



February 20, 2015

SENATE BILL No. 539

DIGEST OF SB 539 (Updated February 17, 2015 1:08 pm - DI 120)

Citations Affected: IC 7.1-1; 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. Defines "manufacturer" as a person or cooperative, located inside or outside Indiana, that is engaged in manufacturing e-liquid. 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.

**Yoder, Miller Patricia, Holdman,
Arnold J, Broden, Randolph**

January 14, 2015, read first time and referred to Committee on Commerce & Technology.
February 2, 2015, amended, reported favorably — Do Pass.
February 9, 2015, reassigned to Committee on Tax & Fiscal Policy.
February 19, 2015, amended, reported favorably — Do Pass.

SB 539—LS 7388/DI 77



February 20, 2015

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

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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 7.1-7-2-7.**

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 7.1-7-2-9.**

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 7.1-7-2-17.**

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 7.1-7-2-18.**

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 7.1-7-2-19.**

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 7.1-7-2-10) that contains tobacco; 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 and Purpose**
 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. The purpose of this article is, in the absence of federal**
 14 **regulations, to protect public health and safety by:**
 15 (1) **ensuring the safety and security of e-liquid manufactured**
 16 **for sale in Indiana;**
 17 (2) **ensuring that e-liquid manufactured or sold in Indiana**
 18 **conforms to appropriate standards of identity, strength,**
 19 **quality, and purity; and**
 20 (3) **ensuring that e-liquid is not contaminated or adulterated**
 21 **by the inclusion of ingredients or other substances that might**
 22 **pose unreasonable threats to public health and safety.**
 23 **Sec. 3. This article does not limit the powers or duties of the**
 24 **commission under IC 7.1-2.**
 25 **Sec. 4. This article may not be construed to restrict or limit any**
 26 **law under IC 35-48.**
 27 **Chapter 2. Definitions**
 28 **Sec. 1. The definitions contained in this chapter apply**
 29 **throughout this article unless the context clearly requires**
 30 **otherwise.**
 31 **Sec. 2. "Applicant" means a person who applies for a permit**
 32 **under this article.**
 33 **Sec. 3. "Audit" means a procedure performed by the**
 34 **commission, including inspection of manufacturing facilities and**
 35 **preparation areas, review of required records, compliance checks,**
 36 **review of personnel working knowledge and training, and auditing**
 37 **of samples of e-liquid.**
 38 **Sec. 4. "Clean room" refers to the part of an e-liquid**
 39 **manufacturing facility where:**
 40 (1) **the mixing, bottling, and packaging activities are**
 41 **conducted in secure and sanitary conditions in a space that is**
 42 **kept in repair sufficient to prevent e-liquid from becoming**



1 contaminated;

2 (2) the equipment used in the manufacturing process is easily

3 cleanable, as defined in 410 IAC 7-24-27(a), in such a way that

4 it protects against contamination of e-liquid, e-liquid

5 containers, or e-liquid packaging materials; and

6 (3) The cleaning and sanitizing of equipment is consistent with

7 the Indiana standards for public health and cleanliness that

8 apply to commercial kitchens in the state.

9 Sec. 5. "Container" means any receptacle that contains e-liquid.

10 Sec. 6. "Cooperative" means any group of people who join

11 together to satisfy the requirements set forth in IC 7.1-7-4-6.

12 Sec. 7. "Department" means the Indiana state department of

13 health.

14 Sec. 8. "Distributor" means a person who is licensed under

15 IC 6-7-2-2 that:

16 (1) distributes, sells, barter, or exchanges e-liquid in Indiana

17 to retail dealers for the purpose of resale; or

18 (2) purchases e-liquid directly from a manufacturer for the

19 purpose of resale.

20 Sec. 9. "Electronic cigarette" means a powered vaporizer that:

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

22 (2) uses a sealed nonrefillable cartridge containing not more

23 than four (4) milliliters of a liquid; and

24 (3) is intended to be vaporized and inhaled.

