

House Bill 907

By: Representatives Rakestraw of the 19th, Maxwell of the 17th, McCall of the 33rd, Hitchens of the 161st, Carter of the 175th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 12 of Title 16 and Title 26 of the Official Code of Georgia
2 Annotated, relating to sale or distribution to, or possession by, minors of cigarettes and
3 tobacco related objects and food, drugs, and cosmetics, respectively, so as to safeguard
4 public health, safety, and welfare by controlling and regulating the manufacture, production,
5 distribution, and sale of e-liquids and vapor pens; to provide for definitions; to provide for
6 the powers, duties, and authority of the Commissioner of Agriculture in regulating and
7 licensing e-liquid manufacturers; to regulate e-liquid ingredients and labeling; to prohibit
8 adulteration, misbranding, false advertising, and certain other activities in conjunction with
9 e-liquids; to provide for injunctions under certain circumstances; to provide for civil and
10 criminal penalties; to provide for applicability; to provide for related matters; to provide an
11 effective date; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to sale
15 or distribution to, or possession by, minors of cigarettes and tobacco related objects, is
16 amended by revising Code Section 16-12-170, relating to definitions, as follows:

17 "16-12-170.

18 As used in this article, the term:

19 (1) 'Alternative nicotine product' means any noncombustible product containing nicotine
20 that is intended for human consumption, whether chewed, absorbed, dissolved, or
21 ingested by any other means. The term 'alternative nicotine product' shall not include any
22 tobacco product, vapor product, or any product regulated as a drug or device by the
23 United States Food and Drug Administration under Chapter V of the Food, Drug, and
24 Cosmetic Act.

25 (2) 'Cigar wraps' means individual cigar wrappers, known as wraps, blunt wraps, or roll
 26 your own cigar wraps, that consist in whole or in part of reconstituted tobacco leaf or
 27 flavored tobacco leaf.

28 (3) 'Cigarette' means roll for smoking made wholly or in part of tobacco when the cover
 29 of the roll is paper or any substance other than tobacco.

30 (4) 'Community service' means a public service which a minor might appropriately be
 31 required to perform, as determined by the court, as punishment for certain offenses
 32 provided for in this article.

33 (5) 'Electronic cigarette' means a powered vaporizer that is the approximate size and
 34 shape of a traditional cigarette and that uses a sealed nonrefillable cartridge of liquid
 35 intended to be vaporized and inhaled. The term 'electronic cigarette' shall not include a
 36 vapor pen.

37 (6) 'E-liquid' means a substance that is intended to be vaporized and inhaled using a
 38 vapor pen. The term 'e-liquid' shall not include substances contained in nonrefillable
 39 sealed cartridges intended to be used in electronic cigarettes.

40 ~~(5)~~(7) 'Minor' means any person who is under the age of 18 years.

41 ~~(6)~~(8) 'Person' means any natural person or any firm, partnership, company, corporation,
 42 or other entity.

43 ~~(7)~~(9) 'Proper identification' means any document issued by a governmental agency
 44 containing a description of the person, such person's photograph, or both, and giving such
 45 person's date of birth and includes, without being limited to, a passport, military
 46 identification card, or driver's license; or an identification card authorized under Code
 47 Sections 40-5-100 through 40-5-104. ~~Proper~~ The term 'proper identification' shall not
 48 include a birth certificate.

49 ~~(8)~~(10) 'Tobacco product' means any cigars, little cigars, granulated, plug cut, crimp cut,
 50 ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and
 51 twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings,
 52 cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in
 53 such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both
 54 for chewing and smoking. The term 'tobacco product' shall not include any alternative
 55 nicotine product, vapor product, or product regulated as a drug or device by the United
 56 States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic
 57 Act.

58 ~~(9)~~(11) 'Tobacco related objects' means any papers, wrappers, or other products, devices,
 59 or substances, including cigar wraps, which are used for the purpose of making cigarettes
 60 or tobacco products in any form whatsoever.

61 ~~(10)~~(12) 'Vapor product' means any noncombustible product containing nicotine that
 62 employs a heating element, power source, electronic circuit, or other electronic, chemical,
 63 or mechanical means, regardless of shape or size, that can be used to produce vapor from
 64 nicotine in a solution, e-liquid, or other form. The term 'vapor product' shall include any
 65 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vapor pen, or
 66 similar product or device and any vapor cartridge or other container of nicotine in a
 67 solution, e-liquid, or other form that is intended to be used with or in an electronic
 68 cigarette, electronic cigar, electronic cigarillo, electronic pipe, vapor pen, or similar
 69 product or device. The term 'vapor product' shall not include any product regulated as
 70 a drug or device by the United States Food and Drug Administration under Chapter V of
 71 the Food, Drug, and Cosmetic Act.

72 (13) 'Vapor pen' means a powered vaporizer, other than an electronic cigarette, that
 73 converts e-liquid to a vapor intended for inhalation."

74 **SECTION 2.**

75 Title 26 of the Official Code of Georgia Annotated, relating to food, drugs, and cosmetics,
 76 is amended by adding a new chapter to read as follows:

77 "CHAPTER 3A

78 26-3A-1.

