

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1190 be amended to read as follows:

- 1 Page 2, between lines 7 and 8, begin a new paragraph and insert:
- 2 "SECTION 3. IC 7.1-2-3-34 IS ADDED TO THE INDIANA
- 3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2006]: **Sec. 34. Upon the filing of a complaint**
- 5 **by a farm winery, the commission has authority to investigate**
- 6 **whether a farm winery is able to obtain reasonable access to**
- 7 **retailers and dealers through the state mandated three (3) tier**
- 8 **system. If after an investigation by the commission conducted in**
- 9 **accordance with the commission's rules relating to permit violation**
- 10 **proceedings, the commission determines that a farm winery has not**
- 11 **been provided reasonable access, the commission may order a wine**
- 12 **wholesaler, which shall first have been made a party to the**
- 13 **administrative proceedings, to provide reasonable access. In**
- 14 **ordering access, the commission shall provide that the wine**
- 15 **wholesaler obligated to provide the access is entitled to recover, at**
- 16 **a minimum, its costs of providing access plus a reasonable return**
- 17 **on the investment."**
- 18 Page 3, delete lines 36 through 42, begin a new paragraph and insert:
- 19 SECTION 6. IC 7.1-3-26 IS ADDED TO THE INDIANA CODE
- 20 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2006]:
- 22 **Chapter 26. Direct Wine Seller's Permit**
- 23 **Sec. 1. As used in this chapter, "applicant" means a person that**
- 24 **applies to the commission for a direct wine seller's permit.**
- 25 **Sec. 2. As used in this chapter, "consumer" means an individual**

1 who purchases wine from a seller.

2 **Sec. 3. As used in this chapter, "seller" means the holder of a**
 3 **direct wine seller's permit issued under this chapter.**

4 **Sec. 4. A person located within Indiana or outside Indiana that**
 5 **wants to sell wine directly to a consumer must be the holder of a**
 6 **direct wine seller's permit and comply with this chapter.**

7 **Sec. 5. A seller may sell only wine directly to a consumer who**
 8 **meets all of the following requirements:**

- 9 (1) **The consumer is at least twenty-one (21) years of age.**
 10 (2) **The consumer is an Indiana resident.**
 11 (3) **The consumer does not hold an interest in an alcoholic**
 12 **beverage permit issued under this title.**
 13 (4) **The consumer has not been convicted within the last ten**
 14 **(10) years of any state or federal crime relating to:**
 15 (A) **providing alcoholic beverages to a minor;**
 16 (B) **engaging in commerce in alcoholic beverages or the**
 17 **transportation of alcoholic beverages; or**
 18 (C) **acquiring alcoholic beverages.**
 19 (5) **The consumer intends to use wine purchased under this**
 20 **chapter for personal consumption only and not for resale or**
 21 **other commercial purposes.**
 22 (6) **The consumer has certified to the seller in a face-to-face**
 23 **transaction all the following:**
 24 (A) **Name and residence address.**
 25 (B) **Proof of age by a photocopy of an Indiana issued**
 26 **driver's license or identification card showing the**
 27 **consumer to be at least twenty-one (21) years of age.**
 28 (C) **A statement, made under penalties for perjury, that the**
 29 **consumer satisfies the requirements of subdivisions (1)**
 30 **through (5).**

31 **Sec. 6. The commission may issue a direct wine seller's permit**
 32 **to an applicant who meets all of the following requirements:**

- 33 (1) **The applicant is domiciled and has its principal place of**
 34 **business in the United States.**
 35 (2) **The applicant is:**
 36 (A) **engaged in the manufacture of wine;**
 37 (B) **the owner of a wine brand name; or**
 38 (C) **the United States importer of a wine brand name.**
 39 (3) **The applicant holds and acts within the scope of authority**
 40 **of an alcoholic beverage license or permit to manufacture**
 41 **wine or import wine that is required:**
 42 (A) **in Indiana or the state where the applicant is**
 43 **domiciled; and**
 44 (B) **by the Tax and Trade Bureau of the United States**
 45 **Treasury Department.**
 46 (4) **The applicant qualifies with the secretary of state to do**

1 **business in Indiana and consents to the personal jurisdiction**
 2 **of the commission and the courts of Indiana.**

3 **(5) The applicant files a surety bond with the commission in**
 4 **accordance with IC 7.1-3-1 in the amount required of an**
 5 **applicant for a vintner's permit under IC 7.1-3-1-7.**

6 **(6) The applicant:**

7 **(A) does not hold a permit or license to wholesale alcoholic**
 8 **beverages issued by any authority;**

9 **(B) does not wholesale alcoholic beverages; and**

10 **(C) is not owned in whole or in part by a person who holds**
 11 **a permit or license to wholesale alcoholic beverages.**

12 **(7) The applicant produces not more than five hundred**
 13 **thousand (500,000) gallons of wine per year.**

14 **(8) The applicant has not distributed wine through a wine**
 15 **wholesaler in Indiana within the two (2) years immediately**
 16 **preceding the applicant's application for a direct wine seller's**
 17 **permit.**

18 **(9) Is not the parent, subsidiary, or affiliate of another entity**
 19 **manufacturing any alcoholic beverage.**