25 The term does not include a vapor pen.

26 Sec. 10. "E-liquid" means a substance that:

27 (1) is intended to be vaporized and inhaled using a vapor pen;

28 and

29 (2) specifically excludes substances contained in non-refillable

30 sealed cartridges of four (4) milliliters or less used in

31 e-cigarettes.

32 Sec. 11. "Employee" means a person who works directly in the

33 service of another person under an express or implied contract of

34 hire, and the employer has the direct right to control the details of

35 work performance. The term does not include a person who works

36 for any independent subcontractor, temporary service provider, or

37 an entity or person not under the direct full control of the

38 employer.

39 Sec. 12. "Flavorings" means a certified food grade additive used

40 to add flavor and that is not prohibited by law.

41 Sec. 13. "Key system" means a licensed or patented key design

42 used to prevent unauthorized duplication of keys for use in high



1 security installations, and that is prospectively exclusive to the
2 security firm for a period of at least ten (10) years.

3 Sec. 14. "Locksmith" means a person or firm who is or employs
4 at least one (1) employee who for the previous one (1) year period
5 has been collectively certified as both:

6 (1) a certified professional locksmith; and

7 (2) a certified registered locksmith;

8 by the Associated Locksmiths of America.

9 Sec. 15. "Manufacturer" means a person or cooperative, located
10 inside or outside Indiana, that is engaged in manufacturing
11 e-liquid.

12 Sec. 16. "Manufacturing" means the process by which an
13 e-liquid is mixed, bottled, packaged, and stored.

14 Sec. 17. "Minor" means an individual who is less than eighteen
15 (18) years of age.

16 Sec. 18. "Permit" means a written authorization issued by the
17 commission entitling the holder to manufacture, sell, or otherwise
18 deal in e-liquid, as provided in this article.

19 Sec. 19. "Permittee" means a person who holds a valid permit
20 under this article, including an agent of, employee of, or other
21 person acting on behalf of, a permittee.

22 Sec. 20. "Retailer" means a person, other than a manufacturer,
23 who in the ordinary course of the person's regular trade or
24 business:

25 (1) acquires any form of e-liquid for the purpose of resale;
26 and

27 (2) transfers the e-liquid to another person for money or other
28 consideration.

29 Sec. 21. "Security firm" means an entity that:

30 (1) is independent from an applicant and manufacturer;

31 (2) has experience in the security business; and

32 (3) as of July 1, 2015:

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

34 (B) is a locksmith; and

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

37 Sec. 22. "Vapor pen" means a powered vaporizer, other than an
38 electronic cigarette, that converts e-liquid to a vapor intended for
39 inhalation.

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

42 Sec. 1. The commission is responsible for the enforcement and



1 administration of this article.

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

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

6 (2) To issue permits.

7 (3) To charge fees to cover the costs of administering this
 8 article. The fees charged under this subdivision may not
 9 exceed the actual costs incurred by the commission.

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

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

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

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

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

24 **Chapter 4. Permit Requirements**

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

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

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

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

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

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

39 (B) capable of meeting all of the security requirements
 40 contained in this article.

41 (2) A service agreement that:

