



Reprinted
April 16, 2019

ENGROSSED HOUSE BILL No. 1444

DIGEST OF HB 1444 (Updated April 15, 2019 10:00 pm - DI 120)

Citations Affected: Noncode.

Synopsis: Study committee. Urges the legislative council to assign to an appropriate interim study committee the task of studying the topic of taxation of: (1) CBD oil; and (2) vaping products.

Effective: Upon passage.

Brown T, Huston, Karickhoff, Klinker

(SENATE SPONSORS — CHARBONNEAU, HOLDMAN, MISHLER)

January 15, 2019, read first time and referred to Committee on Ways and Means.
February 7, 2019, amended, reported — Do Pass.
February 11, 2019, read second time, ordered engrossed.
February 12, 2019, engrossed. Read third time, passed. Yeas 53, nays 40.

SENATE ACTION

March 4, 2019, read first time and referred to Committee on Appropriations.
April 11, 2019, amended, reported favorably — Do Pass.
April 15, 2019, read second time, amended, ordered engrossed.

EH 1444—LS 7490/DI 134



Reprinted
April 16, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1444

A BILL FOR AN ACT concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. [EFFECTIVE UPON PASSAGE] **(a) The legislative**
2 **council is urged to assign to an appropriate interim study**
3 **committee the task of studying the topic of taxation of:**
4 **(1) CBD oil; and**
5 **(2) vaping products.**
6 **(b) This SECTION expires December 31, 2019.**
7 SECTION 2. **An emergency is declared for this act.**

EH 1444—LS 7490/DI 134



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1444, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 27 through 29, begin a new line block indented and insert:

"(3) in the case of retail sales of consumable materials or vapor products, such as electronic cigarettes, the gross retail income received from selling at retail is the total sales price of the vapor product or consumable materials, including the tax imposed under IC 6-7-5."

Page 2, delete lines 37 through 42, begin a new paragraph and insert:

"SECTION 2. IC 6-7-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 5. Electronic Cigarette Tax

Sec. 1. As used in this chapter, "consumable material" means any liquid nicotine solution or other material containing nicotine that is depleted as a vapor product is used. The term includes the liquid nicotine in a solution or other form contained in any cartridge or container that is intended to be used with or in a vapor product, including a cartridge contained within a vapor product sold for a single price, but does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

Sec. 2. As used in this chapter, "distributor" means a person that:

- (1) manufactures, sells, barter, exchanges, or distributes vapor products, consumable materials, or both;**
- (2) purchases vapor products, consumable materials, or both directly from a manufacturer of vapor products, consumable materials, or both; or**
- (3) purchases for resale vapor products, consumable materials, or both from a wholesaler, jobber, or distributor outside Indiana.**

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

- (1) produces vapor products, consumable materials, or both;**
- or**
- (2) contracts with another person to produce vapor products,**



consumable materials, or both, and is the exclusive purchaser of the products under the contract.

The term includes a retail dealer that produces or mixes consumable materials at its retail location.

Sec. 4. As used in this chapter, "retail dealer" means a person engaged in the business of selling vapor products, consumable materials, or both to ultimate consumers.

Sec. 5. As used in this chapter, "vapor product" means a device, such as an electronic cigarette, that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to produce vapor from a consumable material.

Sec. 6. (a) The electronic cigarette tax is imposed on the distribution of consumable material in Indiana at the rate of four cents (\$0.04) per fluid milliliter of consumable material. If the tax calculated for a fractional part of a milliliter carried to the third decimal place results in the numeral in the third decimal place being greater than four (4), the amount of the tax is rounded to the next additional cent.

(b) Except as provided in subsection (c), the distributor of the consumable materials, including a person that sells consumable materials through an Internet web site, is liable for the tax imposed under subsection (a). After June 30, 2019, the tax is imposed at the time the distributor:

- (1) brings or causes consumable materials to be brought into Indiana for distribution or sale;
- (2) manufactures consumable materials in Indiana for distribution;
- (3) transports consumable materials to retail dealers in Indiana for resale by those retail dealers; or
- (4) first possesses the consumable materials in Indiana in a distributor to distributor transaction.

(c) A consumer who purchases consumable materials, including consumable materials purchased through an Internet web site, upon which:

- (1) the tax imposed under subsection (a) has never been paid; and
- (2) the consumer has not paid the tax;

is liable for the tax and shall remit the tax to the department on a form prescribed by the department.

