Reprinted
February 19, 1998

ENGROSSED
SENATE BILL No. 248

DIGEST OF SB 248 (Updated February 18, 1998 4:51 pm - DI 02)

Citations Affected: IC 3-10; IC 7.1-1; IC 7.1-2; IC 7.1-3; IC 7.1-5.

Synopsis: Sale and retirement of excess ABC permits. Provides that a city or town executive, with the approval of the legislative body, may purchase an alcoholic beverage commission (ABC) permit that is subject to a quota and that legally exceeds the quota (because of "grandfathering") at a price agreed to by the executive and the permit holder. Requires a city or town that purchases a permit that exists outside the quota to return the permit to the alcoholic beverage commission. Requires the commission to retire the permit. Makes it a

(Continued next page)

Effective: July 1, 1998.

Clark, Breaux, Young, Lewis, Howard

(HOUSE SPONSORS — CRAWFORD, ALDERMAN, HASLER)

January 8, 1998, read first time and referred to Committee on Governmental and Regulatory Affairs.
January 29, 1998, reported favorably — Do Pass.
February 2, 1998, read second time, ordered engrossed. Engrossed.
February 3, 1998, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.
February 16, 1998, amended, reported — Do Pass.
February 18, 1998, read second time, amended, ordered engrossed.

C o p y

Digest Continued

Class B misdemeanor instead of a Class C misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor. Permits an individual beer wholesaler to hold a beer wholesaler's permit in both Monroe and Jennings counties. (Current law provides that a beer wholesaler may hold a permit in only one county.) Allows beer or wine manufactured in a person's residence for use in a person's residence to be transported to and used or consumed at a brewer's or vintner's premises for purposes of testing, evaluation, or certain educational purposes, but not for purposes of sale. Provides that the alcoholic beverage commission shall not issue a permit for a premises if the walking distance by a normal path from the main public entrance of the premises is less than 200 feet from the main public entrance of a school or church. Provides that an alcoholic beverage primary source of supply or wholesaler is no longer prohibited from selling, giving, supplying, furnishing, granting, or maintaining for a retail or dealer permittee an illuminated advertising sign and that it is no longer unlawful for the permittee to be the recipient of any of these actions. Adds as a defense to unlawfully furnishing an alcoholic beverage to a minor that the person has required each purchaser that an ordinary prudent person would believe to be 26 years of age or less on at least one occasion to produce photographic identification showing the person is of legal age to make the purchase. Provides that a liquor dealer who is the proprietor of a package liquor store or a retail permittee of the alcoholic beverage commission may allow customers to sample up to two samples of liquors per day if each sample size does not exceed one half ounce.

C o p y

Reprinted
February 19, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 248

A BILL FOR AN ACT to amend the Indiana Code concerning alcoholic beverages.

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

SECTION 1. IC 3-10-8-4.5, AS AMENDED BY P.L.3-1997, SECTION 237, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.5. Whenever the election division receives a notice under section 4 of this chapter, the election division shall notify the following offices and agencies that a special election will be conducted within all or part of Indiana:

(1) Each agency serving persons with disabilities and designated as a voter registration site under IC 3-7-16.

(2) Armed forces recruitment offices in accordance with procedures established under IC 3-7-17.

(3) Each agency designated as a voter registration site and subject to IC 3-7-18.

(4) The alcoholic beverage commission for purposes of enforcing IC 7.1-5-10-1.

(5) The bureau of motor vehicles for voter registration purposes

under IC 9-24-2.5.

(6) The adjutant general for purposes of enforcing IC 10-2-4-16.

(7) The division of family and children for voter registration purposes under IC 12-14-1.5, IC 12-14-25, and IC 12-15-1.5.

(8) The state department of health for voter registration purposes under IC 16-35-1.6.

(9) The Federal Voting Assistance Program of the United States Department of Defense for notification of absent uniformed services voters and overseas voters.

SECTION 2. IC 3-10-8-9, AS AMENDED BY P.L.3-1995, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. (a) If the special election occurs during the period when registration is open under IC 3-7-13, the registration period continues through the twenty-ninth day before the special election occurs and resumes on the first day of the month following the month in which the special election is conducted.

(b) The election board conducting the special election shall provide poll lists for use at the precincts that include the names of voters in the precinct who:

(1) have registered through the twenty-ninth day before the special election is to be conducted; or

(2) are absent uniformed services voters or overseas voters registered under IC 3-7-36.

(c) This subsection applies when a special election is ordered by a court under IC 3-12-8-17 or the state recount commission under IC 3-12-11-18. A candidate may not be placed on the special election ballot unless the candidate was on the ballot or was a declared write-in candidate for the office at the general election preceding the special election.

(d) The restrictions on the sale of alcoholic beverages set forth in IC 7.1-5-10-1 apply in each precinct in which the special election is conducted.

SECTION 3. IC 7.1-1-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. ~~Scope: Exceptions.~~

(a) The provisions of this title shall not prohibit **the following**:

(1) The manufacture, sale, possession, transportation, or use of vinegar.

(2) The sale or transportation of sacramental wine to a minister, priest, or rabbi for a religious purpose.

