

SENATE BILL No. 397

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-7-6-7; IC 7.1-8; IC 24-4-21; IC 35-46-1-11.9; IC 35-48-4-18.

Synopsis: Tobacco, e-liquids, and CBD. Provides that a person who knowingly or intentionally sells an e-liquid or an electronic cigarette that contains: (1) a concentration of nicotine that is more than 20 milligrams per milliliter; or (2) vitamin E acetate; commits a Class B infraction. Requires the alcohol and tobacco commission (commission) to issue licenses for low THC hemp extract distributors and sellers licenses (licenses). Provides that the commission may revoke a license if the distributor or seller does not have a certificate of analysis or documentation proving chain of custody for low THC hemp extract. Requires the commission to adopt rules concerning the process for issuance and renewal of licenses and violations that result in suspension or revocation of a license. Provides that a person who sells or distributes low THC hemp extract without a valid license commits a Class A infraction. Provides that it is a Class B infraction if a person knowingly or intentionally sells or distributes to another person food to which has been added certain active ingredients that include a drug product that has been approved under the federal Food, Drug, and Cosmetic Act.

Effective: July 1, 2020.

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January 14, 2020, read first time and referred to Committee on Public Policy.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE BILL No. 397

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 7.1-7-6-7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2020]: **Sec. 7. (a) A person who knowingly or intentionally sells**
4 **an e-liquid that contains a concentration of nicotine that is more**
5 **than twenty (20) milligrams per milliliter commits a Class B**
6 **infraction.**

7 **(b) A person who knowingly or intentionally sells an e-liquid**
8 **that contains vitamin E acetate commits a Class B infraction.**

9 SECTION 2. IC 7.1-8 IS ADDED TO THE INDIANA CODE AS A
10 **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
11 2020]:

12 **ARTICLE 8. LOW THC HEMP EXTRACT LICENSING**

13 **Chapter 1. Applicability and Purpose**

14 **Sec. 1. This article applies to the distribution and sales of low**
15 **THC hemp extract.**

16 **Sec. 2. The purpose of this article is to protect public health and**
17 **safety by:**



(1) ensuring the safety and security of low THC hemp extract that is for sale in Indiana;

(2) ensuring that low THC hemp extract sold in Indiana conforms to appropriate standards of identity, strength, quality, and purity; and

(3) ensuring that low THC hemp extract is not contaminated or adulterated by the inclusion of ingredients or other substances that might pose unreasonable threats to public health and safety.

Sec. 3. This article does not limit the power or duties of the commission under IC 7.1-2.

Sec. 4. This article may not be construed to restrict or limit any law under IC 35-48.

Chapter 2. Definitions

Sec. 1. The definitions contained in this chapter apply throughout the article unless the context clearly requires otherwise.

Sec. 2. "Low THC hemp extract" has the meaning set forth in IC 35-48-1-17.5.

Chapter 3. Duties and Responsibilities of the Alcohol and Tobacco Commission

Sec. 1. The commission is responsible for the enforcement and administration of this article.

Sec. 2. The commission has the following duties and responsibilities:

(1) To require the submission of information necessary to implement this article.

(2) To issue licenses under this article.

(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 approve or deny a license application made under IC 7.1-8-4 within sixty (60) days after receiving the application.

(5) To suspend or revoke licenses issued under this article.

(6) To adopt rules under IC 4-22-2 concerning:

(A) the process for issuance and renewal of licenses; and

(B) violations that result in suspension or revocation of a license issued;

under this article.

Chapter 4. License Requirements

Sec. 1. A person may not distribute or sell low THC hemp



1 extract without a license issued by the commission under this
2 article.

3 Sec. 2. (a) A license issued under this article is valid for five (5)
4 years.

5 (b) An initial application for a license must include the
6 following:

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

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

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

15 (4) A nonrefundable initial application fee of one thousand
16 dollars (\$1,000).

17 (c) The application fee described in subsection (b)(4) shall be
18 deposited in the enforcement and administration fund established
19 under IC 7.1-4-10.

20 (d) The commission shall adopt rules under IC 4-22-2
21 concerning the initial license application process.

22 Sec. 3. (a) A renewal license issued under this article is valid for
23 five (5) years.

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

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

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

31 (3) Written consent allowing the state police department to
32 conduct a state or national criminal history background check
33 on any person listed on the renewal application.

34 (4) A nonrefundable renewal application fee of one thousand
35 dollars (\$1,000).

36 (c) The application fee described in subsection (b)(4) shall be
37 deposited in the enforcement and administration fund established
38 under IC 7.1-4-10.

39 (d) The commission shall adopt rules under IC 4-22-2
40 concerning the renewal license application process.

41 Sec. 4. (a) A license issued under this article may not be
42 transferred:



1 (1) from the license holder to another person; or
 2 (2) from the location for which the license was approved or
 3 renewed to another location;
 4 unless approved by the commission.

5 (b) The commission shall allow a license to be transferred under
 6 subsection (a) if the license has not been suspended or revoked and
 7 if the new license holder or location meets the requirements under
 8 this article.

