

# SENATE BILL No. 539

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-1-3; IC 7.1-7.

**Synopsis:** Regulation of e-liquids. Requires a manufacturer that manufactures, bottles, or stores e-liquid to have a permit issued by the alcohol and tobacco commission. Establishes requirements to obtain a permit to manufacture e-liquid. Establishes penalties for not complying with the terms of the permit. Prohibits a retailer from selling e-liquid: (1) to a minor; (2) that is purchased from a manufacturer that does not have a permit; or (3) that has been altered or tampered with. Allows a permit holder to bring a civil action for violations of the e-liquids laws.

**Effective:** July 1, 2015.

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January 14, 2015, read first time and referred to Committee on Commerce & Technology.

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First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 539

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 7.1-1-3-5.5, AS ADDED BY P.L.94-2008,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2015]: Sec. 5.5. (a) "Applicant", for purposes of
- 4 IC 7.1-3-18.5, means a person who applies for a tobacco sales
- 5 certificate.
- 6 (b) "Applicant", for purposes of IC 7.1-7, has the meaning set
- 7 forth in IC 7.1-7-2-2.
- 8 SECTION 2. IC 7.1-1-3-13 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. ~~Container. The term~~
- 10 (a) "Container", except as provided in subsection (b), means a
- 11 receptacle in which an alcoholic beverage is immediately contained
- 12 and with which the alcoholic beverage contained in it is in immediate
- 13 contact.
- 14 (b) "Container", for purposes of IC 7.1-7, has the meaning set
- 15 forth in IC 7.1-7-2-5.
- 16 SECTION 3. IC 7.1-1-3-14.5 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14.5. ~~Department. The~~  
 2 ~~term (a) "Department", except as provided in subsection (b),~~ means  
 3 the Indiana Department of State Revenue.

4 **(b) "Department", for purposes of IC 7.1-7, has the meaning set**  
 5 **forth in IC 7.1-7-2-6.**

6 SECTION 4. IC 7.1-1-3-15.5, AS ADDED BY P.L.20-2013,  
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2015]: Sec. 15.5. **(a) "Electronic cigarette", except as**  
 9 **provided in subsection (b),** has the meaning set forth in  
 10 IC 35-46-1-1.5.

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

13 SECTION 5. IC 7.1-1-3-25 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 25. ~~Minor. The term (a)~~  
 15 ~~"Minor", except as provided in subsection (b),~~ means a person less  
 16 than twenty-one (21) years of age.

17 **(b) "Minor", for purposes of IC 7.1-7, has the meaning set forth**  
 18 **in IC 7.1-7-2-15.**

19 SECTION 6. IC 7.1-1-3-29 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 29. ~~Permit. The term~~  
 21 ~~(a) "Permit", except as provided in subsection (b),~~ means a written  
 22 authorization issued by the commission entitling its holder to  
 23 manufacture, rectify, distribute, transport, sell, or otherwise deal in  
 24 alcoholic beverages, all as provided in this title.

25 **(b) "Permit", for purposes of IC 7.1-7, has the meaning set forth**  
 26 **in IC 7.1-7-2-16.**

27 SECTION 7. IC 7.1-1-3-30 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 30. ~~Permittee. The term~~  
 29 ~~(a) "Permittee", except as provided in subsection (b),~~ means

30 ~~(a) a person who is the holder of a valid permit under this title, and;~~

31 ~~(b) Also includes including~~ an agent, servant, or employee of, or  
 32 other person acting on behalf of, a permittee, whenever a permittee is  
 33 prohibited from doing a certain act under this title.

34 **(b) "Permittee", for purposes of IC 7.1-7, has the meaning set**  
 35 **forth in IC 7.1-7-2-17.**

36 SECTION 8. IC 7.1-1-3-47.5 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 47.5. **(a) "Tobacco**  
 38 **product", except as provided in subsection (b),** has the meaning set  
 39 forth in IC 7.1-6-1-3.