(3) The manufacture, purchase, possession, transportation, or distribution of sacramental wine for a religious purpose by a minister, priest, or rabbi.

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(4) The manufacture of wine or beer for use in one's own residence.

(5) The manufacture, sale, possession, transportation, or use of industrial alcohol. ~~or~~

(6) Alcoholic beverages held, served, or consumed on airline flights.

(7) The transportation of beer or wine manufactured in a person's residence for use in a person's residence to a brewer's premises or winery for testing, evaluation, or educational purposes, including home brewer or vintner contests, educational seminars, beer or wine tastings, or beer or wine judging as set forth in IC 7.1-3-2-7 and IC 7.1-3-12-5.

(8) The use of beer or wine manufactured in a person's residence for use in the person's residence on a brewer's premises or at a winery for testing, evaluation, or educational purposes, including home brewer or vintner contests, educational seminars, beer or wine tastings, or beer or wine judging as set forth in IC 7.1-3-2-7 and IC 7.1-3-12-5.

(b) The purchase, transportation to, and the possession of alcoholic beverages for use only in one's own residence **or the residence of another person** shall not be prohibited but shall be subject to the applicable provisions of this title.

(c) The manufacture, sale, possession, transportation, or use of alcohol or alcoholic beverages, or a preparation containing alcohol for a medicinal, scientific, or mechanical purpose, shall not be prohibited but shall be controlled, regulated, and confined to permittees as provided in this title.

SECTION 4. IC 7.1-2-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) The commission shall have the power to regulate and prohibit advertising, signs, displays, posters, and designs intended to advertise an alcoholic beverage or the place where alcoholic beverages are sold.

(b) The commission shall not exercise the prohibition power contained in subsection (a) as to any advertisement appearing in a newspaper which:

(1) is published at least once a week;

(2) regularly publishes information of current news interest to the community; and

(3) circulates generally to the public in any part of this state, regardless of where printed.

However, a newspaper shall not include publications devoted to special interests such as labor, religious, fraternal, society, or trade

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publications or journals, or publications owned or issued by political organizations or parties.

(c) The commission shall not exercise the prohibition power contained in subsection (a) as to any advertisement broadcast over duly licensed radio and television stations.

(d) All advertisements relating to alcoholic beverages, whether published in a newspaper or broadcast over radio or television, shall conform to the rules and regulations of the commission.

(e) The commission shall not exercise the prohibition power contained in subsection (a) as to advertising in the official program of the Indianapolis 500 Race or the Madison Regatta, Inc., Hydroplane Race.

(f) Notwithstanding any other law, the commission may not prohibit the use of an illuminated sign advertising alcoholic beverages by brand name that is displayed within the interior or on the exterior of the premises covered by the permit, regardless of whether the sign is illuminated constantly or intermittently. ~~However, it is unlawful for a primary source of supply or a wholesaler of alcoholic beverages to sell, give, supply, furnish, or grant to, or maintain for, a retail or dealer permittee an illuminated advertising sign. It is unlawful for a retail or dealer permittee to receive, accept, display, or permit to be displayed, an illuminated advertising sign sold, given, supplied, furnished, granted, or maintained in violation of this subsection.~~

(g) The commission may not prohibit the advertisement of:

(1) alcoholic beverages; or

(2) a place where alcoholic beverages may be obtained;

in a program, scorecard, handbill, throw-away newspaper, or menu; however, those advertisements must conform to the rules of the commission.

SECTION 5. IC 7.1-3-2-7, AS AMENDED BY P.L.107-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. The holder of a brewer's permit or an out-of-state brewer holding either a primary source of supply permit or an out-of-state brewer's permit may do the following:

(1) Manufacture beer.

(2) Place beer in containers or bottles.

(3) Transport beer.

(4) Sell and deliver beer to a person holding a beer wholesaler's permit issued under IC 7.1-3-3.

(5) If the brewer's brewery manufactures not more than twenty thousand (20,000) barrels of beer in a calendar year, do the following:

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(A) Sell and deliver beer to a person holding a retailer or a dealer permit under this title.

(B) Be the proprietor of a restaurant.

(C) Hold a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant established under clause (B).

(D) Transfer beer directly from the brewery to the restaurant by means of:

(i) bulk containers; or

(ii) a continuous flow system.

(E) Install a window between the brewery and an adjacent restaurant that allows the public and the permittee to view both premises.

(F) Install a doorway or other opening between the brewery and an adjacent restaurant that provides the public and the permittee with access to both premises.

(6) If the brewer's brewery manufactures more than twenty thousand (20,000) barrels of beer in a calendar year, own a portion of the corporate stock of another brewery that:

(A) is located in the same county as the brewer's brewery;

(B) manufactures less than twenty thousand (20,000) barrels of beer in a calendar year; and

(C) is the proprietor of a restaurant that operates under subdivision (5).

(7) Sell and deliver beer to a consumer at the plant of the brewer or at the residence of the consumer. The delivery to a consumer shall be made only in a quantity at any one (1) time of not more than one-half (1/2) barrel, but the beer may be contained in bottles or other permissible containers.

(8) Provide complimentary samples of beer that are:

(A) produced by the brewer; and

(B) offered to consumers for consumption on the brewer's premises.