79 As used in this chapter, the term:

80 (1) 'Audit' means a procedure performed by the Commissioner or his or her designee,
 81 including inspection of manufacturing facilities and preparation areas, review of required
 82 records, compliance checks, and auditing of e-liquid samples.

83 (2) 'Clean room' refers to the part of a manufacturing facility where any mixing, bottling,
 84 or packaging of e-liquid is conducted.

85 (3) 'Commissioner' means the Commissioner of Agriculture.

86 (4) 'Container' means any receptacle that contains e-liquid.

87 (5) 'Contaminated with filth' applies to any e-liquid not securely protected, as far as may
 88 be necessary and by all reasonable means, from dust, dirt, and all foreign or injurious
 89 contamination.

90 (6) 'Department' means the Department of Agriculture.

91 (7) 'Distribute' means to sell, barter, or exchange e-liquid to retain dealers in this state
 92 for the purpose of resale or to purchase e-liquid directly from a person that manufactures
 93 e-liquid for the purpose of resale.

- 94 (8) 'Electronic cigarette' shall have the same meaning as provided in Code Section
95 16-12-170.
- 96 (9) 'E-liquid' shall have the same meaning as provided in Code Section 16-12-170.
- 97 (10) 'Federal act' means the federal Food, Drug, and Cosmetic Act (Title 21 U.S.C.
98 Section 301, et seq., 52 Stat. Section 1040, et seq.).
- 99 (11) 'Flavorings' means food grade additives or synthetic flavoring substances that are
100 used to add flavor, that are approved by the United States Food and Drug Administration
101 as permissible flavorings, and that are not prohibited by law.
- 102 (12) 'Key system' means a licensed or patented key design used to prevent unauthorized
103 duplication of keys for use in high security installations.
- 104 (13) 'Label' means a display of written, printed, or graphic matter upon any container.
- 105 (14) 'Labeling' means all labels upon a container or any wrappers or packaging
106 accompanying such container.
- 107 (15) 'License' means a written authorization issued by the Commissioner entitling the
108 holder to manufacture, sell, or otherwise deal in e-liquid, as provided in this chapter.
- 109 (16) 'Licensee' means a person that holds a valid license under this chapter.
- 110 (17) 'Manufacture' means the process by which an e-liquid is mixed, bottled, packaged,
111 and stored for introduction into commerce.
- 112 (18) 'Manufacturer' means a person located inside or outside the State of Georgia that is
113 engaged in manufacturing in this state.
- 114 (19) 'Manufacturing facility' means any building, plant, factory, warehouse,
115 establishment, or other premises in this state at which any manufacturing, distributing,
116 or retailing is conducted.
- 117 (20) 'Person' means an individual, partnership, corporation, association, or other entity.
- 118 (21) 'Retail' means to acquire any form of e-liquid for the purpose of resale or to transfer
119 e-liquid to another person for money or other consideration.
- 120 (22) 'Vapor pen' shall have the same meaning as provided in Code Section 16-12-170.

121 26-3A-2.

122 The Commissioner shall have the following powers and duties:

- 123 (1) To supervise and exert control over the sanitary conditions of all manufacturing
124 facilities in this state;
- 125 (2) To issue licenses for the manufacture or sale of e-liquids;
- 126 (3) To require the submission of any information, reports, plans, protocols, and
127 specifications that are necessary to implement this chapter;
- 128 (4) To charge fees for licensure;
- 129 (5) To audit and inspect manufacturing facilities;

- 130 (6) To audit random samples maintained by manufacturing facilities to ensure the safety
131 and quality of e-liquids and that the e-liquids meet the requirements in this chapter;
132 (7) To ensure, in coordination with the department, that the e-liquids manufactured,
133 distributed, or retailed in this state conform to appropriate standards of identity, strength,
134 quality, and purity;
135 (8) To approve not less than three different independent testing laboratories to which a
136 manufacturer may choose to send any e-liquid samples for testing, at the manufacturer's
137 expense, as part of any audit, as directed by the Commissioner; and
138 (9) To employ the necessary personnel, fix their compensation, and prescribe their duties
139 in enforcing this chapter.

140 26-3A-3.

- 141 (a) Whenever in the judgment of the Commissioner such action will promote honesty and
142 fair dealing in the interest of the consumers, the Commissioner shall promulgate rules and
143 regulations fixing and establishing for any e-liquids or any class of e-liquid a reasonable
144 definition and standard of identity and, if applicable, a reasonable standard of quality and
145 fill of container.
146 (b) In prescribing a definition and a standard of identity for any e-liquid or class of e-liquid
147 in which optional ingredients are permitted, the Commissioner shall, for the purpose of
148 promoting honesty and fair dealing in the interest of consumers, designate the optional
149 ingredients, which shall be named on the label.

150 26-3A-4.

- 151 (a) The Commissioner or his or her duly authorized agent shall have free access during all
152 hours of operation and at all other reasonable hours to any manufacturing facility and any
153 vehicle being used to transport or hold any e-liquids for introduction into commerce for the
154 purposes of:
155 (1) Inspecting such manufacturing facility or vehicle, any records of pathogen
156 destruction, and any records of testing of samples or specimens of e-liquids or ingredients
157 for the presence of poisonous or deleterious substances or other contaminants and the
158 results thereof, as may be required pursuant to Code Section 26-3A-16, to determine if
159 any of the provisions of this chapter are being violated; and
160 (2) Securing samples or specimens of any e-liquids after paying or offering to pay for
161 such samples.
162 (b) It shall be the duty of the Commissioner to make or cause to be made examinations of
163 samples secured under subsection (a) of this Code section to determine whether or not any
164 provision this chapter is being violated.

