b) The provisions in this chapter may not be construed to restrict the manufacture, distribution, or sale of unflavored e-liquids in accordance with this chapter.

SECTION 6. IC 7.1-7-5-2, AS ADDED BY P.L.176-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A manufacturer of e-liquid may file a request with the department for approval of an ingredient to be allowed in the composition of e-liquid.

(b) The department may approve the request filed under subsection (a) if the department determines that the ingredient will not:

(1) pose an unreasonable threat to public health and safety; **and**

(2) **impart a characterizing flavor to the e-liquid.**

SECTION 7. IC 35-46-1-1.5, AS ADDED BY P.L.20-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2021]: Sec. 1.5. As used in this chapter, "electronic cigarette"
 2 means a device that is capable of providing an inhalable dose of
 3 nicotine by delivering a vaporized solution **that does not contain**
 4 **flavored e-liquid (as defined in IC 7.1-7-2-12.1)**. The term includes
 5 the components and cartridges.

6 SECTION 8. IC 35-46-1-9.7 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2021]: Sec. 9.7. (a) For purposes of this section, "flavored
 9 e-liquid" has the meaning set forth in IC 7.1-7-2-12.1.

10 (b) A person who knowingly:

11 (1) sells or distributes flavored e-liquid to a person of any age;

12 or

13 (2) purchases flavored e-liquid for delivery to another person
 14 of any age;

15 commits a Class C infraction. For a sale to take place under this
 16 section, the buyer must pay the seller for the flavored e-liquid.

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

20 SECTION 9. IC 35-46-1-9.8 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2021]: Sec. 9.8. (a) For purposes of this section, "flavored
 23 e-liquid" has the meaning set forth in IC 7.1-7-2-12.1.

24 (b) A retail establishment that sells or distributes flavored
 25 e-liquid to a person of any age commits a Class C infraction. For
 26 a sale to take place under this section, the buyer must pay for the
 27 flavored e-liquid.

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