(9) Own a portion of the corporate stock of a sports corporation that:

(A) manages a minor league baseball stadium located in the same county as the brewer's brewery; and

(B) holds a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant located in that stadium.

(10) Allow the transportation and consumption on a brewer's premises of beer manufactured by a person for use at the person's residence. The transportation and consumption of

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the beer may be only for testing, evaluation, or educational purposes, including home brewer contests, educational seminars, beer tastings, or beer judging. Beer transported and used as prescribed in this subdivision may not be sold or offered for sale.

SECTION 6. IC 7.1-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. ~~Premises Described in Application.~~ **(a)** The premises to be used as a warehouse by an applicant shall be described in the application for the permit. The commission shall not issue a beer wholesaler's permit to an applicant for any other warehouse or premises than that described in the application.

(b) Except as provided in subsection (c), the commission shall issue only one (1) beer wholesaler's permit to an applicant, but a permittee may be permitted to transfer his warehouse to another location within the county, upon application to, and approval of, the commission.

(c) Notwithstanding subsection (b), the commission may issue to an individual applicant one (1) beer wholesaler's permit for each county having a population of:

(1) more than one hundred eight thousand nine hundred fifty (108,950) but less than one hundred twelve thousand (112,000); or

(2) more than twenty-three thousand six hundred fifty (23,650) but less than twenty-three thousand seven hundred (23,700).

SECTION 7. IC 7.1-3-10-13, AS AMENDED BY P.L.106-1995, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. (a) A liquor dealer permittee who is a proprietor of a package liquor store **and a retail permittee of the Indiana Alcohlic Beverage Commission** may allow customers to sample **the following:**

(1) Wines. ~~and~~

(2) Liquors.

(3) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

(b) Sampling is permitted:

(1) only on the package liquor store permit premises; and

(2) only during the store's regular business hours.

(c) No charge may be made for the samples provided to the customers.

(d) Sample size **of wines** may not exceed one (1) ounce.

(e) In addition to the other provisions of this section, a proprietor

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who allows customers to sample **liquors**, liqueurs, or cordials shall comply with all of the following:

(1) A proprietor may not allow a customer to sample more than two (2) **liquor**, liqueur, or cordial samples per day.

(2) Sample size of **liquors**, liqueurs, or cordials may not exceed one-half (1/2) ounce.

SECTION 8. IC 7.1-3-12-5, AS AMENDED BY P.L.74-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) The holder of a small winery permit:

(1) is entitled to manufacture table wine, to bottle wine, and to bottle table wine produced by the permit holder's small winery;

(2) is entitled to serve complimentary samples of the winery's table wine on the licensed premises;

(3) is entitled to sell the winery's table wine on the licensed premises to consumers either by the glass, or by the bottle, or both;

(4) is entitled to sell table wine by the bottle or by the case to a person who is the holder of a permit to sell wine at either wholesale or retail;

(5) is exempt from the provisions of IC 7.1-3-14; ~~and~~

(6) is entitled to advertise the name and address of any retailer or dealer who sells wine produced by the permit holder's winery; **and**

(7) is entitled to allow the transportation and consumption on the licensed premises of wine manufactured by a person for use at the person's residence. The transportation and consumption of the wine described in this subdivision may be only for testing, evaluation, or educational purposes, including home vintner contests, educational seminars, wine tastings, and wine judging. Wine transported and used as described in this subdivision may not be sold or offered for sale.

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at a second location that is separate from the winery. At the second location, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

(c) With the approval of the commission, a holder of a permit under this chapter may, individually or with other permit holders under this chapter, participate in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant approval under this subsection to a

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holder of a permit under this chapter:

(1) more than three (3) times in a calendar year; and

(2) for more than three (3) days for each event.

SECTION 9. IC 7.1-3-21-10, AS AMENDED BY P.L.52-1994, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) An application for a permit for **a** premises situated within a distance of two hundred (200) feet from an elementary or secondary school or church **as measured under section 11(b) of this chapter** must disclose this fact.

(b) The local board shall state, if required by the commission, in the questionnaire its opinion as to the propriety of granting the particular application.

SECTION 10. IC 7.1-3-21-11, AS AMENDED BY P.L.77-1997, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) As used in this section, "wall" means a wall of a building. The term does not include a boundary wall.

(b) Except as provided in subsection (c), the commission shall not issue a permit for a premises if ~~a wall of the premises is situated within~~ **the walking distance by a normal path from the main public entrance of the premises is less than** two hundred (200) feet from ~~a wall~~ **the main public entrance** of a school or church, if no permit has been issued for the premises under the provisions of Acts 1933, Chapter 80.

(c) This subsection applies to a county having a population of more than one hundred eight thousand nine hundred fifty (108,950) but less than one hundred twelve thousand (112,000). The commission shall not issue a permit for a premises if a wall of the premises is situated within two hundred (200) feet from a wall of a school or church unless:

(1) the permit is a beer dealer or wine dealer permit for a grocery store;

(2) the main entrance of the grocery store and the main entrance of the school or church face different streets or roads;

(3) there is a physical barrier between the grocery store and the school or church that prevents a person from moving between the two (2) properties; and

(4) a wall of the grocery store is not situated within one hundred (100) feet from a wall of the school or church.