Sec. 7. Before the fifteenth day of each month, a distributor liable for the tax imposed under this chapter shall:

- (1) file a return with the department that includes all



information required by the department, including the:

- (A) name of the distributor;
- (B) address of the distributor;
- (C) invoice date;
- (D) invoice number; and
- (E) name and address of the person from whom consumable materials were purchased or the name and address of the person to whom consumable materials were sold; and

(2) pay the tax for which the distributor is liable under this chapter for the preceding month.

All returns required to be filed and taxes required to be paid under this chapter must be made in an electronic format prescribed by the department.

Sec. 8. (a) Every distributor, wholesaler, retail dealer, jobber, and subjobber shall keep and preserve for three (3) years records and invoices showing the purchase and sale of all consumable materials.

(b) All invoices for consumable materials must state the actual amount of consumable material in milliliters.

(c) Records and invoices for consumable materials must be open to inspection by the department at all reasonable times.

Sec. 9. (a) A distributor, including a person that sells consumable materials, vapor products, or both through an Internet web site, must obtain a license from the department before distributing consumable materials in Indiana.

(b) A retail dealer that is a manufacturer of consumable materials doing business in Indiana must first obtain a license from the department before selling consumable materials in Indiana.

(c) If a retailer dealer is also a distributor, only one (1) license is required.

Sec. 10. (a) The department shall issue licenses under this chapter to applicants that qualify under this section.

(b) A license issued under this section:

- (1) is valid for one (1) year, unless revoked or suspended by the department; and
- (2) is not transferable.

(c) An applicant for a license under this section must submit proof to the department of the appointment of an agent of service of process in Indiana if the applicant is:

- (1) an individual whose principal place of residence is outside Indiana; or



(2) a person, other than an individual, that has its principal place of business outside Indiana.

(d) To obtain or renew a license under this section, a person must:

(1) submit, for each location where the person intends to distribute or sell consumable materials, an application upon a form prescribed by the department that includes all information required by the department;

(2) pay a fee of twenty-five dollars (\$25) at the time of the application; and

(3) in the case of a person who is a distributor at the time of the application, post a bond issued by a surety company approved by the department in an amount not less than one thousand dollars (\$1,000) that is conditioned on the applicant's compliance with this chapter.

(e) The department shall investigate each applicant for a license under this section. A license may not be issued if the department determines that any one (1) of the following exists:

(1) The application is not filed in good faith.

(2) The applicant is not the real party in interest.

(3) The license of the real party in interest has been revoked for cause.

(4) Other reasonable cause for nonissuance exists.

(f) If business is transacted at two (2) or more places by one (1) distributor or retail dealer, a separate license must be obtained for each place of business.

(g) Each license issued under this section must:

(1) be numbered;

(2) show the name and address of the distributor or retail dealer; and

(3) be posted in a conspicuous place at the place of business for which the license is used.

(h) If the department determines that a bond provided by a licensee under subsection (d)(3) is inadequate, the department may require a new bond in the amount necessary to fully protect the state.

(i) If a distributor or retail dealer changes its place of business:

(1) the distributor or retail dealer shall return its license to the department; and

(2) the department shall issue a new license for the new place of business free of charge.

Sec. 11. A license issued under this chapter may be surrendered



to the department at any time before its expiration, and the department shall refund an amount of money that bears the same proportion to the fee originally paid for the license as the unexpired period of the license bears to one (1) year. However, no refund may be allowed if the license is suspended or revoked.

Sec. 12. The department:

- (1) may revoke or suspend a license issued under this chapter:
 - (A) for any violation of this chapter by the licensee; or
 - (B) if the licensee has an outstanding listed tax liability;
 and
- (2) may not issue a license under this chapter to an applicant less than six (6) months after the revocation of that applicant's license.

Sec. 13. The department shall credit or refund to a distributor the tax paid under this chapter on consumable materials that are:

- (1) shipped outside Indiana;
- (2) returned to the manufacturer; or
- (3) destroyed by the distributor in the presence of an employee or agent of the department.

Sec. 14. A manufacturer, importer, broker, or shipper must register with the department before selling or otherwise distributing consumable materials to distributors in Indiana.

Sec. 15. A manufacturer, importer, broker, or shipper of consumable materials that sells or otherwise distributes consumable materials to distributors in Indiana shall, before the fifteenth day of each month, submit a report to the department of:

- (1) all of its sales or other distributions to distributors in the preceding month; and
- (2) any other information that the department may require to be reported that the department considers reasonably necessary.

