
HOUSE BILL No. 1281

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3; IC 7.1-4.

Synopsis: Wineries. Allows the holder of an Indiana farm winery permit to own 50% or less of a limited wine wholesaler's permit. Allows an Indiana consumer to buy wine from a direct wine seller and have it shipped using a third party verification service retained by the winery (as an alternative to providing information in an initial face to face transaction with the winery). Allows a direct wine seller to direct ship not more than 90,000 liters of wine in Indiana in any permit year. Allows a direct wine seller to be issued a supplemental direct wine seller permit that entitles the permit holder to sell not more than 2,000 gallons of wine at wholesale during a permit year. Establishes a supplemental direct wine seller permit fee of \$50 annually. Provides that the commission may: (1) fine a direct wine seller; and (2) suspend or revoke a direct wine seller's permit; for noncompliance. Repeals penalty provisions for noncompliance with the direct wine seller provisions.

Effective: July 1, 2009.

Welch, Koch, Robertson, Austin

January 13, 2009, read first time and referred to Committee on Public Policy.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1281



A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

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

- 1 SECTION 1. IC 7.1-3-12-5, AS AMENDED BY P.L.165-2006,
- 2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2009]: Sec. 5. (a) The holder of a farm winery permit:
- 4 (1) is entitled to manufacture wine and to bottle wine produced by
- 5 the permit holder's farm winery;
- 6 (2) is entitled to serve complimentary samples of the winery's
- 7 wine on the licensed premises or an outside area that is
- 8 contiguous to the licensed premises as approved by the
- 9 commission if each employee who serves wine on the licensed
- 10 premises:
- 11 (A) holds an employee permit under IC 7.1-3-18-9; and
- 12 (B) completes a server training program approved by the
- 13 commission;
- 14 (3) is entitled to sell the winery's wine on the licensed premises to
- 15 consumers either by the glass, or by the bottle, or both;
- 16 (4) is entitled to sell the winery's wine to consumers by the bottle
- 17 at a farmers' market that is operated on a nonprofit basis;



- 1 (5) is entitled to sell wine by the bottle or by the case to a person
- 2 who is the holder of a permit to sell wine at wholesale;
- 3 (6) is exempt from the provisions of IC 7.1-3-14;
- 4 (7) is entitled to advertise the name and address of any retailer or
- 5 dealer who sells wine produced by the permit holder's winery;
- 6 (8) for wine described in IC 7.1-1-2-3(a)(4):
- 7 (A) may allow transportation to and consumption of the wine
- 8 on the licensed premises; and
- 9 (B) may not sell, offer to sell, or allow the sale of the wine on
- 10 the licensed premises;
- 11 (9) is entitled to purchase and sell bulk wine as set forth in this
- 12 chapter;
- 13 (10) is entitled to sell wine as authorized by this section for
- 14 carryout on Sunday; and
- 15 (11) is entitled to sell and ship the farm winery's wine to a person
- 16 located in another state in accordance with the laws of the other
- 17 state.

18 (b) With the approval of the commission, a holder of a permit under
 19 this chapter may conduct business at not more than three (3) additional
 20 locations that are separate from the winery. At the additional locations,
 21 the holder of a permit may conduct any business that is authorized at
 22 the first location, except for the manufacturing or bottling of wine.

23 (c) With the approval of the commission, a holder of a permit under
 24 this chapter may, individually or with other permit holders under this
 25 chapter, participate in a trade show or an exposition at which products
 26 of each permit holder participant are displayed, promoted, and sold.
 27 The commission may not grant approval under this subsection to a
 28 holder of a permit under this chapter for more than thirty (30) days in
 29 a calendar year.

30 **(d) The holder of a farm winery permit under this chapter may**
 31 **hold an ownership interest of fifty percent (50%) or less in a wine**
 32 **wholesaler's permit as described in IC 7.1-3-13-3(e).**

33 SECTION 2. IC 7.1-3-13-1 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The commission
 35 may issue a wine wholesaler's permit to sell wine, or wine and brandy,
 36 at wholesale to a person who:

- 37 (1) notwithstanding IC 7.1-5-9-4, holds a beer wholesaler's
- 38 permit;
- 39 (2) holds a liquor wholesaler's permit; or
- 40 (3) does not hold an alcoholic beverage wholesaler's permit, but
- 41 meets the qualifications to hold either a beer or a liquor
- 42 wholesaler's permit.