SECTION 11. IC 7.1-3-22-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 10. (a) This section applies to a permit subject to a quota under this article that:**

(1) exceeds the permissible number of permits under the

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quota; and

(2) is eligible for renewal by law despite the permit exceeding the quota.

(b) A city or town may purchase a permit described in subsection (a) from the permit holder. The purchase price must be agreed to by:

(1) the permit holder; and

(2) the executive (as defined in IC 36-1-2-5) of the respective city or town, with the approval of the legislative body (as defined in IC 36-1-2-9) of the respective city or town.

(c) The executive of a city or town that purchases a permit under subsection (b) shall return the permit to the commission.

(d) The commission shall retire a permit received under subsection (c) and may not issue to another person a permit received under subsection (c).

SECTION 12. IC 7.1-5-7-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5.1. (a) A permittee in a criminal prosecution or in a proceeding before the commission or a local board based upon a charge of unlawfully furnishing an alcoholic beverage to a minor may offer ~~either or both~~ **at least one (1)** of the following proofs as a defense or defenses to the prosecution or proceeding:

(1) That:

(A) the purchaser:

(i) falsely represented the purchaser's age in a written statement, such as that prescribed by subsection (b), supported by two (2) forms of identification showing the purchaser to be at least twenty-one (21) years of age;

(ii) produced a driver's license bearing the purchaser's photograph **that showed that the purchaser was of legal age to make the purchase;** or

(iii) 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 was of legal age to make the purchase;

(B) the appearance of the purchaser was such that an ordinary prudent person would believe the purchaser to be of legal age to make the purchase; and

(C) the sale was made in good faith based upon the reasonable belief that the purchaser was actually of legal age to make the purchase.

(2) That the permittee or his agent had taken all reasonable

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precautions in instructing his employees, in hiring his employees, and in supervising them as to sale of alcoholic beverages to minors.

(3) That the permittee or the permittee's agent has required each purchaser having an appearance that would result in an ordinary prudent person believing the purchaser to be twenty-six (26) years of age or less to produce photographic identification on at least one (1) occasion showing that the purchaser is of legal age to make the purchase.

(b) The following written statement is sufficient for the purposes of subsection (a)(1)(A)(i):

REPRESENTATION AND STATEMENT
OF AGE
FOR PURCHASE OF ALCOHOLIC
BEVERAGES

I understand that misrepresentation of age to induce the sale, service, or delivery of alcoholic beverages to me is cause for my arrest and prosecution, which can result in punishment as follows:

(1) Possible payment of a fine of up to $500.

(2) Possible imprisonment for up to 60 days.

(3) Possible loss or deferment of driver's license privileges for up to one year.

(4) Possible requirement to participate in an alcohol education or treatment program.

Knowing the possible penalties for misstatement, I hereby represent and state, for the purpose of inducing

_____
(Name of licensee)

to sell, serve, or deliver alcoholic beverages to me, that I was born: _____, _____, _____ and am ____ years of age.
(Month) (Day) (Year)

Date _____ Signed _____
Address _____

_____
Other Identification Presented: Nonphoto's driver's license: (number & state)

Signature of person who witnessed completion of this statement by patron:

_____ _____
Social Security Number
_____

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Other _____
_____
_____

SECTION 13. IC 7.1-5-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) It is a ~~Class C~~ **Class B** misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor.

(b) This section shall not be construed to impose civil liability upon any educational institution of higher learning, including but not limited to public and private universities and colleges, business schools, vocational schools, and schools for continuing education, or its agents for injury to any person or property sustained in consequence of a violation of this section unless such institution or its agent sells, barters, exchanges, provides, or furnishes an alcoholic beverage to a minor.

SECTION 14. IC 7.1-5-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. ~~Taking Alcoholic Beverage On Licensed Premises Prohibited.~~ **(a) This section does not apply to a person who carries, conveys, or consumes on or about the licensed premises of a brewer or winery for testing, evaluation, or educational purposes beer or wine manufactured in the person's residence for use in the person's residence as described in IC 7.1-3-2-7 and IC 7.1-3-12-5.**

(b) It is a Class C misdemeanor for a person, for his own use, to knowingly carry on, convey to, or consume, on or about the licensed premises of a permittee, an alcoholic beverage that was not then and there purchased from that permittee.

SECTION 15. IC 7.1-5-9-4, AS AMENDED BY P.L.51-1994, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. An applicant for a beer wholesaler's permit shall have no interest in the following:

(1) A permit to manufacture or to sell at retail alcoholic beverages of any kind.

(2) **Except as provided in IC 7.1-3-3-4(c),** any other permit to wholesale alcoholic beverages.

(3) Through stock ownership or otherwise, in a partnership, limited liability company, or corporation that holds:

(A) a permit to manufacture or to sell at retail alcoholic beverages of any kind; or

(B) any other permit to wholesale alcoholic beverages of any kind.

SECTION 16. IC 7.1-5-10-1, AS AMENDED BY P.L.3-1997,

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SECTION 423, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) It is unlawful to sell alcoholic beverages at the following times:

(1) At a time other than that made lawful by the provisions of IC 7.1-3-1-14.

