

PROPOSED AMENDMENT

SB 185 # 2

DIGEST

E-liquids and tobacco products. Adds language requiring a wholesaler to obtain a wholesale tobacco sales certificate. Establishes various requirements for e-liquid products manufactured, distributed, or sold in Indiana. Prohibits the sale or distribution of an e-liquid or an e-liquid containing an ingredient that is manufactured, sourced, or otherwise imported from a foreign adversary. Amends the requirements for an initial and renewal application to manufacture e-liquids. Allows a tobacco manufacturer to offer buydown programs.

- 1 Page 1, between lines 13 and 14, begin a new paragraph and insert:
2 "SECTION 2. IC 7.1-3-18.5-1.5 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2026]: **Sec. 1.5. (a) A person may not sell**
5 **tobacco products or electronic cigarettes at wholesale or**
6 **participate in the wholesale distribution of tobacco products or**
7 **electronic cigarettes without a valid wholesale tobacco sales**
8 **certificate issued by the commission.**
9 **(b) The commission may only issue a wholesale tobacco sales**
10 **certificate to a person who owns or operates at a premises**
11 **consisting of a permanent building or structure that is used for the**
12 **wholesale distribution of tobacco products or electronic**
13 **cigarettes."**
14 Page 5, delete lines 38 through 42, begin a new paragraph and
15 insert:
16 "SECTION 8. IC 7.1-7-1-0.5 IS ADDED TO THE INDIANA CODE
17 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2026]: **Sec. 0.5. (a) An e-liquid product manufactured,**
19 **distributed, or sold in Indiana must adhere to all applicable rules**
20 **and regulations of the federal Food and Drug Administration,**
21 **including those rules and regulations regarding product safety,**
22 **labeling, and manufacturing standards.**
23 **(b) Except as otherwise provided in this article, this article does**
24 **not require a product subject to this article to be specifically**
25 **approved by the federal Food and Drug Administration if the**

product satisfies all applicable rules and regulations.

(c) If a product subject to this article is approved by the federal Food and Drug Administration, the approval constitutes prima facie evidence of compliance with this article.

SECTION 9. IC 7.1-7-1-1, AS AMENDED BY P.L.206-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 1. (a) Except as provided in subsection (b), this article applies to the following:

(1) The commercial manufacturing, bottling, selling, bartering, or importing of e-liquid in Indiana.

(2) The sale, possession, and use of e-liquid products in Indiana, **including through a cigarette vending machine.**

(b) This article ~~does not apply~~ **applies** to a ~~manufacturer~~ **manufacturers** of a ~~both closed and open~~ **both closed and open** system vapor ~~product,~~ **except as specifically provided in this article: devices manufactured or sold in Indiana.**

SECTION 10. IC 7.1-7-1-2, AS AMENDED BY P.L.206-2017, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 2. The purpose of this article is 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; **and**

(4) ensuring dangerous foreign adversary products are not sold or distributed in Indiana.

SECTION 11. IC 7.1-7-2-8 IS REPEALED [EFFECTIVE JULY 1, 2026]. Sec. 8. "Distributor" ~~means a person who is licensed under IC 6-7-2-8 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.~~

SECTION 12. IC 7.1-7-2-10, AS AMENDED BY P.L.206-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 10. "E-liquid" means a substance that:

- (1) may or may not contain nicotine; and
 (2) is intended to be vaporized and inhaled using a vapor ~~product~~
device.

SECTION 13. IC 7.1-7-2-12, AS AMENDED BY P.L.206-2017, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 12. "Flavoring" means a food grade additive or synthetic flavoring substance that is used to add flavor and that is not prohibited by the federal Food and Drug Administration as an additive in vapor ~~products~~: **devices.**

SECTION 13. IC 7.1-7-2-12.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 12.3. "Foreign adversary" means an individual, business entity, or other entity located in or organized under the laws of a nation governed by a foreign government listed in 15 CFR 791.4.**

SECTION 14. IC 7.1-7-2-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 12.5. "Foreign adversary product" means:**

(1) an e-liquid; or

(2) an e-liquid containing an ingredient;

that is manufactured, sourced, or otherwise imported from a nation governed by a foreign government listed in 15 CFR 791.4.