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1 (b) The holder of a wine wholesaler's permit under subsection (a)(1)
2 or (a)(2):

3 (1) is considered the same as a person who holds a wine
4 wholesaler's permit under subsection (a)(3) for purposes of
5 conducting activities and operations under the wine wholesaler's
6 permit; and

7 (2) may operate the beer or liquor wholesale business
8 independently of the wine wholesale business.

9 (c) **Notwithstanding subsection (a), the holder of a farm winery
10 permit under IC 7.1-3-12 may hold an ownership interest of fifty
11 percent (50%) or less in a wine wholesaler's permit as described in
12 section 3(e) of this chapter.**

13 SECTION 3. IC 7.1-3-13-3, AS AMENDED BY P.L.165-2006,
14 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2009]: Sec. 3. (a) The holder of a wine wholesaler's permit
16 may purchase, import, and transport wine, brandy, or flavored malt
17 beverage from the primary source of supply. A wine wholesaler may
18 export and transport wine, brandy, or flavored malt beverage by the
19 bottle, barrel, cask, or other container, to points outside Indiana. A
20 wine wholesaler is entitled to sell, furnish, and deliver wine or flavored
21 malt beverage from inventory that has been located on the wholesaler's
22 premises before the time of invoicing and delivery to a wine
23 wholesaler, a wine retailer, a supplemental caterer, a temporary wine
24 permittee, and a wine dealer, but not at retail. A wine wholesaler may
25 sell, furnish, and deliver brandy from inventory that has been located
26 on the wholesaler's premises before the time of invoicing and delivery,
27 but not at retail, only to a person who holds a liquor retailer's permit,
28 a supplemental caterer's permit, or a liquor dealer's permit. A holder of
29 a wine wholesaler's permit may sell wine to the wine wholesaler's bona
30 fide regular employees.

31 (b) As used in this section, "brandy" means:

32 (1) any alcoholic distillate described in 27 CFR 5.22(d) as in
33 effect on January 1, 1983; or

34 (2) a beverage product that:

35 (A) is prepared from a liquid described in subdivision (1);

36 (B) is classified as a cordial or liqueur as defined in 27 CFR
37 5.22(h) as in effect on January 1, 1997; and

38 (C) meets the following requirements:

39 (i) At least sixty-six and two-thirds percent (66 2/3%) of the
40 product's alcohol content is composed of a substance
41 described in subdivision (1).

42 (ii) The product's label makes no reference to any distilled

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1 spirit other than brandy.

2 (iii) The product's alcohol content is not less than sixteen
3 percent (16%) by volume or thirty-two (32) degrees proof.

4 (iv) The product contains dairy cream.

5 (v) The product's sugar, dextrose, or levulose content is at
6 least twenty percent (20%) of the product's weight.

7 (vi) The product contains caramel coloring.

8 (c) Nothing in this section allows a wine wholesaler to sell, give,
9 purchase, transport, or export beer (as defined in IC 7.1-1-3-6) unless
10 the wine wholesaler also holds a beer wholesaler's permit under
11 IC 7.1-3-3-1.

12 (d) A wine wholesaler that also holds a liquor wholesaler's permit
13 under IC 7.1-3-8 may not:

14 (1) hold a beer wholesaler's permit under IC 7.1-3-3;

15 (2) possess, sell, or transport beer; or

16 (3) sell more than one million (1,000,000) gallons of flavored
17 malt beverage during a calendar year.

18 **(e) This subsection applies only to a wine wholesaler's permit**
19 **that is partially owned by the holder of a farm winery permit as**
20 **described in section 1(c) of this chapter. A wine wholesaler's**
21 **permit entitles the holder of the permit to sell less than twenty**
22 **thousand (20,000) gallons of wine and brandy in a year at**
23 **wholesale.**

24 SECTION 4. IC 7.1-3-26-4.5 IS ADDED TO THE INDIANA
25 CODE AS A NEW SECTION TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. As used in this chapter,**
27 **"third party verification service" means an Internet based service:**

28 **(1) approved by the commission; and**

29 **(2) specializing in age and identity verification.**

30 SECTION 5. IC 7.1-3-26-6, AS ADDED BY P.L.165-2006,
31 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2009]: **Sec. 6. A seller may sell and ship wine directly only to**
33 **a consumer who meets all of the following requirements:**

34 (1) The consumer is at least twenty-one (21) years of age;

35 (2) The consumer has an Indiana address;

36 ~~(3) The consumer intends to use wine purchased under this~~
37 ~~chapter for personal use only and not for resale or other~~
38 ~~commercial purposes.~~

39 ~~(4)~~ **(3)** Except as provided in subdivision ~~(5)~~; **(4)**, the consumer
40 has provided to the seller, in one (1) initial face-to-face
41 transaction at the seller's place of business appearing on the
42 seller's application for a direct wine seller's permit or any

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1 locations authorized by IC 7.1-3-12-5, **or to a third party**
2 **verification service**, all the following:

3 (A) Name, telephone number, Indiana address, or consumer's
4 Indiana business address.