(2) On Christmas Day and until 7:00 o'clock in the morning, prevailing local time, the following day.

(3) On primary election day, and general election day, from 3:00 o'clock in the morning, prevailing local time, until the voting polls are closed in the evening on these days.

(4) During a special election under IC 3-10-8-9 (within the precincts where the special election is being conducted), from 3:00 o'clock in the morning until the voting polls are closed in the evening on these days.

(b) During the time when the sale of alcoholic beverages is unlawful, no alcoholic beverages shall be sold, dispensed, given away, or otherwise disposed of on the licensed premises, and the licensed premises shall remain closed to the extent that the nature of the business carried on on the premises, as at a hotel or restaurant, permits.

(c) It is unlawful to sell alcoholic beverages on New Year's Day for off-premises consumption.

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SENATE MOTION

Mr. President: I move that Senators R. Young and Lewis be added as coauthors of Senate Bill 248.

SERVER

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental and Regulatory Affairs, to which was referred Senate Bill 248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 248 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred Senate Bill 248, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 3-10-8-4.5, AS AMENDED BY P.L.3-1997, SECTION 237, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.5. Whenever the election division receives a notice under section 4 of this chapter, the election division shall notify the following offices and agencies that a special election will be conducted within all or part of Indiana:

(1) Each agency serving persons with disabilities and designated as a voter registration site under IC 3-7-16.

(2) Armed forces recruitment offices in accordance with procedures established under IC 3-7-17.

(3) Each agency designated as a voter registration site and subject to IC 3-7-18.

~~(4) The alcoholic beverage commission for purposes of enforcing IC 7.1-5-10-1.~~

~~(5)~~ **(4)** The bureau of motor vehicles for voter registration purposes under IC 9-24-2.5.

~~(6)~~ **(5)** The adjutant general for purposes of enforcing IC 10-2-4-16.

~~(7)~~ **(6)** The division of family and children for voter registration purposes under IC 12-14-1.5, IC 12-14-25, and IC 12-15-1.5.

~~(8)~~ **(7)** The state department of health for voter registration purposes under IC 16-35-1.6.

~~(9)~~ **(8)** The Federal Voting Assistance Program of the United States Department of Defense for notification of absent uniformed services voters and overseas voters.

SECTION 2. IC 3-10-8-9, AS AMENDED BY P.L.3-1995, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. (a) If the special election occurs during the period when registration is open under IC 3-7-13, the registration period continues through the twenty-ninth day before the special election occurs and resumes on the first day of the month following the month in which the special election is conducted.

(b) The election board conducting the special election shall provide poll lists for use at the precincts that include the names of voters in the precinct who:

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(1) have registered through the twenty-ninth day before the special election is to be conducted; or

(2) are absent uniformed services voters or overseas voters registered under IC 3-7-36.

(c) This subsection applies when a special election is ordered by a court under IC 3-12-8-17 or the state recount commission under IC 3-12-11-18. A candidate may not be placed on the special election ballot unless the candidate was on the ballot or was a declared write-in candidate for the office at the general election preceding the special election.

~~(d) The restrictions on the sale of alcoholic beverages set forth in IC 7.1-5-10-1 apply in each precinct in which the special election is conducted.~~

SECTION 3. IC 7.1-1-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. ~~Scope: Exceptions.~~

(a) The provisions of this title shall not prohibit **the following**:

(1) The manufacture, sale, possession, transportation, or use of vinegar.

(2) The sale or transportation of sacramental wine to a minister, priest, or rabbi for a religious purpose.

(3) The manufacture, purchase, possession, transportation, or distribution of sacramental wine for a religious purpose by a minister, priest, or rabbi.

(4) The manufacture of wine or beer for use in one's own residence.

(5) The manufacture, sale, possession, transportation, or use of industrial alcohol. ~~or~~

(6) Alcoholic beverages held, served, or consumed on airline flights.

(7) The transportation of beer or wine manufactured in a person's residence for use in a person's residence to a brewer's premises or winery for testing, evaluation, or educational purposes, including home brewer or vintner contests, educational seminars, beer or wine tastings, or beer or wine judging as set forth in IC 7.1-3-2-7 and IC 7.1-3-12-5.

(8) The use of beer or wine manufactured in a person's residence for use in the person's residence on a brewer's premises or at a winery for testing, evaluation, or educational purposes, including home brewer or vintner contests, educational seminars, beer or wine tastings, or beer or wine judging as set forth in IC 7.1-3-2-7 and IC 7.1-3-12-5.

(b) The purchase, transportation to, and the possession of alcoholic

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beverages for use only in one's own residence **or the residence of another person** shall not be prohibited but shall be subject to the applicable provisions of this title.

(c) The manufacture, sale, possession, transportation, or use of alcohol or alcoholic beverages, or a preparation containing alcohol for a medicinal, scientific, or mechanical purpose, shall not be prohibited but shall be controlled, regulated, and confined to permittees as provided in this title.

SECTION 4. IC 7.1-2-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) The commission shall have the power to regulate and prohibit advertising, signs, displays, posters, and designs intended to advertise an alcoholic beverage or the place where alcoholic beverages are sold.