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



- 1 (B) is valid for a period of five (5) years after the date of
 2 the permit application;
 3 (C) provides for the security firm to provide service and
 4 support to meet the security requirements established by
 5 this article;
 6 (D) requires the security firm to certify that the
 7 manufacturer meets all requirements set forth in
 8 IC 7.1-7-4-6(10) through IC 7.1-7-4-6(15); and
 9 (E) is renewable for the entire length of time that the
 10 applicant holds a permit issued by the commission.
 11 (3) Verified documents, satisfactory to the commission, from
 12 the security firm demonstrating that the security firm meets
 13 the following requirements:
 14 (A) The security firm has continuously employed one (1) or
 15 more employees for not less than the previous one (1) year
 16 period who are collectively accredited or certified by:
 17 (i) the Door and Hardware Institute as an Architectural
 18 Hardware Consultant; and
 19 (ii) the International Door Association as a certified
 20 Rolling Steel Fire Door Technician.
 21 (B) The security firm has at least one (1) year of
 22 commercial experience, in the preceding year, with the
 23 following:
 24 (i) Video surveillance system design and installation with
 25 remote viewing capability from a secure facility.
 26 (ii) Owning and operating a security monitoring station
 27 with ownership control and use of a redundant offsite
 28 backup security monitoring station.
 29 (iii) Operating a facility that modifies commercial hollow
 30 metal doors, frames, and borrowed lights with
 31 authorization to apply the Underwriters Laboratories
 32 label.
 33 (4) The name, telephone number, and address of the
 34 applicant.
 35 (5) The name, telephone number, and address of the
 36 manufacturing facility.
 37 (6) The projected output in liters per year of e-liquid of the
 38 manufacturing facility.
 39 (7) The name, telephone number, title, and address of the
 40 person responsible for the manufacturing facility.
 41 (8) Verification that the facility will comply with proper
 42 manufacturing processes.



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

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

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

12 (12) Any other information required by the commission.

13 **Sec. 2. (a)** A manufacturing permit that is renewed by the
 14 commission is valid for five (5) years.

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

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

19 (2) The name, telephone number, and address of the
 20 manufacturing facility.

21 (3) The output in liters per year of e-liquid of the
 22 manufacturing facility.

23 (4) The name, telephone number, title, and address of the
 24 person responsible for the manufacturing facility.

25 (5) Certification by the applicant that the applicant will
 26 continue to use the security protocol approved by the
 27 commission with the applicant's initial application. However,
 28 if the applicant desires to change the previously approved
 29 security protocol, the applicant shall submit the suggested
 30 changes to the commission for approval.

31 (6) Verification that the facility uses proper manufacturing
 32 processes.

33 (7) Certification by the security firm with which the
 34 manufacturer has a security agreement that the manufacturer
 35 meets all requirements set forth in IC 7.1-7-4-6(10) through
 36 IC 7.1-7-4-6(15).

37 (8) Written consent allowing the state police department to
 38 conduct a state or national criminal history background check
 39 on any person listed on the application.

40 (9) Written consent allowing the commission, if a permit is
 41 renewed to the applicant, to enter the premises where the
 42 e-liquid is manufactured to conduct physical inspections,



1 sample the product to ensure the e-liquid meets the
2 requirements of e-liquid set forth in this article, and perform
3 an audit.
4 **(10) A nonrefundable renewal application fee of five hundred**
5 **dollars (\$500).**
6 **(11) Any other information required by the commission.**
7 **Sec. 3. The security protocol that is employed at the applicant's**
8 **facility is confidential and not a public record under IC 5-14-3-4.**
9 **Sec. 4. (a) A permit may not be transferred:**
10 **(1) from the permit holder to another person; or**
11 **(2) from the location where the permit was approved or**
12 **renewed to another location;**
13 **unless approved by the commission.**
14 **(b) The commission shall allow a permit to be transferred under**
15 **subsection (a) if the permit has not been suspended or revoked and**
16 **the new permit holder or location meets the requirements under**
17 **this article.**
18 **Sec. 5. If the information required for the initial or renewal**
19 **permit changes, the permit holder shall notify the commission**
20 **within three (3) business days of the change. If any change in the**
21 **information required for an application results in a violation of this**
22 **article, the commission may impose a penalty as provided in this**
23 **article.**
24 **Sec. 6. A manufacturing facility shall comply with the following**
25 **requirements:**
26 **(1) An e-liquid container must use a child proof cap.**
27 **(2) An e-liquid container must be secured using either ring**
28 **seals or plastic wrap.**
29 **(3) The label on an e-liquid container must identify the active**
30 **ingredients.**
31 **(4) The label must include a separate designation if the**
32 **product contains nicotine.**
33 **(5) The label must include a manufacturing date and batch**
34 **number.**
35 **(6) The label must include a scannable encryption code tied to**
36 **the batch number as prescribed by the commission.**
37 **(7) An e-liquid container must be distributed and sold within**
38 **two (2) years of the date of manufacture.**
39 **(8) The manufacturing facility must conduct all mixing,**
40 **bottling, and packaging activities in a clean room.**
41 **(9) The manufacturer must take reasonable steps to ensure**
42 **that an unauthorized ingredient is not included in any e-liquid**