165 26-3A-5.

166 The following acts and the causing thereof within this state are prohibited:

167 (1) The manufacture, delivery for sale, holding, storage, or offering for sale of any
168 e-liquid that is adulterated or misbranded;

169 (2) The adulteration or misbranding of any e-liquid;

170 (3) The receipt in commerce of any e-liquid that is adulterated or misbranded and the
171 delivery or proffered delivery thereof for pay or otherwise;

172 (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in
173 violation of Code Section 26-3A-22;

174 (5) The dissemination of any false advertisement;

175 (6) The failure to comply with testing, reporting, or record-keeping requirements
176 provided by or pursuant to Code Section 26-3A-16;

177 (7) The refusal to permit entry or inspection, or to permit the taking of a sample, as
178 authorized by Code Section 26-3A-4;

179 (8) The giving of a guaranty or undertaking, which guaranty or undertaking is false,
180 except by a person that relied on a guaranty or undertaking to the same effect signed by,
181 and containing the name and address of, the person residing in this state from whom he
182 or she received in good faith the e-liquid;

183 (9) The removal or disposal of a detained or embargoed article in violation of Code
184 Section 26-3A-22;

185 (10) The alteration, mutilation, destruction, obliteration, or removal of the whole or any
186 part of the labeling of or the doing of any other act with respect to an e-liquid, if such act
187 is done while such article is held for sale and results in such article being adulterated or
188 misbranded;

189 (11) Forging, counterfeiting, simulating, or falsely representing, or without proper
190 authority using any mark, stamp, tag, label, or other identification device authorized or
191 required by regulations promulgated pursuant to this chapter; and

192 (12) The operation of an e-liquid sales establishment in violation of Code Section
193 26-3A-6.

194 26-3A-6.

195 (a) It shall be unlawful for any person to mix, bottle, package, or sell e-liquid in this state
196 without having first obtained a manufacturing license from the Commissioner.

197 (b) A manufacturing license issued by the Commissioner shall be valid for a period of two
198 years.

199 (c) An initial application for a manufacturing license shall include the following:

- 200 (1) A construction and operation plan for the manufacturing facility that demonstrate that
 201 the facility design includes a clean room space where all mixing, bottling, and packaging
 202 activities will occur;
- 203 (2) Security protocols for the manufacturing facility that demonstrate that the facility is
 204 capable of meeting all of the security requirements contained in this chapter;
- 205 (3) The name, telephone number, title, and address of the applicant;
- 206 (4) The name, telephone number, and address of the manufacturing facility;
- 207 (5) The projected output in liters per year from e-liquids from the manufacturing facility;
- 208 (6) Verification that the facility will comply with proper manufacturing processes;
- 209 (7) Written consent allowing the Commissioner and department, if a license is issued to
 210 the applicant, to enter during normal business hours the premises where the e-liquid is
 211 manufactured to conduct physical inspections, sample the product to ensure the e-liquid
 212 meets the requirements for e-liquids set forth in this chapter, and perform an audit;
- 213 (8) Any and all information necessary to run a criminal background check, including, but
 214 not limited to, classifiable sets of fingerprints of the applicant. An application for a
 215 manufacturing license under this chapter shall constitute express consent and
 216 authorization for the Commissioner or his or her designee to perform a criminal
 217 background check. The applicant shall be responsible for all fees associated with the
 218 performance of such background check;
- 219 (9) A nonrefundable initial application fee of \$1,000.00; and
- 220 (10) Any other information or documents as may be required by the Commissioner.

221 26-3A-7.

- 222 (a) A manufacturing license that is renewed by the Commissioner shall be valid for two
 223 years.
- 224 (b) A renewal application for a manufacturing permit shall include the following:
- 225 (1) The name, telephone number, title, and address of the applicant;
- 226 (2) The name, telephone number, and address of the manufacturing facility;
- 227 (3) The output in liters per year of e-liquids from the manufacturing facility;
- 228 (4) Certification by the applicant that the applicant will continue to use the construction
 229 and operation plan and security protocols approved by the Commissioner with the
 230 applicant's initial application and that such plans and protocols meet all requirements set
 231 forth in this chapter and any rules and regulations of the department; provided, however,
 232 that if the applicant desires to change the previously approved plans or protocols, the
 233 applicant shall submit the suggested changes to the Commissioner for approval;
- 234 (5) Verification that the facility uses the manufacturing processes required under this
 235 chapter;

236 (6) Written consent allowing the Commissioner, if a permit is renewed to the applicant,
237 to enter the premises where the e-liquid is manufactured to conduct physical inspections,
238 sample the product to ensure the e-liquid meets the requirements of e-liquids set forth in
239 this chapter, and perform an audit;

240 (7) Any and all information necessary to run a criminal background check, including, but
241 not limited to, classifiable sets of fingerprints of the applicant. An application for a
242 manufacturing license under this chapter shall constitute express consent and
243 authorization for the Commissioner or his or her designee to perform a criminal
244 background check. The applicant shall be responsible for all fees associated with the
245 performance of such background check;

246 (8) A nonrefundable renewal application fee of \$200.00; and

247 (9) Any other information or documents as may be required by the Commissioner.