(b) The commission shall not exercise the prohibition power contained in subsection (a) as to any advertisement appearing in a newspaper which:

(1) is published at least once a week;

(2) regularly publishes information of current news interest to the community; and

(3) circulates generally to the public in any part of this state, regardless of where printed.

However, a newspaper shall not include publications devoted to special interests such as labor, religious, fraternal, society, or trade publications or journals, or publications owned or issued by political organizations or parties.

(c) The commission shall not exercise the prohibition power contained in subsection (a) as to any advertisement broadcast over duly licensed radio and television stations.

(d) All advertisements relating to alcoholic beverages, whether published in a newspaper or broadcast over radio or television, shall conform to the rules and regulations of the commission.

(e) The commission shall not exercise the prohibition power contained in subsection (a) as to advertising in the official program of the Indianapolis 500 Race or the Madison Regatta, Inc., Hydroplane Race.

(f) Notwithstanding any other law, the commission may not prohibit the use of an illuminated sign advertising alcoholic beverages by brand name that is displayed within the interior or on the exterior of the premises covered by the permit, regardless of whether the sign is illuminated constantly or intermittently. ~~However, it is unlawful for a primary source of supply or a wholesaler of alcoholic beverages to sell, give, supply, furnish, or grant to, or maintain for, a retail or dealer~~

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~~permittee an illuminated advertising sign. It is unlawful for a retail or dealer permittee to receive, accept, display, or permit to be displayed, an illuminated advertising sign sold, given, supplied, furnished, granted, or maintained in violation of this subsection.~~

(g) The commission may not prohibit the advertisement of:

(1) alcoholic beverages; or

(2) a place where alcoholic beverages may be obtained;

in a program, scorecard, handbill, throw-away newspaper, or menu; however, those advertisements must conform to the rules of the commission.

SECTION 5. IC 7.1-3-2-7, AS AMENDED BY P.L.107-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. The holder of a brewer's permit or an out-of-state brewer holding either a primary source of supply permit or an out-of-state brewer's permit may do the following:

(1) Manufacture beer.

(2) Place beer in containers or bottles.

(3) Transport beer.

(4) Sell and deliver beer to a person holding a beer wholesaler's permit issued under IC 7.1-3-3.

(5) If the brewer's brewery manufactures not more than twenty thousand (20,000) barrels of beer in a calendar year, do the following:

(A) Sell and deliver beer to a person holding a retailer or a dealer permit under this title.

(B) Be the proprietor of a restaurant.

(C) Hold a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant established under clause (B).

(D) Transfer beer directly from the brewery to the restaurant by means of:

(i) bulk containers; or

(ii) a continuous flow system.

(E) Install a window between the brewery and an adjacent restaurant that allows the public and the permittee to view both premises.

(F) Install a doorway or other opening between the brewery and an adjacent restaurant that provides the public and the permittee with access to both premises.

(6) If the brewer's brewery manufactures more than twenty thousand (20,000) barrels of beer in a calendar year, own a portion of the corporate stock of another brewery that:

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(A) is located in the same county as the brewer's brewery;

(B) manufactures less than twenty thousand (20,000) barrels of beer in a calendar year; and

(C) is the proprietor of a restaurant that operates under subdivision (5).

(7) Sell and deliver beer to a consumer at the plant of the brewer or at the residence of the consumer. The delivery to a consumer shall be made only in a quantity at any one (1) time of not more than one-half (1/2) barrel, but the beer may be contained in bottles or other permissible containers.

(8) Provide complimentary samples of beer that are:

(A) produced by the brewer; and

(B) offered to consumers for consumption on the brewer's premises.

(9) Own a portion of the corporate stock of a sports corporation that:

(A) manages a minor league baseball stadium located in the same county as the brewer's brewery; and

(B) holds a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant located in that stadium.

(10) Allow the transportation and consumption on a brewer's premises of beer manufactured by a person for use at the person's residence. The transportation and consumption of the beer may be only for testing, evaluation, or educational purposes, including home brewer contests, educational seminars, beer tastings, or beer judging. Beer transported and used as prescribed in this subdivision may not be sold or offered for sale.

SECTION 6. IC 7.1-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. ~~Premises Described in Application.~~ **(a)** The premises to be used as a warehouse by an applicant shall be described in the application for the permit. The commission shall not issue a beer wholesaler's permit to an applicant for any other warehouse or premises than that described in the application.

(b) Except as provided in subsection (c), the commission shall issue only one (1) beer wholesaler's permit to an applicant, but a permittee may be permitted to transfer his warehouse to another location within the county, upon application to, and approval of, the commission.

(c) Notwithstanding subsection (b), the commission may issue

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to an individual applicant one (1) beer wholesaler's permit for each county having a population of:

(1) more than one hundred eight thousand nine hundred fifty (108,950) but less than one hundred twelve thousand (112,000); or

(2) more than twenty-three thousand six hundred fifty (23,650) but less than twenty-three thousand seven hundred (23,700).

SECTION 7. IC 7.1-3-10-13, AS AMENDED BY P.L.106-1995, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. (a) A liquor dealer permittee who is a proprietor of a package liquor store may allow customers to sample **the following:**

(1) Wines. ~~and~~

(2) Liquors.