40 **(b) "Tobacco product", for purposes of IC 7.1-3-18.5, means a**  
 41 **product that:**

42 **(1) contains tobacco, including e-liquid (as defined by**



1           **IC 7.1-7-2-8); and**  
 2           **(2) is intended for human consumption.**  
 3           SECTION 9. IC 7.1-7 IS ADDED TO THE INDIANA CODE AS A  
 4           **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**  
 5           **2015]:**  
 6           **ARTICLE 7. VAPOR PENS AND E-LIQUID**  
 7           **Chapter 1. Applicability**  
 8           **Sec. 1. This article applies to the following:**  
 9               **(1) The commercial manufacturing, bottling, selling,**  
 10              **bartering, or importing of e-liquid in Indiana.**  
 11              **(2) The sale, possession, and use of e-liquid products in**  
 12              **Indiana.**  
 13           **Sec. 2. This article does not limit the powers or duties of the**  
 14           **commission under IC 7.1-2.**  
 15           **Sec. 3. This article may not be construed to restrict or limit any**  
 16           **law under IC 35-48.**  
 17           **Chapter 2. Definitions**  
 18           **Sec. 1. The definitions contained in this chapter apply**  
 19           **throughout this article unless the context clearly requires**  
 20           **otherwise.**  
 21           **Sec. 2. "Applicant" means a person who applies for a permit**  
 22           **under this article.**  
 23           **Sec. 3. "Audit" means a procedure performed by the**  
 24           **commission, including inspection of manufacturing facilities and**  
 25           **preparation areas, review of required records, compliance checks,**  
 26           **review of personnel working knowledge and training, and taking**  
 27           **samples of e-liquid.**  
 28           **Sec. 4. "Clean room" refers to the part of an e-liquid**  
 29           **manufacturing facility where:**  
 30               **(1) the mixing, bottling, and packaging activities are**  
 31               **conducted in secure and sanitary conditions in a space that is**  
 32               **kept in repair sufficient to prevent e-liquid from becoming**  
 33               **contaminated; and**  
 34               **(2) the cleaning and sanitizing of equipment is conducted in a**  
 35               **manner that reasonably protects against contamination of**  
 36               **e-liquid, e-liquid containers, or e-liquid packaging materials.**  
 37           **Sec. 5. "Container" means refillable and unsealed receptacles**  
 38           **and sealed receptacles larger than two (2) milliliters that contain**  
 39           **e-liquid during a manufacturing process. The term does not**  
 40           **include a sealed nonrefillable cartridge containing not more than**  
 41           **two (2) milliliters of e-liquid.**  
 42           **Sec. 6. "Department" means the Indiana state department of**



- 1 health.
- 2       **Sec. 7. "Electronic cigarette" means a powered vaporizer that:**
- 3           (1) is the size and shape of a traditional cigarette;
- 4           (2) uses a sealed nonrefillable cartridge containing not more
- 5           than two (2) milliliters of a liquid; and
- 6           (3) is intended to be vaporized and inhaled.
- 7       **The term does not include a vapor pen.**
- 8       **Sec. 8. "E-liquid" means a substance that is:**
- 9           (1) intended to be vaporized and inhaled using a vapor pen;
- 10          and
- 11          (2) manufactured and sold in a refillable or unsealed
- 12          container or any container larger than two (2) milliliters.
- 13       **Sec. 9. "Employee" means a person who works directly in the**
- 14       **service of another person under an express or implied contract of**
- 15       **hire, and the employer has the direct right to control the details of**
- 16       **work performance. The term does not include a person who works**
- 17       **for any independent subcontractor, temporary service provider, or**
- 18       **an entity or person not under the direct full control of the**
- 19       **employer.**
- 20       **Sec. 10. "Flavorings" means a certified food grade additive used**
- 21       **to add flavor and that is not prohibited by law.**
- 22       **Sec. 11. "Key system" means a licensed or patented key design**
- 23       **used to prevent unauthorized duplication of keys for use in high**
- 24       **security installations, and that is prospectively exclusive to the**
- 25       **security firm for a period of at least ten (10) years.**
- 26       **Sec. 12. "Locksmith" means a person or firm who is or employs**
- 27       **at least one (1) individual who for the previous one (1) year period**
- 28       **has been certified as a:**
- 29           (1) certified professional locksmith; and
- 30           (2) certified registered locksmith;
- 31       **by the Associated Locksmiths of America.**
- 32       **Sec. 13. "Manufacturer" means a person who has been issued**
- 33       **a permit.**
- 34       **Sec. 14. "Manufacturing" means the process by which an**
- 35       **e-liquid is mixed, bottled, packaged, and stored.**
- 36       **Sec. 15. "Minor" means an individual who is less than eighteen**
- 37       **(18) years of age.**
- 38       **Sec. 16. "Permit" means a written authorization issued by the**
- 39       **commission entitling the holder to manufacture, sell, or otherwise**
- 40       **deal in e-liquid, as provided in this article.**
- 41       **Sec. 17. "Permittee" means a person who holds a valid permit**
- 42       **under this article, including an agent of, employee of, or other**