The report submitted under this section must be in an electronic format prescribed by the department.

Sec. 16. A person who knowingly or intentionally distributes or sells consumable materials without a license issued under this chapter commits a Class B misdemeanor.

Sec. 17. A person who knowingly or intentionally does not comply with section 14 or 15 of this chapter commits a Class B misdemeanor.

Sec. 18. A person who knowingly or intentionally does not comply with:

- (1) section 8 of this chapter; or



(2) IC 6-8.1-5-4;
 commits a Class B misdemeanor.

Sec. 19. A distributor or retail dealer who knowingly:

- (1) acts as a distributor or retail dealer without a license;
- (2) makes a false statement in a report under this chapter; or
- (3) in the case of distributor, does not pay the tax for which the distributor is liable under this chapter;

commits a Class B misdemeanor.

Sec. 20. A retail dealer who knowingly purchases consumable materials from a distributor who has not obtained a license required under section 9 of this chapter, or a distributor whose license has been suspended or revoked by the department, is subject to a civil penalty of an amount that does not exceed the greater of:

- (1) five hundred percent (500%) of the retail value of the consumable materials; or
- (2) five thousand dollars (\$5,000);

for each purchase.

Sec. 21. All revenue from the tax imposed by this chapter must be deposited in the state general fund.

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

Delete page 3.

Page 4, delete lines 1 through 4.

Page 4, line 26, delete "the e-liquids tax" and insert "**the electronic cigarette tax (IC 6-7-5);**".

Page 4, line 27, delete "(IC 6-7-5);".

Page 4, after line 36, begin a new paragraph and insert:

"SECTION 4. IC 35-52-6-56.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 56.1. IC 6-7-5-16 defines a crime concerning the electronic cigarette tax.**

SECTION 5. IC 35-52-6-56.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 56.2. IC 6-7-5-17 defines a crime concerning the electronic cigarette tax.**

SECTION 6. IC 35-52-6-56.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 56.3. IC 6-7-5-18 defines a crime concerning the electronic cigarette tax.**

SECTION 7. IC 35-52-6-56.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2019]: **Sec. 56.4. IC 6-7-5-19 defines a crime concerning the electronic cigarette tax."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1444 as introduced.)

HUSTON

Committee Vote: yeas 22, nays 1.

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred House Bill No. 1444, 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:

Replace the effective dates in SECTIONS 1 through 4 with "[EFFECTIVE JANUARY 1, 2020]".

Page 2, delete line 41.

Page 3, line 2, delete "liquid nicotine" and insert "**liquid**".

Page 3, line 2, delete "containing nicotine".

Page 3, line 4, delete "nicotine".

Page 3, delete lines 10 through 28, begin a new paragraph and insert:

"Sec. 2. As used in this chapter, "department" refers to the department of state revenue and includes its employees and agents.

Sec. 3. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4."

Page 3, delete lines 36 through 42, begin a new paragraph and insert:

"Sec. 6. (a) An excise tax, known as the electronic cigarette tax, is imposed on the retail sale of vapor products and consumable materials in Indiana.

(b) The electronic cigarette tax equals twenty percent (20%) of the gross retail income received by the retail dealer for the sale.

(c) The electronic cigarette tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5.

Sec. 7. (a) It is unlawful for any retail dealer to sell vapor products or consumable materials in Indiana unless the

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department has issued the retail dealer an electronic cigarette retail dealer's certificate.

(b) A retail dealer must do the following before an electronic cigarette retail dealer's certificate may be issued by the department:

(1) Be registered as a retail merchant with the department and submit proof of that registration to the department.

(2) Submit a twenty-five dollar (\$25) fee for the certificate.

(c) An electronic cigarette retail dealer's certificate issued under this section:

(1) is valid for one (1) year, unless revoked or suspended by the department; and

(2) is not transferable.

Sec. 8. A retail dealer who knowingly:

(1) sells vapor products or consumable materials in Indiana without an electronic cigarette retail dealer's certificate; or

(2) does not pay the tax for which the retail dealer is liable under this chapter;

commits a Class B misdemeanor.

Sec. 9. The amounts received from the electronic cigarette tax imposed under this chapter shall be transferred by the auditor of state to the children's health insurance program fund established by IC 12-17.6-7-1."

Delete pages 4 through 7.

Page 8, delete lines 1 through 2.