5 (B) Proof of age by a state issued driver's license or state
6 issued identification card showing the consumer to be at least
7 twenty-one (21) years of age.

8 ~~(C) A verified statement, made under penalties for perjury,~~
9 ~~that the consumer satisfies the requirements of subdivisions~~
10 ~~(1) through (3):~~

11 ~~(5)~~ (4) If:

12 (A) before April 1, 2006, the consumer has engaged in a
13 transaction with a seller in which the seller sold wine to the
14 consumer and, after April 1, 2006, but before December 31, 2006,
15 the consumer provides the seller with a verified statement, made
16 under penalties for perjury, that the consumer is at least
17 twenty-one (21) years of age; and

18 (B) the seller provides the name and Indiana address of the
19 consumer to the commission before January 15, 2007;

20 the seller may sell directly to the consumer in accordance with this
21 chapter.

22 SECTION 6. IC 7.1-3-26-7, AS AMENDED BY P.L.54-2008,
23 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2009]: Sec. 7. (a) The commission may issue a direct wine
25 seller's permit to an applicant who meets all of the following
26 requirements:

27 (1) The applicant is domiciled and has its principal place of
28 business in the United States.

29 (2) The applicant is engaged in the manufacture of wine.

30 (3) The applicant holds and acts within the scope of authority of
31 an alcoholic beverage license or permit to manufacture wine that
32 is required:

33 (A) in Indiana or the state where the applicant is domiciled;
34 and

35 (B) by the Tax and Trade Bureau of the United States
36 Department of the Treasury.

37 (4) The applicant qualifies with the secretary of state to do
38 business in Indiana and consents to the personal jurisdiction of
39 the commission and the courts of Indiana.

40 (5) The applicant files a surety bond with the commission in
41 accordance with IC 7.1-3-1, or deposits cash in an escrow account
42 with the commission, in the amount required of an applicant for

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1 a vintner's permit under IC 7.1-3-1-7.

2 (6) The applicant:

3 (A) does not hold a permit or license to wholesale alcoholic
4 beverages issued by any authority; and

5 (B) is not owned in whole or in part or controlled by a person
6 who holds a permit or license to wholesale alcoholic
7 beverages.

8 **However, this subdivision does not apply to an applicant who**
9 **holds a farm winery permit under IC 7.1-3-12 and has a**
10 **partial ownership interest in a wine wholesaler permit as**
11 **described in IC 7.1-3-13-3(e) or an applicant who holds a**
12 **supplemental direct wine seller's permit under IC 7.1-3-27.**

13 (7) The applicant sells not more than one million (1,000,000)
14 gallons of wine per year in Indiana, excluding wine shipped to an
15 out-of-state address.

16 (8) The applicant **meets one (1) of the following requirements:**

17 (A) **The applicant** has not distributed wine through a wine
18 wholesaler in Indiana within the one hundred twenty (120)
19 days immediately preceding the applicant's application for a
20 direct wine seller's permit and does not distribute wine through
21 a wine wholesaler in Indiana during the term of the direct wine
22 seller's permit. ~~or~~ **This clause does not apply to an applicant**
23 **who holds a supplemental direct wine seller's permit under**
24 **IC 7.1-3-27.**

25 (B) **The applicant** has operated as a farm winery under
26 IC 7.1-3-12.

27 (9) The applicant is not the parent, subsidiary, or affiliate of
28 another entity manufacturing any alcoholic beverage.

29 (10) The applicant completes documentation regarding the
30 applicant's application required by the commission.

31 (b) The commission may issue a direct wine seller's permit to an
32 applicant who:

33 (1) meets the requirements under subsection (a); and

34 (2) holds a permit issued under this title that allows the sale of an
35 alcoholic beverage at retail.