SECTION 15. IC 7.1-7-2-15, AS AMENDED BY P.L.206-2017, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 15. "Manufacturer" means a person located inside or outside Indiana that is engaged in manufacturing e-liquid **for closed and open system vapor devices.**

SECTION 16. IC 7.1-7-2-15.5 IS REPEALED [EFFECTIVE JULY 1, 2026]. ~~Sec. 15.5: "Manufacturer of a closed system vapor product" means a manufacturer of vapor products whose closed system vapor products are for sale in Indiana; but that does not produce open system vapor products that are for sale in Indiana.~~

SECTION 17. IC 7.1-7-2-23, AS AMENDED BY P.L.206-2017, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 23. "Vapor ~~product~~ **device**" means a powered vaporizer that converts e-liquid to a vapor intended for inhalation. **The term includes both open and closed system vapor devices.**

SECTION 18. IC 7.1-7-2-24 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

1, 2026]: Sec. 24. "Wholesaler" means a person who has obtained or is required to obtain a wholesale tobacco sales certificate under IC 7.1-3-18.5-1.5 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 to resellers.

SECTION 19. IC 7.1-7-3-2, AS AMENDED BY P.L.206-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: 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 permits.
- (3) To charge fees as set forth in this article. ~~The fees charged under this subdivision may not exceed the actual costs incurred by the commission.~~
- (4) To approve or deny a permit application made under IC 7.1-7-4 within sixty (60) days of receiving the application.

SECTION 20. IC 7.1-7-4-1, AS AMENDED BY P.L.49-2020, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 1. (a) **Not later than January 1, 2027, a manufacturer of an e-liquid product that is manufactured or sold in Indiana must obtain a permit under this section.**

(a) (b) A manufacturer of e-liquid may not mix, bottle, package, or sell e-liquid to retailers, consumers, or ~~distributors~~ **wholesalers** in Indiana without a permit issued by the commission under this article.

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

(c) A manufacturing permit issued by the commission **before July 1, 2026**, is valid for five (5) years. **A manufacturing permit issued by the commission after June 30, 2026, is valid for two (2) years.** ~~A manufacturing permit issued by the commission under this article before July 1, 2017, does not expire before July 1, 2020.~~

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

- (1) The name, telephone number, and address of the applicant.
- (2) The name, telephone number, and address of the

1 manufacturing facility.

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

4 (4) Verification that the facility will comply with applicable
5 tobacco products good manufacturing practices promulgated
6 under 21 U.S.C. 387f(e) of the federal Food, Drug, and Cosmetic
7 Act.

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

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

14 (7) A nonrefundable initial application fee of ~~one thousand dollars~~
15 ~~(\$1,000)~~ **three thousand dollars (\$3,000).**

16 **(8) Verification that the manufacturer will comply with all**
17 **other state and federal laws related to e-liquids.**

18 **(9) An affirmation, made under the penalties for perjury, that**
19 **the manufacturer will not use any ingredients or e-liquids in**
20 **the manufacturer's manufacturing process that originate in**
21 **a nation governed by a foreign government listed in 15 CFR**
22 **791.4.**

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

25 **(f) Except as otherwise provided in this article, an applicant for**
26 **a permit under this section must adhere to all state and federal**
27 **laws applicable to e-liquids, including rules and regulations**
28 **promulgated by the federal Food and Drug Administration.**

29 SECTION 21. IC 7.1-7-4-2, AS AMENDED BY P.L.206-2017,
30 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2026]: Sec. 2. (a) A manufacturing permit that is renewed by
32 the commission **before July 1, 2026**, is valid for five (5) years. **A**
33 **manufacturing permit that is renewed by the commission after**
34 **June 30, 2026, is valid for two (2) years.**

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

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

38 (2) The name, telephone number, and address of the
39 manufacturing facility.

40 (3) The name, telephone number, title, and address of the person

responsible for the manufacturing facility.

(4) Verification that the facility complies with all tobacco products good manufacturing practices:

(A) set forth in; and

(B) promulgated in federal rules under;

21 U.S.C. 387f through 21 U.S.C. 387u of the federal Food, Drug, and Cosmetic Act.

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

(6) A nonrefundable renewal application fee of ~~five hundred dollars (\$500)~~ **one thousand dollars (\$1,000)**.

(7) Verification that the manufacturer will comply with all other state and federal laws related to e-liquids.