248 26-3A-8.

249 (a) A license shall not be transferred from the license holder to another person or from the
250 location where the license was approved or renewed to another location unless approved
251 by the Commissioner.

252 (b) The Commissioner may allow a license to be transferred if the license has not been
253 suspended or revoked and the new license holder or location meets the requirements of this
254 chapter.

255 26-3A-9.

256 If the information required for the initial or renewal license changes, including, but not
257 limited to, the applicant's criminal history, the license holder shall notify the Commissioner
258 within ten business days of such change. If any change in the information required for an
259 application results in a violation of this chapter, the Commissioner may impose a penalty
260 as provided in this chapter.

261 26-3A-10.

262 (a) On receipt of a completed license application, the Commissioner shall transmit the
263 fingerprints to the Georgia Crime Information Center, which shall submit the fingerprints
264 to the Federal Bureau of Investigation for a search of bureau records and an appropriate
265 report and promptly conduct a search of state records based upon the fingerprints. After
266 receiving the report from the Georgia Crime Information Center and the Federal Bureau
267 of Investigation, the department shall determine whether the applicant may be licensed.

268 (b) The Commissioner shall grant or deny a completed application for a license within 60
269 days of receipt of the application. If the Commissioner determines that all the requirements

270 under this chapter have been met and the applicant or anyone having a financial interest in
 271 the manufacturer or manufacturing facility has not been convicted of a felony involving a
 272 controlled substance, the Commissioner shall approve the application for issuance of the
 273 license.

274 26-3A-11.

275 No license issued under this chapter shall be suspended or revoked except for health and
 276 sanitation reasons or violations of this chapter and until the licensee to be affected is
 277 provided with reasonable notice thereof and an opportunity for a hearing, as provided under
 278 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

279 26-3A-12.

280 (a) Each holder of a manufacturing license pursuant to this chapter shall post such license
 281 on the premises in an open and conspicuous manner so as to be visible to the public.

282 (b) Neither the state nor any county, municipality, or consolidated government shall issue
 283 or renew any business or occupation license or permit for any manufacturing facility until
 284 such facility complies with the requirements of this chapter.

285 26-3A-13.

286 All manufacturing facilities shall comply with the following requirements:

287 (1) All e-liquid containers shall:

288 (A) Use a child-proof cap;

289 (B) Be secured using either ring seals or plastic wrap;

290 (C) Bear a label which shall:

291 (i) Identify the active ingredients;

292 (ii) Include a separate designation if the product contains nicotine;

293 (iii) Include a manufacturing date and batch number; and

294 (iv) Include a scannable encryption code tied to the batch number as prescribed by
 295 the Commissioner; and

296 (D) Be distributed and sold within two years of the date of manufacture;

297 (2) All mixing, bottling, and packaging activities shall be conducted in a clean room;

298 (3) The manufacturer shall take reasonable steps to ensure that an unauthorized
 299 ingredient shall not be included in any e-liquid produced for sale in this state;

300 (4) The manufacturer shall establish security protocols that shall provide that:

301 (A) All ingredients used in the production of e-liquids are stored in a secure area
 302 accessible only by authorized personnel;

- 303 (B) Only authorized personnel have access to secured areas of the facility where
304 e-liquids are mixed, bottled, and packaged;
- 305 (C) Areas where e-liquids are mixed, bottled, packaged, and stored shall be accessible
306 to authorized personnel only by the use of a high security key system;
- 307 (D) There is a remotely-monitored security system at the facility in areas where
308 e-liquids are mixed, bottled, packaged, and stored; and
- 309 (E) The manufacturing facility shall be subject to a 24 hour video surveillance of the
310 location where e-liquids are mixed, bottled, packaged, and stored. The recordings of
311 such video surveillance shall be retained for at least 30 days;
- 312 (5) The manufacturer shall store and maintain three ten-milliliter sample bottles from
313 each production batch for a period of not less than three years in a secure limited access
314 area with recorded video surveillance;
- 315 (6) The manufacturer shall submit to random audits of the facility and the manufacturer's
316 samples and records by the Commissioner; and
- 317 (7) The manufacturer shall submit to random site visits by the Commissioner.

318 26-3A-14.

- 319 (a) E-liquids manufactured, distributed, or sold within this state shall be composed of any
320 of the following ingredients:
- 321 (1) Vegetable glycerol or vegetable glycerin;
322 (2) Propylene glycol;
323 (3) Nicotine;
324 (4) Flavorings;
325 (5) Water; and
326 (6) Other ingredients approved by the department under subsection (c) of this Code
327 section or specifically approved for inclusion in e-liquids by the United States Food and
328 Drug Administration.
- 329 (b) A person shall not purchase, sell, use, or possess any substance intended to be
330 vaporized and inhaled in a vapor pen that contains any ingredient other than an ingredient
331 allowed under subsection (a) of this Code section.
- 332 (c) A manufacturer may file a request with the Commissioner for approval of an ingredient
333 to be allowed in the composition of an e-liquid. The Commissioner may approve such
334 request filed if the department determines that the ingredient will not pose an unreasonable
335 threat to public health and safety.