36 SECTION 7. IC 7.1-3-26-9, AS ADDED BY P.L.165-2006,
37 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2009]: Sec. 9. A direct wine seller's permit entitles a seller to
39 sell and ship wine to a consumer by receiving and filling orders that the
40 consumer transmits by electronic or other means if all of the following
41 conditions are satisfied before the sale or by the times set forth as
42 follows:

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- 1 (1) The consumer provides ~~the direct wine seller with~~ the
 2 following:
- 3 (A) The ~~verification information~~ required by section ~~6(4) 6(3)~~
 4 of this chapter **to:**
- 5 (i) **the direct wine seller** in an initial face-to-face
 6 transaction; **or**
- 7 (ii) **a third party verification service.**
- 8 (B) Notwithstanding clause (A), if the consumer provided the
 9 information specified in section ~~6(5)(A) 6(4)(A)~~ of this
 10 chapter after April 1, 2006, but before December 31, 2006,
 11 and the seller provides the name and Indiana address of the
 12 consumer under section ~~6(5)(B) 6(4)(B)~~ of this chapter to the
 13 commission before January 15, 2007, the consumer is not
 14 required to comply with section ~~6(4) 6(3)~~ of this chapter.
- 15 (2) The direct wine seller meets the following requirements:
- 16 (A) Maintains for two (2) years all records of wine sales made
 17 under this chapter. If the records are requested by the
 18 commission, a direct wine seller shall:
- 19 (i) make the records available to the commission during the
 20 direct wine seller's regular business hours; or
- 21 (ii) at the direction of the commission, deliver copies to the
 22 commission.
- 23 (B) Stamps, prints, or labels on the outside of the shipping
 24 container the following: "CONTAINS WINE. SIGNATURE
 25 OF PERSON AGE 21 OR OLDER REQUIRED FOR
 26 DELIVERY."
- 27 (C) Causes the wine to be delivered by the holder of a valid
 28 carrier's alcoholic beverage permit under IC 7.1-3-18.
- 29 (D) Directs the carrier to verify that the individual personally
 30 receiving the wine shipment is at least twenty-one (21) years
 31 of age.
- 32 (E) Does not ship to any consumer more than two hundred
 33 sixteen (216) liters of wine in any calendar year.
- 34 (F) Remits to the department of state revenue monthly all
 35 Indiana excise, sales, and use taxes on the shipments made
 36 into Indiana by the direct wine seller during the previous
 37 month.
- 38 SECTION 8. IC 7.1-3-26-12, AS ADDED BY P.L.165-2006,
 39 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2009]: Sec. 12. During a permit year, a direct wine seller may
 41 not direct ship in Indiana more than ~~twenty-seven ninety~~ thousand
 42 ~~(27,000)~~ **(90,000)** liters of wine.

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1 SECTION 9. IC 7.1-3-26-15, AS ADDED BY P.L.165-2006,
2 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 15. (a) Except as provided in subsections (b) and
4 (c), a seller who violates this chapter commits a Class A infraction.

5 (b) Except as provided in subsection (d), a seller who:

- 6 (1) knowingly or intentionally violates this chapter; and
- 7 (2) has one (1) prior unrelated conviction or judgment for an
- 8 infraction under this section for an act or omission that occurred
- 9 not more than ten (10) years before the act or omission that is the
- 10 basis for the most recent conviction or judgment for an infraction;

11 commits a Class A misdemeanor.

12 (c) Except as provided in subsection (d), a seller who:

- 13 (1) knowingly or intentionally violates this chapter; and
- 14 (2) has at least two (2) prior unrelated convictions or judgments
- 15 for infractions under this section for acts or omissions that
- 16 occurred not more than ten (10) years before the act or omission
- 17 that is the basis for the most recent conviction or judgment for an
- 18 infraction;

19 commits a Class D felony.

20 (d) A person who violates section ~~6(5)~~ **6(4)** of this chapter commits
21 a Class A infraction. The commission may consider an infraction
22 committed under this subsection in its determination of whether to
23 renew a seller's permit.

24 SECTION 10. IC 7.1-3-26-15.5 IS ADDED TO THE INDIANA
25 CODE AS A NEW SECTION TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2009]: **Sec. 15.5. The commission may:**

- 27 **(1) suspend or revoke a direct wine seller's permit; or**
- 28 **(2) fine the holder of a direct wine seller's permit;**

29 **for noncompliance with this chapter in accordance with**
30 **IC 7.1-3-23.**

31 SECTION 11. IC 7.1-3-26-16, AS AMENDED BY P.L.1-2007,
32 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2009]: Sec. 16. If a direct wine seller is charged under section
34 15 of this chapter with selling to a consumer who does not meet the
35 requirements of section 6 of this chapter, it is a defense to the charge
36 if the direct wine seller obtained from the consumer the verified
37 statement required under section ~~6(4)(C)~~ or ~~6(5)(A)~~ **6(4)(A)** of this
38 chapter and produces a copy of the verified statement.

