

HOUSE BILL No. 1187

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-4-1; IC 6-7-4; IC 12-23-2-2.

Synopsis: E-liquids taxes. Imposes a tax on e-liquids that contain nicotine at a rate of \$0.10 per fluid milliliter of consumable product. Deposits the revenue from the tax in the state general fund and the addiction services fund.

Effective: July 1, 2018.

Klinker

January 9, 2018, read first time and referred to Committee on Ways and Means.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1187

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 6-2.5-4-1, AS AMENDED BY P.L.227-2013,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 1. (a) A person is a retail merchant making a retail
4 transaction when the person engages in selling at retail.
5 (b) A person is engaged in selling at retail when, in the ordinary
6 course of the person's regularly conducted trade or business, the
7 person:
8 (1) acquires tangible personal property for the purpose of resale;
9 and
10 (2) transfers that property to another person for consideration.
11 (c) For purposes of determining what constitutes selling at retail, it
12 does not matter whether:
13 (1) the property is transferred in the same form as when it was
14 acquired;
15 (2) the property is transferred alone or in conjunction with other
16 property or services; or
17 (3) the property is transferred conditionally or otherwise.



1 (d) Notwithstanding subsection (b), a person is not selling at retail
 2 if the person is making a wholesale sale as described in section 2 of this
 3 chapter. However, in the case of sales of gasoline (as defined in
 4 IC 6-6-1.1-103), a person shall collect the gasoline use tax as provided
 5 in IC 6-2.5-3.5.

6 (e) The gross retail income received from selling at retail is only
 7 taxable under this article to the extent that the income represents:

8 (1) the price of the property transferred, without the rendition of
 9 any service; and

10 (2) except as provided in subsection (g), any bona fide charges
 11 which are made for preparation, fabrication, alteration,
 12 modification, finishing, completion, delivery, or other service
 13 performed in respect to the property transferred before its transfer
 14 and which are separately stated on the transferor's records.

15 For purposes of this subsection, a transfer is considered to have
 16 occurred after delivery of the property to the purchaser.

17 (f) Notwithstanding subsection (e):

18 (1) in the case of retail sales of special fuel (as defined in
 19 IC 6-6-2.5-22), the gross retail income received from selling at
 20 retail is the total sales price of the special fuel minus the part of
 21 that price attributable to tax imposed under IC 6-6-2.5 or Section
 22 4041(a) or Section 4081 of the Internal Revenue Code; ~~and~~

23 (2) in the case of retail sales of cigarettes (as defined in
 24 IC 6-7-1-2), the gross retail income received from selling at retail
 25 is the total sales price of the cigarettes, including the tax imposed
 26 under IC 6-7-1; **and**

27 **(3) in the case of retail sales of e-liquids, the gross retail**
 28 **income received from selling at retail is the total sales price of**
 29 **the e-liquids, including the tax imposed under IC 6-7-4.**

30 (g) Gross retail income does not include income that represents
 31 charges for serving or delivering food and food ingredients furnished,
 32 prepared, or served for consumption at a location, or on equipment,
 33 provided by the retail merchant. However, the exclusion under this
 34 subsection only applies if the charges for the serving or delivery are
 35 stated separately from the price of the food and food ingredients when
 36 the purchaser pays the charges.

37 SECTION 2. IC 6-7-4 IS ADDED TO THE INDIANA CODE AS
 38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2018]:

40 **Chapter 4. E-liquids Tax**

41 **Sec. 1. As used in this chapter, "consumable product" means**
 42 **any liquid nicotine solution or other material containing nicotine**



1 that is depleted as a vapor product is used.

2 **Sec. 2. As used in this chapter, "distributor" means a person**
3 **who:**

4 (1) manufactures, sells, barter, exchanges, or distributes
5 vapor products in Indiana to retail dealers for the purpose of
6 resale;

7 (2) purchases vapor products directly from a manufacturer of
8 vapor products; or

9 (3) purchases for resale vapor products from a wholesaler,
10 jobber, or distributor outside Indiana.

11 **Sec. 3. As used in this chapter, "manufacturer" means a person**
12 **within or outside Indiana that:**

13 (1) produces vapor products; or

14 (2) contracts with another person to produce vapor products
15 and is the exclusive purchaser of the products under the
16 contract.

17 **Sec. 4. As used in this chapter, "vapor product" means a**
18 **noncombustible product containing nicotine, such as an electronic**
19 **cigarette, that employs a mechanical heating element, battery, or**
20 **electronic circuit, regardless of shape or size, that can be used to**
21 **produce vapor from a liquid nicotine solution. The term includes**
22 **any vapor cartridge or other container of nicotine in a solution or**
23 **other form that is intended to be used with or in a vapor product.**

24 **Sec. 5. (a) An e-liquids tax is imposed on the distribution of**
25 **vapor products in Indiana at the rate of ten cents (\$0.10) per fluid**
26 **milliliter of consumable product.**

27 **(b) The distributor of the vapor products, including a person**
28 **that sells vapor products through an Internet web site, is liable for**
29 **the tax imposed under subsection (a). The tax is imposed at the**
30 **time the distributor:**

31 (1) brings or causes vapor products to be brought into Indiana
32 for distribution;

33 (2) manufactures vapor products in Indiana for distribution;
34 or

35 (3) transports vapor products to retail dealers in Indiana for
36 resale by those retail dealers.

37 **(c) All invoices for vapor products must state the amount of**
38 **consumable product in milliliters.**

39 **(d) Copies of all invoices for the purchase or sale of any vapor**
40 **products shall be retained by each wholesaler, retailer, distributor,**
41 **jobber, and subjobber for a period of three (3) years, subject to**
42 **examination by the department.**



1 **Sec. 6. The department shall deposit the revenue collected from**
2 **the tax imposed by this chapter as follows:**

3 **(1) Fifty percent (50%) of the revenue shall be deposited in**
4 **the state general fund.**

5 **(2) Fifty percent (50%) of the revenue shall be deposited in**
6 **the addiction services fund under IC 12-23-2.**

7 **Sec. 7. The department may adopt rules under IC 4-22-2**
8 **necessary to enforce this chapter.**

9 SECTION 3. IC 12-23-2-2 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. The addiction
11 services fund is established for the deposit of excise taxes on alcoholic
12 beverages as described in IC 7.1-4-11, **taxes on e-liquids as described**
13 **in IC 6-7-4**, and taxes on riverboat admissions under IC 4-33-12-6.