(8) An affirmation, made under the penalties for perjury, that the manufacturer will not use any ingredients or e-liquids in the manufacturer's manufacturing process that originate in a nation governed by a foreign government listed in 15 CFR 791.4.

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

SECTION 22. IC 7.1-7-4-6, AS AMENDED BY P.L.17-2019, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 6. (a) As used in this section:

(1) "adulterated" means a product that:

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

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

(C) is a foreign adversary product (as defined in IC 7.1-7-2-12.5); and

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

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

(1) An e-liquid container must use a child proof cap that has the child resistant effectiveness set forth in the federal poison

1 prevention packaging standards, 16 CFR 1700.15(b)(1).

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

7 (3) The label on an e-liquid container must meet the nicotine
8 addictiveness warning statement requirements set forth in 21 CFR
9 1143.3.

10 (4) The manufacturer, **wholesaler**, or retailer may not add an
11 adulterated product to any e-liquid produced for sale in Indiana.

12 (5) The manufacturer must submit to random site visits by the
13 commission.

14 (6) The manufacturer may:

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

17 (B) subcontract with another manufacturer for the performance
18 of the e-liquid manufacturing service, the bottling services, or
19 both services.

20 However, both the manufacturer performing a service under
21 clause (B) and the manufacturer for which the service is
22 performed must meet the requirements of this article, **including**
23 **obtaining a permit. A manufacturer may not be located in or**
24 **source any ingredient or substance used in an e-liquid product**
25 **from a nation governed by a foreign government listed in 15**
26 **CFR 791.4.**

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

29 (8) The manufacturer or any person listed on the permit
30 application may not have been convicted within ten (10) years
31 before the date of application of:

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

33 (B) an Indiana Class A, Class B, or Class C felony (for a crime
34 committed before July 1, 2014) or a Level 1, Level 2, Level 3,
35 Level 4, or Level 5 felony (for a crime committed after June
36 30, 2014);

37 (C) a crime in a state other than Indiana having a penalty equal
38 to the penalty for an Indiana Class A, Class B, or Class C
39 felony (for a crime committed before July 1, 2014) or a Level
40 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 23. IC 7.1-7-4-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 8. (a) This section does not apply to:**

(1) a vapor device (as defined in IC 7.1-7-2-23), including:

(A) a part to be utilized in an open or closed system to convert e-liquid to a vapor for inhalation; or

(B) an e-liquid product that includes a vapor device sourced from or manufactured by a foreign adversary; and

(2) an e-liquid product that is manufactured by or sourced from a foreign adversary, if the e-liquid product has been specifically approved for distribution and sale in the United States by the federal Food and Drug Administration.

(b) A manufacturer of e-liquid that is permitted or required to be permitted under this chapter may not manufacture or source a foreign adversary product.

(c) A retailer that holds or is required to hold a tobacco sales certificate under IC 7.1-3-18.5-1 may not possess, sell, or otherwise distribute a foreign adversary product.

(d) A wholesaler that holds or is required to hold a wholesale tobacco sales certificate under IC 7.1-3-18.5-1.5 may not possess, sell, or otherwise distribute a foreign adversary product.

SECTION 24. IC 7.1-7-5-1.1, AS AMENDED BY P.L.220-2023, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: **Sec. 1.1. (a) A retailer must have a valid sales certificate issued by the commission in accordance with IC 7.1-3-18.5-1 that contains a separate box to check for identifying a retailer that sells e-liquids.**

(b) A retailer may purchase e-liquid only from an Indiana e-liquid manufacturing permit holder or an Indiana ~~distributor~~ wholesaler permit holder.

(c) A retailer shall retain all invoices for e-liquid that the retailer purchases for two (2) years.

(d) A retailer shall not allow the self-service sale for individuals purchasing an e-liquid.

(e) A retailer may not sell an e-liquid that contains more than seventy-five (75) milligrams per milliliter of nicotine.

(f) A manufacturer must have an e-liquid manufacturing permit issued under IC 7.1-7-4.

(g) A ~~distributor~~ **wholesaler** that does not have a valid e-liquid manufacturing permit issued under IC 7.1-7-4 must have a valid ~~distributor's license~~ **wholesale tobacco sales certificate** issued under ~~IC 6-7-2-8~~ **IC 7.1-3-18.5-1.5**.