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person acting on behalf of, a permittee.

**Sec. 18. "Retailer" means a person, other than a manufacturer, who in the ordinary course of the person's regular trade or business:**

- (1) acquires any form of e-liquid for the purpose of resale; and**
- (2) transfers the e-liquid to another person for money or other consideration.**

**Sec. 19. "Security firm" means an entity, that is independent from an applicant and manufacturer, with experience in the security business and that:**

- (1) meets the qualifications under IC 7.1-7-4-1(d)(3);**
- (2) is a locksmith; and**
- (3) provides services necessary to ensure the safety and security of e-liquid manufactured for sale in Indiana.**

**Sec. 20. "Vapor pen" means a powered vaporizer, other than an electronic cigarette, that converts e-liquid to a vapor intended for inhalation.**

**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 reports, plans, and specifications that are necessary to implement this article.**
- (2) To issue permits and charge fees.**
- (3) To audit facilities that manufacture or sell e-liquid.**
- (4) To take random samples to ensure the safety and quality of the e-liquid and that the e-liquid meets the requirements in this article.**
- (5) 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.**

**Sec. 3. The commission shall adopt rules, under IC 4-22-2, that are necessary to administer this article.**

**Chapter 4. Permit Requirements**

**Sec. 1. (a) A manufacturer of e-liquid shall obtain a permit from the commission before mixing, bottling, packaging, or selling e-liquid in Indiana.**

**(b) The commission shall accept initial applications and issue**



1 manufacturing permits until June 30, 2016.

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

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

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

9 (A) consistent with reasonable guidelines regarding clean  
10 room facilities and sterilization processes; and

11 (B) capable of meeting all of the security requirements  
12 contained in this article.

13 (2) A service agreement entered into with a security firm that  
14 is valid for a period of five (5) years from the date of the  
15 application and that provides for service and support for the  
16 security requirements of this article. The service agreement  
17 must be renewable the entire length of time that the applicant  
18 holds a permit issued by the commission.

19 (3) Documentation from the security firm demonstrating that  
20 the security firm meets the following requirements:

21 (A) The security firm has continuously employed not less  
22 than one (1) employee for not less than the previous one (1)  
23 year period who is accredited or certified by:

24 (i) the Door and Hardware Institute as an Architectural  
25 Hardware Consultant; and

26 (ii) the International Door Association as a certified  
27 Rolling Steel Fire Door Technician.

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

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

33 (ii) Owning and operating a security monitoring station  
34 with ownership control and use of a redundant offsite  
35 backup security monitoring station.

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

40 (4) The name, telephone number, and address of the  
41 applicant.