20 **(10) Completes documentation regarding the applicant's**
 21 **application required by the commission.**

22 **Sec. 7. (a) The term of a direct wine seller's permit begins on**
 23 **July 1 and expires on June 30 of the following year. A direct wine**
 24 **seller's permit may be renewed in accordance with rules adopted**
 25 **by the commission.**

26 **(b) The annual direct wine seller's permit fee is one hundred**
 27 **dollars (\$100).**

28 **Sec. 8. The commission may deny issuance of an initial direct**
 29 **wine seller's permit or renewal of a direct wine seller's permit if the**
 30 **seller:**

31 **(1) fails to file a tax return or other document required to be**
 32 **filed by an Indiana taxing authority;**

33 **(2) fails to pay a tax required to be paid by an Indiana taxing**
 34 **authority;**

35 **(3) has not complied with an Indiana alcoholic beverage**
 36 **statute or rule; or**

37 **(4) in the judgment of the commission, based on any other**
 38 **regulatory agency's experience with the applicant or persons**
 39 **having any interest in the applicant, is not likely to comply**
 40 **with Indiana alcoholic beverage statutes or rules.**

41 **Sec. 9. A direct wine seller's permit entitles a seller to sell wine**
 42 **to a consumer for delivery to only the consumer's residence by**
 43 **receiving and filling orders that the consumer transmits by**
 44 **electronic or other means if all of the following conditions are**
 45 **satisfied before the sale or by the times set forth below:**

46 **(1) The consumer provides the direct wine seller with the**

- 1 verification required by section 5(6) of this chapter in an
 2 initial face-to-face transaction.
- 3 (2) Provides the commission with the verification provided in
 4 section 5(6) of this chapter in not more than five (5) business
 5 days after the initial face-to-face transaction.
- 6 (3) Stamps, prints, or labels on the outside of the shipping
 7 container the following: "Contains Wine. Must be delivered
 8 to only the addressee."
- 9 (4) Causes the wine to be delivered by the holder of a valid
 10 carrier's alcoholic beverage permit under IC 7.1-18 through
 11 the employee of the carrier who is certified under a program
 12 established under IC 7.1-3-1.5.
- 13 (5) Causes the carrier to verify the identity of the consumer at
 14 the time of the delivery and that the consumer is at least
 15 twenty-one (21) years of age.
- 16 (6) Does not ship the consumer more than two hundred
 17 sixteen (216) liters of wine in any calendar year.
- 18 (7) Remits to the department of state revenue monthly all
 19 Indiana excise, sales, and use taxes on the shipments made
 20 into Indiana by the direct wine seller during the previous
 21 month.
- 22 **Sec. 10. It is unlawful for the holder of a farm winery brandy**
 23 **distiller's permit to ship or cause to be shipped brandy produced**
 24 **under this title to a consumer.**
- 25 **Sec. 11. During a permit year, a direct wine seller may not direct**
 26 **ship in Indiana more than nine thousand (9,000) liters of wine.**
- 27 **Sec. 12. The commission shall record the names and addresses**
 28 **of all consumers and of all wine sold by direct wine sellers. Direct**
 29 **wine sellers shall provide the commission with information**
 30 **requested by the commission.**
- 31 **Sec. 13. A consumer shall provide the direct wine seller with**
 32 **information the direct wine seller reasonably requires including the**
 33 **consumer's name, home street address, telephone number, and**
 34 **other information required by the commission. The consumer shall**
 35 **also verify under penalties for perjury to the direct wine seller that**
 36 **the consumer satisfies every requirement of section 6 of this**
 37 **chapter.**
- 38 **Sec. 14. A consumer shall take personal delivery of the shipment**
 39 **at the consumer's residence.**
- 40 **Sec. 15. A personal consumer may not receive more than two**
 41 **hundred sixteen (216) liters of wine in total from one (1) or more**
 42 **direct wine seller's in a calendar year.**
- 43 **Sec. 16. (a) Except as provided in subsections (b) and (c), a**
 44 **person who knowingly or intentionally violates this chapter**
 45 **commits a Class C misdemeanor.**
- 46 **(b) A person who:**

1 **(1) knowingly or intentionally violates this chapter; and**
2 **(2) has one (1) prior unrelated conviction under this section**
3 **for an act or omission that occurred not more than ten (10)**
4 **years before the act or omission that is the basis for the most**
5 **recent violation;**
6 **commits a Class A misdemeanor.**
7 **(c) A person who:**
8 **(1) knowingly or intentionally violates this chapter; and**
9 **(2) has at least two (2) prior unrelated convictions under this**
10 **section for acts or omissions that occurred not more than ten**
11 **(10) years before the act or omission that is the basis for the**
12 **most recent violation;**
13 **commits a Class D felony.**
14 **Sec. 17. For the purposes of IC 1-1-1-8, if any part of this**
15 **chapter is held to be invalid, the entire chapter is void."**
16 Page 4, delete lines 1 through 41.
17 Re-number all SECTIONS consecutively.
 (Reference is to HB 1190 as printed January 24, 2006.)

Representative Stutzman