(h) A ~~distributor~~ **wholesaler** shall purchase and distribute e-liquid from an:

(1) Indiana e-liquid manufacturer that has a valid e-liquid manufacturing permit under IC 7.1-7-4; or

(2) Indiana e-liquid ~~distributor~~ **wholesaler** that has a valid:

(A) e-liquid manufacturing permit issued under IC 7.1-7-4; or

(B) ~~distributor's license~~ **wholesale tobacco sales certificate** under ~~IC 6-7-2-8~~ **IC 7.1-3-18.5-1.5**.

(i) A ~~distributor~~ **wholesaler** shall retain all invoices to a retailer or from a manufacturer for at least two (2) years.

(j) A manufacturer, ~~distributor~~, **wholesaler**, or retailer may not market e-liquid as a modified risk tobacco product, as defined by IC 7.1-7-2-17.5, that has not been designated as a modified risk tobacco product by the federal Food and Drug Administration.

(k) Except as provided in subsection (m), a manufacturer ~~including a manufacturer of a closed system vapor product~~, **permitted or required to be permitted under IC 7.1-7-4** shall annually submit a report to the commission setting forth:

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

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

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

(l) A manufacturer **permitted or required to be permitted under IC 7.1-7-4** shall annually submit a report to the commission setting

1 forth:

2 (1) the milligrams per milliliter of nicotine in each product the
3 manufacturer produces; and

4 (2) the milliliters of each product sold that current year.

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

7 (m) A manufacturer is not required to submit a report described in
8 subsection (k) if the manufacturer submits to the commission a
9 certification, by October 1 of each year, that each of the manufacturer's
10 vapor ~~products~~ **devices** sold in Indiana has been filed with the federal
11 Food and Drug Administration.

12 SECTION 25. IC 7.1-7-5-2, AS ADDED BY P.L.176-2015,
13 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2026]: Sec. 2. (a) A manufacturer of e-liquid may file a
15 request with the **Indiana** department **of health** for approval of an
16 ingredient to be allowed in the composition of e-liquid.

17 (b) The **Indiana** department **of health** may approve the request filed
18 under subsection (a) if the department determines that the ingredient
19 will not pose an unreasonable threat to public health and safety.

20 SECTION 26. IC 7.1-7-6-1, AS AMENDED BY P.L.206-2017,
21 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2026]: Sec. 1. (a) If a manufacturer, ~~distributor,~~ **wholesaler,**
23 or retailer violates **any provision of** this article, the manufacturer,
24 ~~distributor,~~ **wholesaler,** or retailer may be reprimanded, assessed a
25 civil penalty, or have the manufacturer's permit, ~~distributor's license,~~
26 **wholesaler's tobacco sales certificate,** or retailer's tobacco sales
27 certificate suspended **by the commission.**

28 (b) Any provision in this article that requires a manufacturer,
29 **wholesaler, or retailer** to comply with the federal Food, Drug, and
30 Cosmetic Act or a federal rule promulgated under the federal Food,
31 Drug, and Cosmetic Act is under the ~~sole~~ **dual** jurisdiction of the
32 federal Food and Drug Administration **and the commission and may**
33 **be enforced through action by the federal Food and Drug**
34 **Administration and the commission.** If the federal Food and Drug
35 Administration seeks court enforcement of any section of the federal
36 Food, Drug, and Cosmetic Act cited in this article and a civil monetary
37 penalty is assessed against the manufacturer, the act or omission for
38 which the penalty was assessed constitutes a violation of this article
39 **and may result in a reprimand or civil penalty or a revocation by**
40 **the commission of the license or sales certificate of the**

1 **manufacturer, wholesaler, or retailer.**

2 (c) The commission may assess a civil penalty against a
3 manufacturer, ~~distributor~~, **wholesaler**, or retailer for a violation of this
4 article in an amount that does not exceed ten thousand dollars
5 (\$10,000). A civil penalty may be assessed in addition to other
6 penalties allowed under this article.

7 **(d) The commission has full authority to enforce all provisions**
8 **of this article, including those that require compliance with federal**
9 **law.**

10 SECTION 27. IC 24-3-2-2, AS AMENDED BY P.L.217-2017,
11 SECTION 154, IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2026]: Sec. 2. Unless the context in this chapter
13 requires otherwise, the term:

14 (a) "Cigarette" shall mean and include any roll for smoking made
15 wholly or in part of tobacco, irrespective of size or shape and
16 irrespective of tobacco being flavored, adulterated, or mixed with any
17 other ingredient, where such roll has a wrapper or cover made of paper
18 or any other material; provided the definition in this paragraph shall not
19 be construed to include cigars.