336 26-3A-15.

337 (a) A licensee may bring a civil action against any person that produces, distributes, or
338 sells an e-liquid not approved for sale in this state.

339 (b)(1) A licensee may bring the civil action described in subsection (a) of this Code
340 section in a court with jurisdiction in this state based on a violation of this chapter or the
341 rules and regulations adopted by the Commissioner to enjoin the violation and to recover
342 for actual monetary loss from the violation.

343 (2) The court may award attorney's fees to the prevailing party.

344 26-3A-16.

345 (a)(1)(A) In order to protect public health, safety, and welfare and to ensure
346 compliance with this chapter, the Commissioner shall by rule and regulation establish
347 requirements for regular testing of samples or specimens of e-liquids and ingredients
348 by manufacturing facilities for the presence of poisonous or deleterious substances or
349 other contaminants rendering such e-liquids or ingredients injurious to health. Such
350 rules and regulations shall identify the specific classes or types of manufacturing
351 facilities, e-liquids, ingredients, and poisonous or deleterious substances or other
352 contaminants that shall be subject to such testing requirements and the frequency with
353 which such tests shall be performed by manufacturing facilities.

354 (B) The Commissioner shall also promulgate rules and regulations establishing
355 minimum standards and requirements for a written e-liquid safety plan, such as a hazard
356 analysis critical control point plan, that may be submitted by an operator of a
357 manufacturing facility to document and describe the procedures used at such facility to
358 prevent the presence of hazards such as poisonous or deleterious substances or other
359 contaminants that would render e-liquids manufactured at such facility injurious to
360 health, including preventive controls, monitoring to ensure the effectiveness of such
361 controls, and records of corrective actions, such as actions taken in response to the
362 presence of known hazards. If an operator of a manufacturing facility, in its discretion,
363 submits to the department a written e-liquid safety plan for such facility and such
364 facility conforms to the rules and regulations promulgated for purposes of this
365 subparagraph, then such manufacturing facility shall comply with the requirements of
366 such written e-liquid safety plan, including, but not limited to, any test regimen
367 provided by such plan, in lieu of complying with a test regimen established by rules or
368 regulations promulgated by the Commissioner pursuant to subparagraph (A) of this
369 paragraph.

370 (C)(i) The Commissioner shall impose a civil penalty for a violation of this
371 subsection.

372 (ii) The department shall adopt rules and regulations establishing a schedule of civil
373 penalties that shall be imposed under this subsection. Civil penalties imposed
374 pursuant to this subsection shall not exceed \$5,000.00 for each violation; provided,
375 however, that a manufacturing facility that knowingly fails to comply with the
376 provisions of subparagraph (B) of this paragraph shall be punished by the imposition
377 of a \$7,500.00 civil penalty. In addition to such civil penalty, within 30 days of the
378 determination by the Commissioner that such violation has occurred, such
379 manufacturing facility shall submit to the Commissioner a written e-liquid safety plan
380 pursuant to subparagraph (B) of this paragraph.

381 (iii) For purposes of this subsection, each day a violation continues after the period
382 established for compliance by the Commissioner shall be considered a separate
383 violation.

384 (iv) When a civil penalty is imposed under this subsection, such penalty shall be
385 subject to review in the manner prescribed by Chapter 13 of Title 50, the 'Georgia
386 Administrative Procedure Act.'

387 (2) In addition to any regular tests required pursuant to paragraph (1) of this subsection,
388 the Commissioner may order any manufacturing facility to have samples or specimens
389 of its e-liquids and ingredients tested for the presence of any poisonous or deleterious
390 substances or other contaminants whenever the Commissioner determines that there are
391 reasonable grounds to suspect that such e-liquids or ingredients may be injurious to
392 health.

393 (b) Any manufacturing facility subject to any testing requirements pursuant to this Code
394 section shall cause such required tests to be performed in accordance with testing standards
395 and procedures established by the rules and regulations of the Commissioner.

396 (c) A manufacturing facility shall be responsible for the cost of any testing required
397 pursuant to this Code section and may conduct such testing either internally or via a third
398 party, provided that subsection (b) of this Code section applies in either case.

399 (d)(1) Whenever any person that operates a manufacturing facility in this state obtains
400 information from testing from samples or specimens of e-liquids or ingredients
401 manufactured at such manufacturing facility which, based on a confirmed positive test
402 result, indicates the presence of a substance that would cause a manufactured e-liquid
403 bearing or containing the same to be adulterated within the meaning of paragraph (1) of
404 Code Section 26-3A-17, such person or firm shall report such information to the
405 department within 24 hours after obtaining such information.

406 (2) Any person that knowingly fails to make the report required by paragraph (1) of this
407 subsection shall be guilty of a misdemeanor. The punishment provided for in this
408 paragraph shall be supplemental to any other applicable provisions of law.

409 (e) Records of the results of any tests required pursuant to this Code section shall be kept
 410 by a manufacturing facility and made available to the department for inspection for a
 411 period of not less than two years from the date the results were reported by the laboratory.
 412 Any person that knowingly violates this subsection shall be guilty of a misdemeanor. The
 413 punishment provided for in this subsection shall be supplemental to any other applicable
 414 provisions of law.