42 (5) The name, telephone number, and address of the



- 1 manufacturing facility.
- 2 (6) The projected output in gallons per year of e-liquid of the
- 3 manufacturing facility.
- 4 (7) The name, telephone number, title, and address of the
- 5 person responsible for the manufacturing facility.
- 6 (8) Verification that the facility will comply with proper
- 7 manufacturing processes.
- 8 (9) Written consent allowing the state police department to
- 9 conduct a state or national criminal history background check
- 10 on any person listed on the application.
- 11 (10) Written consent allowing the commission, if a permit is
- 12 issued to the applicant, to enter the premises where the
- 13 e-liquid is manufactured to conduct physical inspections,
- 14 sample the product to ensure the e-liquid meets the
- 15 requirements for e-liquid set forth in this article, and perform
- 16 an audit.
- 17 (11) A nonrefundable initial application fee of five thousand
- 18 dollars (\$5,000).
- 19 (12) Any other information required by the commission.
- 20 **Sec. 2. (a) A manufacturing permit that is renewed by the**
- 21 **commission is valid for five (5) years.**
- 22 **(b) A renewal application for a manufacturing permit must**
- 23 **include the following:**
- 24 (1) The name, telephone number, and address of the
- 25 applicant.
- 26 (2) The name, telephone number, and address of the
- 27 manufacturing facility.
- 28 (3) The output in gallons per year of e-liquid of the
- 29 manufacturing facility.
- 30 (4) The name, telephone number, title, and address of the
- 31 person responsible for the manufacturing facility.
- 32 (5) Certification by the applicant that the applicant will
- 33 continue to use the security protocol approved by the
- 34 commission with the applicant's initial application. However,
- 35 if the applicant desires to change the previously approved
- 36 security protocol, the applicant shall submit the suggested
- 37 changes to the commission for approval.
- 38 (6) Verification that the facility uses proper manufacturing
- 39 processes.
- 40 (7) Written consent allowing the state police department to
- 41 conduct a state or national criminal history background check
- 42 on any person listed on the application.





1           **(8) Written consent allowing the commission, if a permit is**  
 2           **renewed to the applicant, to enter the premises where the**  
 3           **e-liquid is manufactured to conduct physical inspections,**  
 4           **sample the product to ensure the e-liquid meets the**  
 5           **requirements of e-liquid set forth in this article, and perform**  
 6           **an audit.**

7           **(9) A nonrefundable renewal application fee of one thousand**  
 8           **dollars (\$1,000).**

9           **(10) Any other information required by the commission.**

10          **Sec. 3. The security protocol that is employed at the applicant's**  
 11          **facility is confidential and not a public record under IC 5-14-3-4.**

12          **Sec. 4. (a) A permit may not be transferred:**

13           **(1) from the permit holder to another person; or**

14           **(2) from the location where the permit was approved or**  
 15           **renewed to another location;**

16          **unless approved by the commission.**

17          **(b) The commission shall allow a permit to be transferred under**  
 18          **subsection (a) if the permit has not been suspended or revoked and**  
 19          **the new permit holder or location meets the requirements under**  
 20          **this article.**

21          **Sec. 5. If the information required for the initial or renewal**  
 22          **permit changes, the permit holder shall notify the commission**  
 23          **within three (3) business days of the change. If any change in the**  
 24          **information required for an application results in a violation of this**  
 25          **article, the commission may impose a penalty as provided in this**  
 26          **article.**

27          **Sec. 6. A manufacturing facility shall comply with the following**  
 28          **requirements:**

29           **(1) An e-liquid container must use a child proof cap.**

30           **(2) An e-liquid container must be secured using either ring**  
 31           **seals or plastic wrap.**

32           **(3) The label on an e-liquid container must identify the active**  
 33           **ingredients.**

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

36           **(5) The label must include a manufacturing date and batch**  
 37           **number.**

38           **(6) The label must include a scannable encryption code tied to**  
 39           **the batch number as proscribed by the commission.**

40           **(7) An e-liquid container must be distributed and sold within**  
 41           **two (2) years of the date of manufacture.**

42           **(8) The manufacturing facility must comply with reasonable**



1 guidelines regarding clean room facilities and sterilization  
2 processes.

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

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

10 (11) The manufacturer's security firm shall install a remotely  
11 monitored security system at the facility in areas where  
12 e-liquid is mixed, bottled, packaged, and stored.

13 (12) The manufacturer's security firm shall install an  
14 exclusive high security key system that limits access to areas  
15 where e-liquid is mixed, bottled, packaged, and stored to  
16 authorized personnel only.

17 (13) The manufacturer's facility must be subject to  
18 twenty-four (24) hour video recording with remote viewing  
19 capability in areas where e-liquid is mixed, bottled, packaged,  
20 and stored. The video recordings must be retained for at least  
21 thirty (30) days.

22 (14) The manufacturer must take reasonable steps to ensure  
23 that only authorized personnel have access to secured areas of  
24 the facility where e-liquid is mixed, bottled, and packaged.