9 Sec. 5. If the information required for the initial or renewal
 10 license changes, the license holder shall notify the commission
 11 within ten (10) business days after the change. If any change in the
 12 information required for an application results in a violation of this
 13 article, the commission may impose a penalty as provided in this
 14 article.

15 Sec. 6. The commission may revoke a low THC hemp extract
 16 license issued under this article for a person who violates a
 17 provision of IC 24-4-21.

18 Sec. 7. A person who sells or distributes low THC hemp extract
 19 without a valid license issued under this article commits a Class A
 20 infraction. Each violation of this section constitutes a separate
 21 offense.

22 SECTION 3. IC 24-4-21-1, AS AMENDED BY P.L.190-2019,
 23 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2020]: Sec. 1. The following definitions apply throughout this
 25 chapter:

26 (1) "Certificate of analysis" means a certificate from an
 27 independent testing laboratory describing the results of the
 28 laboratory's testing of a sample.

29 (2) "Chain of custody" means documentation that indicates:
 30 (A) the name and address of the farmer or company that
 31 grew the hemp from which the low THC hemp extract was
 32 derived;

33 (B) the name and address of the company that processed
 34 and packaged the low THC hemp extract;

35 (C) the name and address of each person or company that
 36 distributed the low THC hemp extract; and

37 (D) any other people or retailers that possessed the low
 38 THC hemp extract before the sale or distribution of the
 39 low THC hemp extract.

40 (2) (3) "Independent testing laboratory" means a laboratory:

41 (A) with respect to which no person having a direct or indirect
 42 interest in the laboratory also has a direct or indirect interest



in a facility that:

- (i) processes, distributes, or sells low THC hemp extract, or a substantially similar substance in another jurisdiction;
- (ii) cultivates, processes, distributes, dispenses, or sells marijuana; or
- (iii) cultivates, processes, or distributes hemp; and

(B) that is accredited as a testing laboratory to International Organization for Standardization (ISO) 17025 by a third party accrediting body such as the American Association for Laboratory Accreditation (A2LA) or Assured Calibration and Laboratory Accreditation Select Services (ACLASS).

⊕ (4) "Low THC hemp extract" has the meaning set forth in IC 35-48-1-17.5.

SECTION 4. IC 24-4-21-2, AS ADDED BY P.L.153-2018, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. A person may distribute low THC hemp extract in Indiana only if:

(1) the product:

⊕ (A) has been approved by the federal Food and Drug Administration or the federal Drug Enforcement Agency as a prescription or over the counter drug; or

⊕ (B) meets the requirements of this chapter; and

(2) the person has a low THC hemp extract distribution or sales license issued under IC 7.1-8.

SECTION 5. IC 24-4-21-3, AS AMENDED BY P.L.190-2019, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) A person may distribute **or sell** low THC hemp extract in Indiana only if the distributor **or seller** has a certificate of analysis prepared by an independent testing laboratory showing:

(1) that the low THC hemp extract is the product of a batch tested by the independent testing laboratory;

(2) that the independent testing laboratory determined that the batch contained not more than three-tenths percent (0.3%) total delta-9-tetrahydrocannabinol (THC), including precursors, by weight, based on the testing of a random sample of the batch; and

(3) the cannabidiol percent present of the low THC hemp extract.

(b) A person may distribute or sell low THC hemp extract only if the distributor or seller has documentation indicating the chain of custody of the low THC hemp extract.

SECTION 6. IC 24-4-21-5, AS ADDED BY P.L.153-2018, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) ~~This section applies after June 30, 2018:~~ A



1 person who distributes low THC hemp extract in violation of this
 2 chapter commits a Class B infraction. However, the offense is a Class
 3 A infraction if the person has a prior unrelated judgment for a violation
 4 of this chapter.

5 **(b) The alcohol and tobacco commission may suspend or revoke**
 6 **a low THC hemp extract permit issued under IC 7.1-8-3 for a**
 7 **violation of this chapter.**

8 **(c) These penalties are in addition to any criminal penalties that may**
 9 **be imposed for unlawful possession or distribution of a controlled**
 10 **substance.**

11 SECTION 7. IC 35-46-1-11.9 IS ADDED TO THE INDIANA
 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2020]: **Sec. 11.9. (a) A person who knowingly**
 14 **or intentionally sells an electronic cigarette that contains a**
 15 **concentration of nicotine that is more than twenty (20) milligrams**
 16 **per milliliter commits a Class B infraction.**

17 **(b) A person who knowingly or intentionally sells an electronic**
 18 **cigarette that contains vitamin E acetate commits a Class B**
 19 **infraction.**

20 SECTION 8. IC 35-48-4-18 IS ADDED TO THE INDIANA CODE
 21 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2020]: **Sec. 18. A person who knowingly or intentionally sells or**
 23 **distributes to another person food to which has been added a**
 24 **substance in which an active ingredient is a drug product that has**
 25 **been approved under Section 505 of the federal Food, Drug, and**
 26 **Cosmetic Act (21 U.S.C. 355) commits a Class B infraction.**