415 (f) Any person that knowingly introduces into commerce e-liquids manufactured at a
 416 manufacturing facility that contain a substance that would cause such e-liquids to be
 417 adulterated within the meaning of paragraph (1) of Code Section 26-3A-17 shall be guilty
 418 of a felony and upon conviction shall be punished by imprisonment for not less than one
 419 nor more than 20 years, a fine not to exceed \$20,000.00, or both. The punishment provided
 420 for in this subsection shall be supplemental to any other applicable provisions of law.

421 26-3A-17.

422 An e-liquid shall be deemed to be adulterated if:

423 (1) It bears or contains any poisonous or deleterious substance which may render it
 424 injurious to health; provided, however, that such e-liquid shall not be considered
 425 adulterated under this paragraph if the substance is not an added substance and if the
 426 quantity of such substance does not ordinarily render it injurious to health;

427 (2) It bears a pesticide residue in excess of a tolerance established by the United States
 428 Environmental Protection Agency under the federal Food, Drug, and Cosmetic Act or if
 429 it bears a pesticide residue for which no tolerance has been established or is currently in
 430 effect for such e-liquid, provided that such residue appears at a level which is readily
 431 quantifiable by methods of assay for pesticide residues employed by the Commissioner
 432 on the date of the assay;

433 (3) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or
 434 decomposed substance;

435 (4) It has been produced, prepared, packed, or held under unsanitary conditions whereby
 436 it may have become contaminated with filth or whereby it may have been rendered
 437 injurious to health;

438 (5) Its container is composed in whole or in part of any poisonous or deleterious
 439 substance which may render the contents injurious to health;

440 (6) Any valuable constituent has been in whole or in part omitted or abstracted
 441 therefrom;

442 (7) Any substance has been substituted wholly or in part therefor;

443 (8) Damage or inferiority has been concealed in any manner;

- 444 (9) Any substance has been added thereto or mixed or packed therewith so as to increase
445 its bulk or weight, reduce its quality or strength, or make it appear better or of greater
446 value than it is; or
447 (10) It bears or contains a coal-tar color other than one from a batch which has been
448 certified under authority of the federal act.

449 26-3A-18.

450 (a) An e-liquid shall be deemed to be misbranded if:

451 (1) Its labeling is false or misleading;

452 (2) Its container is so made, formed, or filled as to be misleading;

453 (3) Any word, statement, or other information required by or under authority of this
454 chapter to appear on the label or labeling is not prominently placed thereon with such
455 conspicuousness, as compared with other words, statements, designs, or devices in the
456 labeling, and in such terms as to render it likely to be read and understood by the ordinary
457 individual under customary conditions of purchase and use;

458 (4) It purports to be or is represented as an e-liquid for which a definition and standard
459 of identity has been prescribed by rules and regulations as provided by Code Section
460 26-3A-3, unless:

461 (A) It conforms to such definition and standard; and

462 (B) Its label bears the name 'e-liquid' and, insofar as may be required by such rules and
463 regulations, the common names of optional ingredients, other than spices, flavorings,
464 and coloring, present in such e-liquid

465 fully to inform purchasers as to its value for such uses;

466 (5) It bears or contains any artificial flavoring, artificial coloring, or chemical
467 preservatives, unless it bears labeling stating such, provided that to the extent that
468 compliance with the requirements of this paragraph is impracticable, exemptions shall be
469 established by rules and regulations promulgated by the Commissioner; or

470 (6)(A) Its container is so made, formed, or filled as to be misleading; or

471 (B) If it is offered for sale under the name of another product.

472 (b) Any requirement made by or under the authority of this chapter that any word,
473 statement, or other information appear on the label shall not be considered to be complied
474 with unless each such word, statement, or other information also appears on the outside
475 wrapper or packaging accompanying a container, if there is any, appears on the outside of
476 the retail package of such container, or is easily legible through the outside wrapper or
477 packaging.

478 26-3A-19.

479 (a) An advertisement of an e-liquid shall be deemed to be false if it is misleading.

480 (b) By way of illustration only and without limiting the scope of subsection (a) of this
481 Code section, the following practices employed in the advertisement of any e-liquid are
482 declared to be misleading:

483 (1) Causing actual confusion or actual misunderstanding as to the source, sponsorship,
484 approval, or certification of the e-liquid;

485 (2) Using deceptive representations or designations of geographic origin in connection
486 with the e-liquid;

487 (3) Representing that the e-liquid has sponsorship, approval, characteristics, ingredients,
488 uses, benefits, or quantities that it does not have or that a person has a sponsorship,
489 approval, status, affiliation, or connection that such person does not have;

490 (4) Representing that the e-liquid is of a particular standard, quality, or grade if it is not;
491 or

492 (5) Making false or misleading statements concerning the e-liquid of another.

493 26-3A-20.

494 If an e-liquid is alleged to be misbranded because the labeling is misleading or if an
495 advertisement is alleged to be false because it is misleading, then in determining whether
496 the labeling or advertisement is misleading, there shall be taken into account, among other
497 things, not only representations made or suggested by statements, words, designs, devices,
498 sounds, or any combination thereof, but also the extent to which the labeling or
499 advertisement fails to reveal facts material in the light of such representations or material
500 with respect to consequences which may result from the use of the article to which the
501 labeling or advertisement relates under the conditions of use prescribed in the labeling or
502 advertisement thereof or under such conditions of use as are customary or usual.