- 1 produced for sale in Indiana.
- 2 (10) The manufacturer must take reasonable steps to ensure
- 3 that all ingredients used in the production of e-liquid are
- 4 stored in a secure area accessible only by authorized
- 5 personnel.
- 6 (11) The manufacturer shall have a remotely monitored
- 7 security system at the facility in areas where e-liquid is mixed,
- 8 bottled, packaged, and stored.
- 9 (12) The manufacturer's security firm shall install an
- 10 exclusive high security key system that limits access to areas
- 11 where e-liquid is mixed, bottled, packaged, and stored to
- 12 authorized personnel only.
- 13 (13) The manufacturer's facility must be subject to
- 14 twenty-four (24) hour video recording where e-liquid is
- 15 mixed, bottled, packaged, and stored. The video recordings
- 16 must be retained for at least thirty (30) days.
- 17 (14) The manufacturer must take reasonable steps to ensure
- 18 that only authorized personnel have access to secured areas of
- 19 the facility where e-liquid is mixed, bottled, and packaged.
- 20 (15) The manufacturer must store and maintain three (3) ten
- 21 (10) milliliter sample bottles from each production batch for
- 22 a period of not less than three (3) years in a secure limited
- 23 access area with recorded video surveillance and submit to
- 24 random audits of the facility and the manufacturer's samples
- 25 and records by the commission.
- 26 (16) The manufacturer must submit to random site visits by
- 27 the commission.
- 28 (17) The manufacturer may:
- 29 (A) own and control both the e-liquid manufacturing
- 30 process and the bottling process; or
- 31 (B) subcontract with another manufacturer for the
- 32 performance of the e-liquid manufacturing service, the
- 33 bottling services, or both services.
- 34 However, both the manufacturer performing a service under
- 35 clause (B) and the manufacturer for which the service is
- 36 performed must meet the requirements of this chapter.
- 37 (18) The manufacturer or anyone having a financial interest
- 38 in a manufacturer may not have been convicted of a felony or
- 39 an offense involving a controlled substance.
- 40 Sec. 7. (a) On receipt of a completed permit application, the
- 41 commission shall forward a copy of the application to the state
- 42 police department. The state police department shall perform a



1 state or national criminal history background check of the
 2 applicant and return the application to the commission along with
 3 the state police department's findings from the state or national
 4 background check.

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

- 10 (1) all the requirements under this article have been met;
- 11 (2) the applicant is of good character; and
- 12 (3) the applicant has not been convicted of a felony;

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

15 (c) If the completed application for a permit is denied, the
 16 commission must state the reasons for the denial. If a completed
 17 application is denied under this section, the applicant may reapply
 18 at any time.

19 Chapter 5. Manufacturing and Safety Requirements

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

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

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

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

- 38 (1) sell or remove from retail all inventory of e-liquid
 39 manufactured before July 1, 2015; or
- 40 (2) acquire:
 - 41 (A) a valid tobacco sales certificate issued by the
 42 commission in accordance with IC 7.1-3-18.5-1;



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

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

4 Sec. 2. (a) A manufacturer of e-liquid may file a request with the
5 department for approval of an ingredient to be allowed in the
6 composition of e-liquid.

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

10 Chapter 6. Violations and Penalties

11 Sec. 1. (a) If a manufacturer violates this article, the
12 manufacturer may be reprimanded, assessed a civil penalty, or
13 have the manufacturer's permit suspended, or in the case of gross
14 or willful misconduct, the permit holder may have the
15 manufacturer's permit revoked for a period of up to one (1) year.
16 At the end of the revocation period, the manufacturer may apply
17 to the commission for reinstatement of the permit.