20 (b) "Person" or the term "company", used in this chapter
21 interchangeably, means and includes any individual, assignee, receiver,
22 commissioner, fiduciary, trustee, executor, administrator, institution,
23 bank, consignee, firm, partnership, limited liability company, joint
24 vendor, pool, syndicate, bureau, association, cooperative association,
25 society, club, fraternity, sorority, lodge, corporation, municipal
26 corporation, or other political subdivision of the state engaged in
27 private or proprietary activities or business, estate, trust, or any other
28 group or combination acting as a unit, and the plural as well as the
29 singular number, unless the intention to give a more limited meaning
30 is disclosed by the context.

31 (c) "Distributor" shall mean and include every person who sells,
32 barter, exchanges, or distributes cigarettes in the state of Indiana to
33 retail dealers for the purpose of resale, or who purchases for resale
34 cigarettes from a manufacturer of cigarettes or from a wholesaler,
35 jobber, or distributor outside the state of Indiana who is not a
36 distributor holding a registration certificate issued under the provisions
37 of IC 6-7-1.

38 (d) "Retailer" shall mean every person, other than a distributor, who
39 purchases, sells, offers for sale, or distributes cigarettes to consumers
40 or to any person for any purpose other than resale, irrespective of

1 quantity or amount or the number of sales.

2 (e) "Sell at retail", "sale at retail", and "retail sales" shall mean and
3 include any transfer of title to cigarettes for a valuable consideration
4 made in the ordinary course of trade or usual conduct of the seller's
5 business to the purchaser for consummation or use.

6 (f) "Sell at wholesale", "sale at wholesale", and "wholesale sales"
7 shall mean and include any transfer of title to cigarettes for a valuable
8 consideration made in the ordinary course of trade or usual conduct of
9 a distributor's business.

10 (g) "Basic cost of cigarettes" shall mean the invoice cost of
11 cigarettes to the retailer or distributor, as the case may be, or the
12 replacement cost of cigarettes to the retailer or distributor, as the case
13 may be, within thirty (30) days prior to the date of sale, in the quantity
14 last purchased, whichever is the lower, less all trade discounts and
15 customary discounts for cash, plus the cost at full face value of any
16 stamps which may be required by IC 6-7-1, if not included by the
17 manufacturer in his selling price to the distributor.

18 (h) "Department" shall mean the alcohol and tobacco commission
19 or its duly authorized assistants and employees.

20 (i) "Cost to the retailer" shall mean the basic cost of cigarettes to the
21 retailer, plus the cost of doing business by the retailer as evidenced by
22 the standards and methods of accounting regularly employed by him in
23 his allocation of overhead costs and expenses paid or incurred and must
24 include without limitation labor (including salaries of executives and
25 officers), rent, depreciation, selling costs, maintenance of equipment,
26 delivery costs, all types of licenses, taxes, insurance, and advertising;
27 however, any retailer who, in connection with the retailer's purchase,
28 receives not only the discounts ordinarily allowed upon purchases by
29 a retailer, but also, in whole or in part, discounts ordinarily allowed on
30 purchases by a distributor shall, in determining costs to the retailer
31 pursuant to this section, add the cost to the distributor, as defined in
32 paragraph (j), to the basic cost of cigarettes to said retailer as well as
33 the cost of doing business by the retailer. In the absence of proof of a
34 lesser or higher cost of doing business:

35 (1) by the retailer making the sale, the cost of doing business by
36 the retailer shall be presumed to be the following percent of the
37 basic cost of cigarettes to the retailer:

38 (A) Until January 1, 2018, twelve percent (12%).

39 (B) During 2018, twelve and twenty-five hundredths percent
40 (12.25%).

