

## **2017 IWDA Legislative Session Update**

### **The Long and Short of it!**

Heading into the 2017 legislative session, Indiana lawmakers expected to vote on a gas tax increase to fund a long-term road construction plan. They also knew that they would likely be voting on a cigarette tax increase as a powerful coalition led by the Indiana Chamber of Commerce was aggressively promoting a \$1 per pack increase. Additionally, the Senate was vocal in their intent to “fix” the monopolistic vape law that was originally passed in 2015 and amended in 2016 to the benefit of a single security company. (The House was mostly silent on the vape issue prior to the session). And then there was the surprise issue of the session: cold beer in convenience stores that few saw coming. A second (but much smaller) surprise came in the budget bill when language was inserted at the last minute to increase the retail minimum price for cigarettes.

The legislature passed a 10 cent per gallon gas tax increase along party lines with little fanfare or drama. There were differences between the House and Senate over the amount of the increase and the issue of toll roads, but nothing out of the ordinary and it was evident all session that the bill would pass.

The proposed cigarette tax increase was more controversial from the beginning. House Speaker Brian Bosma, the Indiana Chamber of Commerce, the Indiana State Medical Association, the Indiana Hospital Association, the Indiana Heart Association and several other health related groups that were part of a coalition supporting a \$1 per pack increase in the cigarette tax. Opposing the increase was IWDA, the tobacco companies and most of the retail community. The proponents felt they had momentum when a bill increasing the tax by \$1.50 a pack, eliminated the Smoker’s Bill of Rights and raised the smoking age to 21 passed out of the House Public Health Committee. They still liked their position when House Ways & Means Chairman Tim Brown killed the bill containing the \$1.50 increase but included a \$1 per pack increase in the House budget bill that passed along party lines.

Those who have worked on the cigarette tax issue were not surprised by the support in the House. A similar proposal passed the House twice last year, in an election year. The real fight was going to occur in the Senate and that is exactly how it ultimately played out.

The Senate had little, if any, support for a cigarette tax increase particularly when they knew they would likely pass a gas tax increase. Senate President Pro Tempore David Long indicated as much with comments prior to the session. And it was well known (at least to some of us) that chief Senate budget negotiator Luke Kenley did not support any increase in the cigarette tax, and he gets his way far more often than not. Kenley was able to craft a Senate version of the budget that did not rely on a cigarette tax increase which again, passed along party lines.

Kenley is concerned about federal cuts in the Medicaid program and knows the state may have to fill the huge financial hole created by the cuts. It is not a matter of if there will be cuts, it is a

matter of when and how much. Kenley stated his preference for saving a cigarette tax increase until we know the magnitude of the federal Medicaid cuts. His reasoning worked to our advantage in 2017, but sends an ominous message about future sessions, possibly as early as next year but more likely in 2019. Regardless of federal actions on Medicaid it is unrealistic to not expect the Speaker of the House to continue his relentless pursuit of significant increases in the cigarette tax.

The Senate indicated that fixing the monopolistic vape law would be a priority during the 2017 session and it was a good sign that they were serious when the assigned bill number was SB 1. IWDA was part of a coalition along with much of the vape industry (the group that was denied the ability to do business in Indiana) and much of the retail community. SB 1 removed the onerous requirements including approval by a single security company and kept the basic licensing and public safety elements. SB 1 passed the Senate by a vote of 49 – 1.

The House was initially somewhat less enthusiastic about fixing the vape law but came around as the legislative session progressed. SB 1 passed 3<sup>rd</sup> reading by a vote of 91 – 4. Because the House amended SB 1, it went to conference committee to negotiate the final version of the bill. It was then that we learned that our vape coalition partner was attempting to insert language in the bill to allow direct internet sales of e-liquids. Fortunately, IWDA prevented that from happening.

IWDA had suggested from the beginning of session that language should be added to the bill requiring a retailer to purchase e-liquid from a wholesaler, as is the case with tobacco products. The vape industry opposed that language and it became clear why late in the session when they advocated for direct internet sales.

The surprise issue of the session, cold beer in convenience stores, popped up about 2/3 of the way through the legislative session. Ricker's convenience stores cleverly used a statute allowing the sale of alcohol in restaurants to sell cold beer. They added a Mexican restaurant with seating capacity inside two of their convenience stores and were granted a liquor license by the ATC. Word eventually spread and the liquor store lobby and legislative leaders were incensed that someone followed the existing law as written by the legislature to accomplish what the legislative leadership historically did not allow. After a lot of gnashing of teeth, Ricker's was allowed to keep selling cold beer until their liquor license expires in April of 2018 and the topic of Indiana's archaic liquor laws was assigned to an interim study committee. Interestingly enough, when the study committees were officially announced, the study of the liquor laws was designated as a 2-year study which will conclude after Ricker's liquor license expires.

Finally, during the last day of session, language was inserted into the budget bill raising the minimum retail price for cigarettes. Nothing was said about this issue during the session – we first saw it when reading through the conference committee report on HB 1001. The retail minimum increases commence in January 2018 and are .25% each year for four years.

Speculation is that one retailer was being rewarded for his significant legislative campaign contributions. There is concern that these increases in the retail minimums could jeopardize support for the state's minimum mark-up law.