18 (b) The commission may assess a civil penalty against a
19 manufacturer for a violation of this article in an amount that does
20 not exceed ten thousand dollars (\$10,000). A civil penalty may be
21 assessed in addition to other penalties allowed under this article.

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

23 (1) to a minor;

24 (2) purchased from a manufacturer that does not have a
25 permit; or

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

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

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

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

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

41 (3) If the retail establishment at that specific business location
42 has had two (2) citations or summonses issued for a violation



1 of this section in the previous one hundred eighty (180) days,
2 a civil penalty of up to seven hundred dollars (\$700).

3 (4) If the retail establishment at that specific business location
4 has had three (3) or more citations or summonses issued for
5 a violation of this section in the previous one hundred eighty
6 (180) days, a civil penalty of up to one thousand dollars
7 (\$1,000).

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

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

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

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

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

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

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

- 32 (1) agriculture;
33 (2) processing;
34 (3) transporting;
35 (4) wholesaling; or
36 (5) retailing.

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

40 (g) Unless a person buys or receives e-liquid under the direction
41 of a law enforcement officer as part of an enforcement action, a
42 retail establishment that sells or distributes e-liquid is not liable for



1 a violation of this section unless the person less than eighteen (18)
 2 years of age who bought or received the e-liquid is issued a citation
 3 or summons in violation of this article.

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

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

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

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

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

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

25 (1) based on a violation of this article or the rules adopted by
 26 the commission to enjoin the violation; and

27 (2) to recover for actual monetary loss from the violation.

28 The court shall award attorney's fees to the prevailing party.



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 539, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 12, delete "IC 7.1-7-2-7." and insert "**IC 7.1-7-2-8.**".

Page 2, line 18, delete "IC 7.1-7-2-15." and insert "**IC 7.1-7-2-16.**".

Page 2, line 26, delete "IC 7.1-7-2-16." and insert "**IC 7.1-7-2-17.**".

Page 2, line 35, delete "IC 7.1-7-2-17." and insert "**IC 7.1-7-2-18.**".

Page 3, line 1, delete "IC 7.1-7-2-8);" and insert "**IC 7.1-7-2-9);**".

Page 3, line 26, delete "taking" and insert "**auditing of**".

Page 3, line 33, delete "and".

Page 3, line 34, delete "cleaning and sanitizing of".

Page 3, line 34, delete "is conducted in a" and insert "**used in the manufacturing process is easily cleanable, as defined in 410 IAC 7-24-27(a), in such a way that it**".

Page 3, line 35, delete "manner that reasonably".

Page 3, line 36, delete "materials." and insert "**materials; and**

(3) The cleaning and sanitizing of equipment is consistent with the Indiana standards for public health and cleanliness that apply to food processing facilities in the state where food is processed and packaged for human consumption.".

Page 3, line 37, delete "refillable and unsealed receptacles" and insert "**any receptacle that contains e-liquid.**".

Page 3, delete lines 38 through 41.

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"Sec. 7. "Distributor" means a person who is licensed under IC 6-7-2-2 that:

(1) distributes, sells, barter, or exchanges e-liquid in Indiana to retail dealers for the purpose of resale; or

(2) purchases e-liquid directly from a manufacturer for the purpose of resale.".

Page 4, line 2, delete "7." and insert "**8.**".

Page 4, line 8, delete "8." and insert "**9.**".

Page 4, line 8, delete "that is:" and insert "**that:**".

Page 4, line 9, after "(1)" insert "**is**".

Page 4, delete lines 11 through 12, begin a new line block indented and insert:

"(2) specifically excludes substances contained in non-refillable sealed cartridges of two (2) milliliters or less



used in e-cigarettes."

Page 4, line 13, delete "9." and insert "**10.**".

Page 4, line 20, delete "10." and insert "**11.**".

Page 4, line 22, delete "11." and insert "**12.**".

Page 4, line 26, delete "12." and insert "**13.**".

Page 4, line 27, delete "individual" and insert "**employee**".

Page 4, line 28, after "been" insert "**collectively**".