(3) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

(b) Sampling is permitted:

(1) only on the package liquor store permit premises; and

(2) only during the store's regular business hours.

(c) No charge may be made for the samples provided to the customers.

(d) Sample size **of wines** may not exceed one (1) ounce.

(e) In addition to the other provisions of this section, a proprietor who allows customers to sample **liquors**, liqueurs, or cordials shall comply with all of the following:

(1) A proprietor may not allow a customer to sample more than two (2) **liquor**, liqueur, or cordial samples per day.

(2) Sample size of **liquors**, liqueurs, or cordials may not exceed one-half (1/2) ounce.

SECTION 8. IC 7.1-3-12-5, AS AMENDED BY P.L.74-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) The holder of a small winery permit:

(1) is entitled to manufacture table wine, to bottle wine, and to bottle table wine produced by the permit holder's small winery;

(2) is entitled to serve complimentary samples of the winery's table wine on the licensed premises;

(3) is entitled to sell the winery's table wine on the licensed premises to consumers either by the glass, or by the bottle, or both;

(4) is entitled to sell table wine by the bottle or by the case to a person who is the holder of a permit to sell wine at either wholesale or retail;

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(5) is exempt from the provisions of IC 7.1-3-14; ~~and~~

(6) is entitled to advertise the name and address of any retailer or dealer who sells wine produced by the permit holder's winery; **and**

(7) is entitled to allow the transportation and consumption on the licensed premises of wine manufactured by a person for use at the person's residence. The transportation and consumption of the wine described in this subdivision may be only for testing, evaluation, or educational purposes, including home vintner contests, educational seminars, wine tastings, and wine judging. Wine transported and used as described in this subdivision may not be sold or offered for sale.

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at a second location that is separate from the winery. At the second location, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

(c) With the approval of the commission, a holder of a permit under this chapter may, individually or with other permit holders under this chapter, participate in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant approval under this subsection to a holder of a permit under this chapter:

(1) more than three (3) times in a calendar year; and

(2) for more than three (3) days for each event.".

Page 2, after line 3, begin a new paragraph and insert:

"SECTION 10. IC 7.1-5-7-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5.1. (a) A permittee in a criminal prosecution or in a proceeding before the commission or a local board based upon a charge of unlawfully furnishing an alcoholic beverage to a minor may offer ~~either or both~~ **at least one (1)** of the following proofs as a defense or defenses to the prosecution or proceeding:

(1) That:

(A) the purchaser:

(i) falsely represented the purchaser's age in a written statement, such as that prescribed by subsection (b), supported by two (2) forms of identification showing the purchaser to be at least twenty-one (21) years of age;

(ii) produced a driver's license bearing the purchaser's

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photograph **that showed that the purchaser was of legal age to make the purchase;** or

(iii) 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 was of legal age to make the purchase;

(B) the appearance of the purchaser was such that an ordinary prudent person would believe the purchaser to be of legal age to make the purchase; and

(C) the sale was made in good faith based upon the reasonable belief that the purchaser was actually of legal age to make the purchase.

(2) That the permittee or his agent had taken all reasonable precautions in instructing his employees, in hiring his employees, and in supervising them as to sale of alcoholic beverages to minors.

(3) That the permittee or the permittee's agent has required each purchaser having an appearance that would result in an ordinary prudent person believing the purchaser to be twenty-six (26) years of age or less to produce photographic identification on at least one (1) occasion showing that the purchaser is of legal age to make the purchase.

(b) The following written statement is sufficient for the purposes of subsection (a)(1)(A)(i):

REPRESENTATION AND STATEMENT
OF AGE
FOR PURCHASE OF ALCOHOLIC
BEVERAGES

I understand that misrepresentation of age to induce the sale, service, or delivery of alcoholic beverages to me is cause for my arrest and prosecution, which can result in punishment as follows:

(1) Possible payment of a fine of up to $500.

(2) Possible imprisonment for up to 60 days.

(3) Possible loss or deferment of driver's license privileges for up to one year.

(4) Possible requirement to participate in an alcohol education or treatment program.

Knowing the possible penalties for misstatement, I hereby represent and state, for the purpose of inducing

_____

(Name of licensee)

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to sell, serve, or deliver alcoholic beverages to me, that I was born: _____, _____, _____ and am ____ years of age.
(Month) (Day) (Year)

Date _____ Signed _____
Address _____

_____
Other Identification Presented: Nonphoto's driver's license: (number & state)

Signature of person who witnessed completion of this statement by patron:

_____ _____

Social Security Number
_____

Other _____
_____
_____

SECTION 11. IC 7.1-5-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) It is a ~~Class C~~ **Class B** misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor.

(b) This section shall not be construed to impose civil liability upon any educational institution of higher learning, including but not limited to public and private universities and colleges, business schools, vocational schools, and schools for continuing education, or its agents for injury to any person or property sustained in consequence of a violation of this section unless such institution or its agent sells, barters, exchanges, provides, or furnishes an alcoholic beverage to a minor.