25 (15) The manufacturer must submit to random audits of the  
26 facility and the manufacturer's records by the commission.

27 (16) The manufacturer must submit to random site visits by  
28 the commission.

29 (17) The manufacturer must own and control both the e-liquid  
30 manufacturing and bottling process.

31 (18) The manufacturer or anyone having a financial interest  
32 in a manufacturer may not have been convicted of a felony or  
33 an offense involving moral turpitude or a controlled  
34 substance.

35 Sec. 7. (a) On receipt of a completed permit application, the  
36 commission shall forward a copy of the application to the state  
37 police department. The state police department shall perform a  
38 state or national criminal history background check of the  
39 applicant and return the application to the commission along with  
40 the state police department's findings from the state or national  
41 background check.

42 (b) The commission shall review the permit application after it



1 is returned from the state police department under subsection (a).  
2 The commission shall grant or deny a completed application for a  
3 permit within sixty (60) days of receipt of the application. If the  
4 commission determines that:

- 5 (1) all the requirements under this article have been met;
  - 6 (2) the applicant is of good character; and
  - 7 (3) the applicant has not been convicted of a felony;
- 8 the commission shall approve the application for issuance of the  
9 permit.

10 (c) If the completed application for a permit is denied, the  
11 commission must state the reasons for the denial. If a completed  
12 application is denied under this section, the applicant may reapply  
13 at any time.

14 **Chapter 5. Manufacturing and Safety Requirements**

15 **Sec. 1. (a) E-liquid distributed and sold within Indiana may be**  
16 **comprised of any of the following ingredients:**

- 17 (1) Vegetable glycerol or vegetable glycerin.
- 18 (2) Propylene glycol.
- 19 (3) Nicotine.
- 20 (4) Flavorings.
- 21 (5) Water.
- 22 (6) Other ingredients approved by the department under  
23 section 2 of this chapter.

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

28 **Sec. 2. (a) A manufacturer of e-liquid may file a request with the**  
29 **department for approval of an ingredient to be allowed in the**  
30 **composition of e-liquid.**

31 (b) The department may approve the request filed under  
32 subsection (a) if the department determines that the ingredient will  
33 not pose an unreasonable threat to public health and safety.

34 **Chapter 6. Violations and Penalties**

35 **Sec. 1. (a) If a manufacturer violates this article, the**  
36 **manufacturer may be reprimanded, assessed a civil penalty, or**  
37 **have the manufacturer's permit suspended, or in the case of gross**  
38 **or willful misconduct, the permit holder may have the**  
39 **manufacturer's permit revoked for a period of up to one (1) year.**  
40 **At the end of the revocation period, the manufacturer may apply**  
41 **to the commission for reinstatement of the permit.**

42 (b) The commission may assess a civil penalty against a



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

4 **Sec. 2. (a) If a retailer knowingly sells e-liquid:**

5 (1) to a minor;

6 (2) purchased from a manufacturer that does not have a  
 7 permit; or

8 (3) that has been altered or tampered with;

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

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

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

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

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

27 (4) If the retail establishment at that specific business location  
 28 has had three (3) or more citations or summonses issued for  
 29 a violation of this section in the previous one hundred eighty  
 30 (180) days, a civil penalty of up to one thousand dollars  
 31 (\$1,000).

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

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

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

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



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

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

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

- 14           (1) agriculture;  
15           (2) processing;  
16           (3) transporting;  
17           (4) wholesaling; or  
18           (5) retailing.

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

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

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

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

34           Sec. 3. (a) Except as otherwise permitted by this article, a person  
35 may not purchase, receive, manufacture, import, or transport, or  
36 cause to be imported or transported from another state, territory,  
37 or country into Indiana, or transport, ship, barter, give away,  
38 exchange, furnish, or otherwise handle or dispose of e-liquid, or to  
39 possess e-liquid for purpose of sale.

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



1           (c) A person who violates this section commits a Class A  
2     **infraction.**

3           **Sec. 4. A permittee may bring a civil action against any person**  
4     **or entity who violates this article. A permittee may bring the civil**  
5     **action in a court with jurisdiction in Indiana:**

6           (1) based on a violation of this article or the rules adopted by  
7           the 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.**