Page 4, line 28, delete "a:" and insert "**both:**".

Page 4, line 29, after "(1)" insert "**a**".

Page 4, line 30, after "(2)" insert "**a**".

Page 4, line 32, delete "13." and insert "**14.**".

Page 4, line 34, delete "14." and insert "**15.**".

Page 4, line 36, delete "15." and insert "**16.**".

Page 4, line 38, delete "16." and insert "**17.**".

Page 4, line 41, delete "17." and insert "**18.**".

Page 5, line 2, delete "18." and insert "**19.**".

Page 5, line 9, delete "19." and insert "**20.**".

Page 5, line 11, delete "and that:" and insert "**who as of July 1, 2015:**".

Page 5, line 16, delete "20." and insert "**21.**".

Page 5, line 29, delete "take" and insert "**audit**".

Page 5, line 29, after "samples" insert "**maintained by the manufacturer**".

Page 5, between lines 35 and 36, begin a new line block indented and insert:

"(6) To approve not less than three (3) different independent testing laboratories from 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."

Page 5, line 41, after "e-liquid" insert "**to retailers or distributors**".

Page 6, delete lines 9 through 10, begin a new line double block indented and insert:

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

Page 6, line 19, delete "Documentation" and insert "**Verified documents, satisfactory to the commission,**".

Page 6, line 21, delete "not less".

Page 6, line 22, delete "than one (1) employee" and insert "**one (1) or more employees**".

Page 6, line 23, delete "is" and insert "**are collectively**".

Page 7, line 2, delete "gallons" and insert "**liters**".

Page 7, line 12, after "enter" insert "**during normal business**".



hours".

Page 7, line 28, delete "gallons" and insert "**liters**".

Page 8, line 42, delete "comply with reasonable" and insert "**conduct all mixing, bottling, and packaging activities in a**".

Page 9, line 1, delete "guidelines regarding".

Page 9, line 1, delete "room" and insert "**room.**".

Page 9, line 1, delete "facilities and sterilization".

Page 9, delete line 2.

Page 9, line 25, after "must" insert "**store and maintain three (3) ten (10) milliliter sample bottles from each production batch for a period of not less than three (3) years in a secure limited access area with recorded video surveillance and**".

Page 9, line 26, after "manufacturer's" insert "**samples and**".

Page 10, line 23, delete "chapter." and insert "**chapter or any ingredient specifically approved for inclusion in e-liquid by the Food and Drug Administration of the United States of America.**".

Page 10, between lines 27 and 28, begin a new paragraph and insert:

"(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; or

(2) acquire:

(A) a valid tobacco sales certificate issued by the commission in accordance with IC 7.1-3-18.5-1;

(B) an e-liquid manufacturing permit issued under IC 7.1-7.5-1; or

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

Page 12, line 41, after "person" insert "**or authorized distributor**".

and when so amended that said bill do pass.

(Reference is to SB 539 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 4.



Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that SB 539 which is eligible for second reading, has been reassigned to the Committee on Tax & Fiscal Policy.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 539, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 5, delete "7.1-7-2-6." and insert "**7.1-7-2-7.**"

Page 2, line 12, delete "7.1-7-2-8." and insert "**7.1-7-2-9.**"

Page 2, line 18, delete "7.1-7-2-16." and insert "**7.1-7-2-17.**"

Page 2, line 26, delete "7.1-7-2-17." and insert "**7.1-7-2-18.**"

Page 2, line 35, delete "7.1-7-2-18." and insert "**7.1-7-2-19.**"

Page 3, line 1, delete "7.1-7-2-9);" and insert "**7.1-7-2-10) that contains tobacco;**".

Page 3, line 7, after "Applicability" insert "**and Purpose**".

Page 3, between lines 12 and 13, begin a new paragraph and insert:

"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."

Page 3, line 13, delete "Sec. 2." and insert "**Sec. 3.**".

Page 3, line 15, delete "Sec. 3." and insert "**Sec. 4.**".