503 26-3A-21.

504 (a) Whenever the Commissioner finds, after investigation, that the distribution in this state
505 of any class of e-liquid or any ingredients used therein may, by reason of contamination
506 with microorganisms during the manufacture thereof in any locality, be injurious to health
507 and that such injurious nature cannot be adequately determined after such articles have
508 entered commerce, he or she then, and in such case only, shall promulgate rules and
509 regulations providing for the issuance to manufacturers of such class of e-liquid in such
510 locality of permits to which shall be attached such conditions governing the manufacture
511 of such class of e-liquid, for such temporary period of time, as may be necessary to protect
512 public health, and provided that after the effective date of such rules and regulations and

513 during such temporary period, no person shall introduce or deliver for introduction into
514 commerce any e-liquid manufactured by any such manufacturer unless such manufacturer
515 holds a permit issued by the Commissioner as provided by such rules and regulations.

516 (b) The Commissioner shall be authorized to suspend immediately upon notice any permit
517 issued under authority of this Code section if it is found that any of the conditions of the
518 permit have been violated. The holder of a permit so suspended shall be privileged at any
519 time to apply for the reinstatement of such permit. The Commissioner shall, immediately
520 after a prompt hearing and inspection of the establishment, reinstate such permit if it is
521 found that adequate measures have been taken to comply with and maintain the conditions
522 of the permit as originally issued or as amended.

523 (c) Any officer or employee duly designated by the Commissioner shall have access to any
524 manufacturing facility, the owner or operator of which holds a permit from the department,
525 for the purpose of ascertaining whether or not the conditions of the permit are being
526 complied with. Denial of access for such inspection shall be grounds for suspension of the
527 permit until such access is freely given by the owner or operator.

528 26-3A-22.

529 (a) Whenever a duly authorized agent of the Commissioner finds or has probable cause to
530 believe that any e-liquid is adulterated or misbranded within the meaning of this chapter,
531 such agent shall affix to any container which contains such e-liquid a tag or other
532 appropriate marking, giving notice that such e-liquid is, or is suspected of being,
533 adulterated or misbranded and has been detained or embargoed and warning all persons not
534 to remove or dispose of such container by sale or otherwise until permission for removal
535 or disposal is given by the agent or the court. It shall be unlawful for any person to remove
536 or dispose of such detained or embargoed container by sale or otherwise without
537 permission of the Commissioner. Upon application, the Commissioner shall grant
538 permission to move or dispose of such container to a safe and secure area and in a safe and
539 secure manner.

540 (b) When an article detained or embargoed under subsection (a) of this Code section has
541 been found by such agent to be adulterated or misbranded, the agent shall bring an action
542 for condemnation of such article in the superior court of the county where the container is
543 detained or embargoed. When such agent has found that a container so detained or
544 embargoed is not adulterated or misbranded, the agent shall remove the tags or other
545 markings.

546 (c) If the court finds that a detained or embargoed container is adulterated or misbranded,
547 such container shall, after entry of the decree, be destroyed at the expense of the claimant
548 thereof under the supervision of the Commissioner, and all court costs and fees and storage

549 and other proper expenses shall be taxed against the claimant of such container or the
550 claimant's agent, provided that when the adulteration or misbranding can be corrected by
551 proper labeling or processing of the container, the court, after entry of the decree and after
552 such costs, fees, and expenses have been paid and a good and sufficient bond conditioned
553 that such article shall be so labeled or processed, has been executed, may by proper order
554 direct that such article be delivered to the claimant thereof for such labeling or processing
555 under the supervision of an agent of the Commissioner. The expense of such supervision
556 shall be paid by the claimant. Such expense shall be returned to the claimant of the
557 container on representation to the court by the Commissioner that the container is no longer
558 in violation of this chapter and that the expense of such supervision has been paid.

559 (d) Whenever the Commissioner or any of his or her authorized agents finds in any room,
560 building, vehicle for transportation, or other structure any e-liquid which contains any
561 filthy, decomposed, or putrid substances, or which might be poisonous or deleterious to
562 health or otherwise unsafe, the same shall be declared to be a nuisance, and the
563 Commissioner or his or her authorized agent shall immediately condemn or destroy or in
564 any other manner render the same unsalable for human consumption.

565 26-3A-23.

566 (a) The Commissioner may cause to be published from time to time reports summarizing
567 all judgments, decrees, and court orders which have been rendered under this chapter,
568 including the nature of the charge and the disposition thereof.

569 (b) The Commissioner may also cause to be disseminated such information regarding
570 e-liquids as the Commissioner deems necessary in the interest of public health and the
571 protection of the consumer against fraud.

572 (c) Nothing in this chapter shall be construed to prohibit the Commissioner from
573 collecting, reporting, and illustrating the results of the investigations of the Commissioner,
574 his or her agents, or the department.

575 (d) Nothing in this chapter shall be construed as requiring the Commissioner to report, for
576 the institution of proceedings under this chapter, minor violations of this chapter whenever
577 the Commissioner believes that the public interest will be adequately served in the
578 circumstances by a suitable written notice or warning.