- 1 (C) During 2019, twelve and five tenths percent (12.5%).
- 2 (D) During 2020, twelve and seventy-five hundredths percent
- 3 (12.75%).
- 4 (E) During 2021, thirteen percent (13%).
- 5 (F) During 2022, thirteen and twenty-five hundredths percent
- 6 (13.25%).
- 7 (G) During 2023, thirteen and five tenths percent (13.5%).
- 8 (H) During 2024, thirteen and seventy-five hundredths percent
- 9 (13.75%).
- 10 (I) After 2024, fourteen percent (14%).
- 11 (2) by the retailer, who in connection with the retailer's purchase
- 12 receives not only the discounts ordinarily allowed upon purchases
- 13 by a retailer, but also, in whole or in part, the discounts ordinarily
- 14 allowed upon purchases by a distributor, shall be presumed to be
- 15 the following percent of the sum of the basic cost of cigarettes
- 16 plus the cost of doing business by the distributor:
- 17 (A) Until January 1, 2018, twelve percent (12%).
- 18 (B) During 2018, twelve and twenty-five hundredths percent
- 19 (12.25%).
- 20 (C) During 2019, twelve and five tenths percent (12.5%).
- 21 (D) During 2020, twelve and seventy-five hundredths percent
- 22 (12.75%).
- 23 (E) During 2021, thirteen percent (13%).
- 24 (F) During 2022, thirteen and twenty-five hundredths percent
- 25 (13.25%).
- 26 (G) During 2023, thirteen and five tenths percent (13.5%).
- 27 (H) During 2024, thirteen and seventy-five hundredths percent
- 28 (13.75%).
- 29 (I) After 2024, fourteen percent (14%).
- 30 (j) "Cost to the distributor" shall mean the basic cost of cigarettes to
- 31 the distributor, plus the cost of doing business by the distributor as
- 32 evidenced by the standards and methods of accounting regularly
- 33 employed by him in his allocation of overhead costs and expenses, paid
- 34 or incurred, and must include without limitation labor costs (including
- 35 salaries of executives and officers), rent, depreciation, selling costs,
- 36 maintenance of equipment, delivery costs, all types of licenses, taxes,
- 37 insurance, and advertising. In the absence of proof of a lesser or higher
- 38 cost of doing business by the distributor making the sale, the cost of
- 39 doing business by the wholesaler shall be presumed to be four percent
- 40 (4%) of the basic cost of cigarettes to the distributor, plus cartage to the

1 retail outlet, if performed or paid for by the distributor, which cartage
 2 cost, in the absence of proof of a lesser or higher cost, shall be deemed
 3 to be one-half of one percent (0.5%) of the basic cost of cigarettes to
 4 the distributor.

5 (k) "Registration certificate" refers to the registration certificate
 6 issued to cigarette distributors by the department of state revenue under
 7 IC 6-7-1-16.

8 **(l) "Buydown" means any payment or compensation given by**
 9 **a cigarette manufacturer to a cigarette distributor or retailer to**
 10 **promote the sale of cigarettes and for which the manufacturer**
 11 **requires that either:**

12 **(1) the distributor pass the resulting price reduction on to the**
 13 **retailer; or**

14 **(2) the retailer pass the resulting price reduction on to the**
 15 **consumer.**

16 SECTION 28. IC 24-3-2-9 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 9. (a) In determining
 18 cost to the retailer and cost to the distributor, the court or the
 19 department, as the case may be, shall receive and consider as bearing
 20 on the bona fides of such cost evidence tending to show that any person
 21 complained against under any of the provisions of this chapter
 22 purchased cigarettes with respect to the sale of which complaint is
 23 made at a fictitious price, or upon terms, or in such manner, or under
 24 such invoices, as to conceal the true cost, discounts, or terms of
 25 purchase, and shall also receive and consider as bearing on the bona
 26 fides of such cost evidence of the normal, customary, and prevailing
 27 terms and discounts in connection with other sales of a similar nature
 28 in the trade area or state.

29 (b) Merchandise given gratis or payment made to a retailer or
 30 distributor for display, or advertising, or promotion purposes, or
 31 otherwise shall not be considered in determining the cost of cigarettes
 32 to the retailer or distributor.

33 **(c) A buydown must be considered in determining the cost to the**
 34 **retailer or the cost to the distributor, as applicable, provided that**
 35 **the sum of any buydown and consideration paid by the purchaser**
 36 **is not below the cost to the retailer or distributor."**

37 Page 6, delete lines 1 through 2.

38 Renumber all SECTIONS consecutively.

(Reference is to SB 185 as introduced.)