Page 3, line 40, delete "food processing facilities in the state where food is" and insert "**commercial kitchens in the state.**".

Page 3, delete line 41.

Page 3, after line 42, begin a new paragraph and insert:

"Sec. 6. "Cooperative" means any group of people who join



together to satisfy the requirements set forth in IC 7.1-7-4-6."

Page 4, line 1, delete "Sec. 6." and insert "**Sec. 7.**".

Page 4, line 3, delete "Sec. 7." and insert "**Sec. 8.**".

Page 4, line 9, delete "Sec. 8." and insert "**Sec. 9.**".

Page 4, line 12, delete "two (2)" and insert "**four (4)**".

Page 4, line 15, delete "Sec. 9." and insert "**Sec. 10.**".

Page 4, line 19, delete "two (2)" and insert "**four (4)**".

Page 4, line 21, delete "Sec. 10." and insert "**Sec. 11.**".

Page 4, line 28, delete "Sec. 11." and insert "**Sec. 12.**".

Page 4, line 30, delete "Sec. 12." and insert "**Sec. 13.**".

Page 4, line 34, delete "Sec. 13." and insert "**Sec. 14.**".

Page 4, delete lines 40 through 41, begin a new paragraph and insert:

"Sec. 15. "Manufacturer" means a person or cooperative, located inside or outside Indiana, that is engaged in manufacturing e-liquid."

Page 4, line 42, delete "Sec. 15." and insert "**Sec. 16.**".

Page 5, line 2, delete "Sec. 16." and insert "**Sec. 17.**".

Page 5, line 4, delete "Sec. 17." and insert "**Sec. 18.**".

Page 5, line 7, delete "Sec. 18." and insert "**Sec. 19.**".

Page 5, line 10, delete "Sec. 19." and insert "**Sec. 20.**".

Page 5, delete lines 17 through 23, begin a new paragraph and insert:

"Sec. 21. "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."

Page 5, line 24, delete "Sec. 21." and insert "**Sec. 22.**".

Page 5, line 35, delete "permits and charge fees." and insert "**permits.**".

Page 5, between lines 35 and 36, begin a new line block indented and insert:

"(3) To charge fees to cover the costs of administering this article. The fees charged under this subdivision may not exceed the actual costs incurred by the commission."

Page 5, line 36, delete "(3)" and insert "**(4)**".

Page 5, line 37, delete "(4)" and insert "**(5)**".

Page 5, line 40, delete "(5)" and insert "**(6)**".



Page 6, line 2, delete "(6)" and insert "(7)".

Page 6, delete lines 25 through 30, begin a new line block indented and insert:

"(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); and**
- (E) is renewable for the entire length of time that the applicant holds a permit issued by the commission."**

Page 7, line 30, delete "five" and insert "one".

Page 7, line 31, delete "(\$5,000)." and insert "(\$1,000)."

Page 8, between lines 10 and 11, begin a new line block indented and insert:

"(7) Certification by the security firm with which the manufacturer has a security agreement that the manufacturer meets all requirements set forth in IC 7.1-7-4-6(10) through IC 7.1-7-4-6(15)."

Page 8, line 11, delete "(7)" and insert "(8)".

Page 8, line 14, delete "(8)" and insert "(9)".

Page 8, delete lines 20 through 21, begin a new line block indented and insert:

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

Page 8, line 22, delete "(10)" and insert "(11)".

Page 9, line 10, delete "proscribed" and insert "prescribed".

Page 9, line 22, delete "manufacturer's security firm shall install" and insert "**manufacturer shall have**".

Page 9, line 30, delete "with remote viewing".

Page 9, line 31, delete "capability in areas".

Page 10, delete lines 3 through 4, begin a new line block indented and insert:

"(17) 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 chapter."

Page 10, line 7, delete "moral turpitude or".

Page 11, line 13, delete "IC 7.1-7.5-1;" and insert "**IC 7.1-7-4;**".

and when so amended that said bill do pass.

(Reference is to SB 539 as printed February 3, 2015.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