Page 8, line 3, delete "Sec. 22." and insert "**Sec. 10.**"

Page 8, between lines 35 and 36, begin a new paragraph and insert: "SECTION 4. IC 7.1-1-3-15.5, AS AMENDED BY P.L.206-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 15.5. "Electronic cigarette":

(1) has the meaning set forth in ~~IC 35-46-1-1.5~~ **IC 35-46-1-1.5(1); and**

(2) for purposes of **IC 7.1-3-18.5 (tobacco sales certificate) and IC 7.1-6 (youth tobacco sales and enforcement) also includes:**

(A) consumable material as defined in **IC 6-7-5-1; and**

(B) a vapor product as defined in **IC 6-7-5-5.**

SECTION 5. IC 7.1-7-2-10, AS AMENDED BY P.L.206-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: 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.

The term includes consumable material as defined in IC 6-7-5-1.



SECTION 6. IC 7.1-7-2-23, AS AMENDED BY P.L.206-2017, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 23. "Vapor product" means a powered vaporizer that converts e-liquid to a vapor intended for inhalation, **and for purposes IC 7.1-7-5.5 and IC 7.1-7-6 also includes a vapor product as defined in IC 6-7-5-5.**

SECTION 7. IC 7.1-7-5.5-1, AS ADDED BY P.L.206-2017, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 1. A retailer may not make a delivery sale of e-liquid **or a vapor product** to a minor as set forth in IC 7.1-7-6-5.

SECTION 8. IC 7.1-7-5.5-2, AS ADDED BY P.L.206-2017, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 2. A retailer may not ship e-liquids **or vapor products** without first making a good faith effort to verify the age of the purchaser of the e-liquids as set forth in IC 7.1-7-6-6.

SECTION 9. IC 7.1-7-6-2, AS AMENDED BY P.L.206-2017, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 2. (a) This subsection does not apply to a delivery sale as defined in IC 7.1-7-2-6.3. If a retailer:

- (1) knowingly and intentionally sells e-liquid **or a vapor product** to a minor; or
- (2) knowingly, intentionally, or negligently fails to verify the age of a person who appears to be less than twenty-seven (27) years of age by checking a government issued identification and sells the person e-liquid **or a vapor product**;

the retailer commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the e-liquid **or a vapor product.**

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

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).



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

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

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

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

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

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

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

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

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

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

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



in violation of this article.

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

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

SECTION 10. IC 7.1-7-6-5, AS ADDED BY P.L.206-2017, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 5. A person who knowingly or intentionally makes a delivery sale of e-liquids **or a vapor product** to a minor commits a Class C infraction.

SECTION 11. IC 35-46-1-1.5, AS ADDED BY P.L.20-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 1.5. As used in this chapter, "electronic cigarette" means:

(1) a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution, ~~The term includes~~ **including** the components and cartridges; **and**

(2) **for purposes of:**

(A) **IC 35-46-1-10 (sale or distribution of tobacco or electronic cigarettes to a minor);**

(B) **IC 35-46-1-10.2 (retail establishment's sale or distribution of tobacco or electronic cigarettes to a minor);**

(C) **IC 35-46-1-10.5 (purchase, acceptance, or possession of tobacco or electronic cigarettes by a minor);**

(D) **IC 35-46-1-11 (retail sale of tobacco and electronic cigarettes; warning notices);**

(E) **IC 35-46-1-11.5 (coin machines for sale or distribution of tobacco or electronic cigarettes); and**

(F) **IC 35-46-1-11.8 (tobacco and electronic cigarette displays);**

also includes consumable material as defined in IC 6-7-5-1 and a vapor product as defined in IC 6-7-5-5."

Page 8, line 38, delete "IC 6-7-5-16" and insert "**IC 6-7-5-8**".



Page 8, delete lines 40 through 42.
Delete page 9.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1444 as printed February 8, 2019.)

MISHLER, Chairperson

Committee Vote: Yeas 12, Nays 1.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1444 be amended to read as follows:

Page 3, between lines 28 and 29, begin a new paragraph and insert:

"(d) All of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the tax imposed under this section, except to the extent such provisions are in conflict or inconsistent with the specific provisions of this chapter. However, the return filed for the payment of the taxes may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue."

(Reference is to EHB 1444 as printed April 12, 2019.)

HOLDMAN



SENATE MOTION

Madam President: I move that Engrossed House Bill 1444 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning taxation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

(Reference is to EHB 1444 as printed April 12, 2019.)

HEAD