39 SECTION 12. IC 7.1-3-27 IS ADDED TO THE INDIANA CODE
40 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2009]:

42 **Chapter 27. Supplemental Direct Wine Seller's Permit**

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1 **Sec. 1. As used in this chapter, "supplemental permit" means a**
2 **supplemental direct wine seller's permit issued under this chapter.**

3 **Sec. 2. The commission may issue a supplemental direct wine**
4 **seller's permit to a person who desires to sell wine in Indiana at**
5 **wholesale as set forth in this chapter.**

6 **Sec. 3. The commission may issue a supplemental permit only to**
7 **an applicant who is the holder of a direct wine seller's permit**
8 **under IC 7.1-3-26.**

9 **Sec. 4. The holder of a supplemental permit is entitled to sell,**
10 **furnish, and deliver wine from inventory that has been located on**
11 **the holder's premises before the time of invoicing and delivery to**
12 **a wine wholesaler, a wine retailer, a supplemental caterer, a**
13 **temporary wine permittee, or a wine dealer in Indiana, but not at**
14 **retail.**

15 **Sec. 5. A supplemental permit entitles the holder to sell not more**
16 **than two thousand (2,000) gallons of wine at wholesale during a**
17 **permit year.**

18 **Sec. 6. The term of a supplemental permit begins on:**
19 **(1) the date approved by the commission for an initial**
20 **application; and**
21 **(2) July 1 for a renewed permit;**
22 **and expires on June 30 of the following year. A supplemental**
23 **permit may be renewed in accordance with rules adopted by the**
24 **commission.**

25 **Sec. 7. The annual fee for a supplemental permit is fifty dollars**
26 **(\$50).**

27 SECTION 13. IC 7.1-4-4-3 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2009]: ~~Sec. 3. Persons liable for~~
29 ~~Tax:~~ The wine excise tax shall be paid by the holder of a vintner's
30 permit, a farm winery permit, a wine wholesaler's permit, **a direct wine**
31 **seller's permit, a supplemental direct wine seller's permit,** a dining
32 car wine permit, or a boat wine permit on the alcoholic beverage to
33 which the tax is applicable and which has been manufactured or
34 imported by ~~him~~ **the permit holder** into this state. However, the same
35 article shall be taxed only once for wine excise tax purposes.

36 SECTION 14. IC 7.1-4-4.1-13, AS AMENDED BY P.L.165-2006,
37 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2009]: Sec. 13. (a) This section applies to the following
39 permits:

- 40 (1) Beer wholesaler's permit.
- 41 (2) Malt wholesaler's permit.
- 42 (3) Liquor wholesaler's permit.

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(4) Wine wholesaler's permit.
(b) Except as provided in subsection (c), a permit fee of two thousand dollars (\$2,000) is annually imposed for the issuance of each of the permits described in subsection (a).

(c) A permit fee of one hundred dollars (\$100) is annually imposed for the issuance of a wine wholesaler's permit to a permit applicant who:

- (1) has never previously held a wine wholesaler's permit and anticipates selling less than ~~twelve thousand (12,000)~~ **twenty thousand (20,000)** gallons of wine and brandy in a year; or
- (2) previously held a wine wholesaler's permit and certifies to the commission that the permit applicant sold less than ~~twelve thousand (12,000)~~ **twenty thousand (20,000)** gallons of wine and brandy in the previous year.

SECTION 15. IC 7.1-4-4.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. The hard cider excise tax shall be paid by the holder of a vintner's permit, a farm winery permit, a wine wholesaler's permit, **a direct wine seller's permit, a supplemental direct wine seller's permit,** a beer wholesaler's permit, a dining car wine permit, or a boat wine permit on the hard cider to which the tax is applicable and that is manufactured or imported by the person into this state. However, an item may only be taxed once for hard cider excise tax purposes.

SECTION 16. IC 7.1-4-7-1, AS AMENDED BY P.L.165-2006, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The chairman shall collect the required annual license fee paid in connection with the issuance of a brewer's permit, a beer wholesaler's permit, a temporary beer permit, a dining car permit of any type, a boat permit of any type, a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a vintner's permit, a farm winery permit, a farm winery brandy distiller's permit, a wine wholesaler's permit, a wine bottler's permit, a temporary wine permit, a direct wine seller's permit, **a supplemental direct wine seller's permit,** a salesman's permit, and a carrier's alcoholic permit.

SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 7.1-3-26-15; IC 7.1-3-26-16.

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