579 26-3A-24.

580 It shall be the duty of each prosecuting attorney to whom the Commissioner reports any
581 violation of this chapter to cause appropriate proceedings to be instituted in the appropriate
582 court without delay and to prosecute the same in the manner provided by law. Before any
583 violation of this chapter is reported to any prosecuting attorney for the institution of a

584 criminal proceeding, the person against whom such proceeding is contemplated shall be
585 given appropriate notice and an opportunity to present such person's views before the
586 Commissioner or his or her designated agent orally or in writing, in person or by attorney,
587 with regard to such contemplated proceedings.

588 26-3A-25.

589 (a) If a manufacturer violates this chapter, the manufacturer may be reprimanded, assessed
590 a civil penalty, or have the manufacturer's license suspended, or in the case of gross or
591 willful misconduct, the license holder may have the manufacturer's license revoked for a
592 period of up to one year. At the end of the revocation period, the manufacturer may apply
593 to the Commissioner for reinstatement of the license.

594 (b) The Commissioner may assess a civil penalty against a manufacturer for a violation
595 of this chapter in an amount that shall not exceed \$10,000.00. A civil penalty may be
596 assessed in addition to other penalties allowed under this chapter.

597 26-3A-26.

598 (a) Except as otherwise permitted by this chapter, a person shall not purchase; receive;
599 manufacture; import; transport; cause to be imported or transported from another state,
600 territory, or country into this state; ship; barter; give away; exchange; furnish; otherwise
601 handle or dispose of; or possess any e-liquid for purpose of sale.

602 (b) A person shall not knowingly receive or acquire any e-liquid from a person that does
603 not hold a valid license under this chapter.

604 (c) Any person that violates this Code section shall be guilty of a misdemeanor; provided,
605 however, that upon a second or subsequent violation of this Code section, such person shall
606 be guilty of a misdemeanor of a high and aggravated nature.

607 26-3A-27.

608 The Commissioner shall be authorized to adopt and maintain an adequate system of
609 wholesomeness inspection as to all e-liquids offered for sale in this state and to employ or
610 designate qualified personnel necessary to maintain such inspection program to adopt an
611 appropriate marking system so as to identify those e-liquids inspected and passed as fit for
612 human consumption to adopt standards and specifications for e-liquids.

613 26-3A-28.

614 No person shall manufacture e-liquids within this state except in a clean room. A clean
615 room shall:

616 (1) Be a space that is kept free of conditions other than sanitary; and

617 (2) Contain equipment used in the manufacturing of e-liquids that is easily cleanable and
618 sanitized in such a way that it prevents contamination of such e-liquids, containers, or
619 packaging materials.

620 26-3A-29.

621 (a) No person, firm, or corporation shall sell, offer for sale, or possess for sale any e-liquid
622 or any byproduct thereof that has been produced, manufactured, transported, handled,
623 stored, or processed under conditions other than sanitary.

624 (b) Conditions other than sanitary shall be deemed to exist when any or all of the following
625 conditions exist:

626 (1) Premises, buildings, handling or storage space, or equipment in a state of decay;

627 (2) Floors and side walls or other parts of any space of building covered or coated with
628 decaying matter;

629 (3) Sufficient insect screens not provided or maintained;

630 (4) Insufficient drainage;

631 (5) Inadequate supply of pure water;

632 (6) Inadequate supply of hot water; or

633 (7) Putrid odors.

634 (c) The enumeration of these conditions shall not be exclusive, and the Commissioner shall
635 determine whether unsanitary conditions exist.

636 26-3A-30.

637 Nothing in this chapter shall prevent the governing authority of any county or municipal
638 corporation from adopting ordinances or resolutions providing for the inspection of
639 e-liquids sold within its limits and providing penalties for violations thereof; provided,
640 however, that no such ordinance or resolution shall conflict with any power or authority
641 of the Commissioner or his or her designee, and provided, further, that no county or
642 municipal corporation shall adopt sanitary standards or specifications that are less than
643 those adopted by the Commissioner.

644 26-3A-31.

645 In addition to the remedies provided in this chapter and notwithstanding the existence of
646 any remedy at law, the Commissioner is authorized to apply to the superior court, and such
647 court shall have jurisdiction upon a hearing and for cause shown to grant a temporary or
648 permanent injunction, restraining order, or both, restraining any person from violating or
649 continuing to violate this chapter or from failing or refusing to comply with the

650 requirements of this chapter or any rule or regulation adopted by the Commissioner
651 pursuant to this chapter. No ex parte restraining order shall be issued without bond.

652 26-3A-32.

653 Any person that violates this chapter, rules and regulations adopted under this chapter, or
654 any sanitary standards or specifications adopted under this chapter shall be guilty of a
655 misdemeanor.

656 26-3A-33.

657 Nothing in this chapter shall be applicable to the mixing, bottling, packaging, storage, or
658 sale of sealed nonrefillable cartridges of e-liquids intended to be vaporized and inhaled
659 using a powered vaporizer."

660 **SECTION 3.**

661 This Act shall become effective on July 1, 2016.

662 **SECTION 4.**

663 All laws and parts of laws in conflict with this Act are repealed.