SECTION 12. IC 7.1-5-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. ~~Taking Alcoholic Beverage On Licensed Premises Prohibited.~~ **(a) This section does not apply to a person who carries, conveys, or consumes on or about the licensed premises of a brewer or winery for testing, evaluation, or educational purposes beer or wine manufactured in the person's residence for use in the person's residence as described in IC 7.1-3-2-7 and IC 7.1-3-12-5.**

(b) It is a Class C misdemeanor for a person, for his own use, to knowingly carry on, convey to, or consume, on or about the licensed premises of a permittee, an alcoholic beverage that was not then and there purchased from that permittee.

SECTION 13. IC 7.1-5-9-4, AS AMENDED BY P.L.51-1994,

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SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. An applicant for a beer wholesaler's permit shall have no interest in the following:

(1) A permit to manufacture or to sell at retail alcoholic beverages of any kind.

(2) **Except as provided in IC 7.1-3-3-4(c),** any other permit to wholesale alcoholic beverages.

(3) Through stock ownership or otherwise, in a partnership, limited liability company, or corporation that holds:

(A) a permit to manufacture or to sell at retail alcoholic beverages of any kind; or

(B) any other permit to wholesale alcoholic beverages of any kind.

SECTION 14. IC 7.1-5-10-1, AS AMENDED BY P.L.3-1997, SECTION 423, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) It is unlawful to sell alcoholic beverages at the following times:

(1) At a time other than that made lawful by the provisions of IC 7.1-3-1-14.

(2) On Christmas Day and until 7:00 o'clock in the morning, prevailing local time, the following day.

~~(3) On primary election day, and general election day, from 3:00 o'clock in the morning, prevailing local time, until the voting polls are closed in the evening on these days.~~

~~(4) During a special election under IC 3-10-8-9 (within the precincts where the special election is being conducted), from 3:00 o'clock in the morning until the voting polls are closed in the evening on these days.~~

(b) During the time when the sale of alcoholic beverages is unlawful, no alcoholic beverages shall be sold, dispensed, given away, or otherwise disposed of on the licensed premises, and the licensed premises shall remain closed to the extent that the nature of the business carried on on the premises, as at a hotel or restaurant, permits.

(c) It is unlawful to sell alcoholic beverages on New Year's Day for off-premises consumption.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 248 as printed January 30, 1998.)

BAILEY, Chair

Committee Vote: yeas 8, nays 4.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 248 be amended to read as follows:

Page x, line x, delete "x".
Page 1, lines 13 through 14, reset in roman.
Page 1, line 15, reset in roman "(5)".
Page 1, line 15, delete "(4)".
Page 2, line 2, reset in roman "(6)".
Page 2, line 2, delete "(5)".
Page 2, line 4, reset in roman "(7)".
Page 2, line 4, delete "(6)".
Page 2, line 6, reset in roman "(8)".
Page 2, line 6, delete "(7)".
Page 2, line 8, reset in roman "(9)".
Page 2, line 8, delete "(8)".
Page 2, lines 31 through 33, reset in roman.
Page 11, lines 16 through 22, reset in roman.

(Reference is to Engrossed Senate Bill as printed February 16, 1998.)

CRAWFORD

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 248 be amended to read as follows:

Page 6, line 31, after "store" insert "**and a retail permittee of the Indiana Alcohlic Beverage Commission**".

(Reference is to Engrossed Senate Bill 248 as printed February 16, 1998.)

L. LUTZ

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 248 be amended to read as follows:

Page 8, between lines 3 and 4, begin a new paragraph and insert:

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"SECTION 8. IC 7.1-3-21-10, AS AMENDED BY P.L.52-1994, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) An application for a permit for **a** premises situated within a distance of two hundred (200) feet from an elementary or secondary school or church **as measured under section 11(b) of this chapter** must disclose this fact.

(b) The local board shall state, if required by the commission, in the questionnaire its opinion as to the propriety of granting the particular application.

SECTION 9. IC 7.1-3-21-11, AS AMENDED BY P.L.77-1997, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) As used in this section, "wall" means a wall of a building. The term does not include a boundary wall.

(b) Except as provided in subsection (c), the commission shall not issue a permit for a premises if ~~a wall of the premises is situated within~~ **the walking distance by a normal path from the main public entrance of the premises is less than** two hundred (200) feet from ~~a wall~~ **the main public entrance** of a school or church, if no permit has been issued for the premises under the provisions of Acts 1933, Chapter 80.

(c) This subsection applies to a county having a population of more than one hundred eight thousand nine hundred fifty (108,950) but less than one hundred twelve thousand (112,000). The commission shall not issue a permit for a premises if a wall of the premises is situated within two hundred (200) feet from a wall of a school or church unless:

(1) the permit is a beer dealer or wine dealer permit for a grocery store;

(2) the main entrance of the grocery store and the main entrance of the school or church face different streets or roads;

(3) there is a physical barrier between the grocery store and the school or church that prevents a person from moving between the two (2) properties; and

(4) a wall of the grocery store is not situated within one hundred (100) feet from a wall of the school or church.".

Renumber all SECTIONS consecutively.

(Reference is to Engrossed Senate Bill 248 as printed February 16, 1998.)

DOBIS

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