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# HOUSE BILL No. 1191

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3; IC 7.1-5.

**Synopsis:** Alcoholic beverage wholesalers. Allows a person to wholesale beer, wine, and liquor. (Current law allows a person to wholesale only wine and beer or wine and liquor.) Allows a beer wholesaler to have a minority interest in another entity that holds a beer wholesaler permit, if the entity: (1) is a women-owned business enterprise or a minority owned business; and (2) the permit premises or warehouse is located in a county that borders the Ohio River. Allows a wine wholesaler that also holds a liquor wholesaler's permit to sell more than 1,000,000 gallons of flavored malt beverage during a calendar year. Requires a primary source of supply of a liquor or wine brand to provide notice to the existing wholesaler of the brand if the primary source of supply intends to: (1) terminate or not renew the distribution rights of the existing wholesaler for the brand and appoint a successor wholesaler to distribute the brand; (2) reduce the existing wholesaler's territory for the brand and appoint a successor wholesaler for the brand; (3) appoint a wholesaler to distribute the brand in all or part of the existing wholesaler's territory; or (4) acquire the right to manufacture or distribute a brand and decides not to have the existing wholesaler continue to distribute the brand. Requires the successor wholesaler for the brand to negotiate with the existing wholesaler for the brand to determine the fair market value of the existing wholesaler's distribution rights for the brand. Provides that if a settlement agreement is not reached with a certain period of time, the matter may be submitted to binding arbitration. Provides that the existing wholesaler continues to distribute the brand until the existing wholesaler is compensated for the loss in distribution rights. Repeals a provision that prohibits the alcohol and tobacco commission from issuing a beer wholesaler's permit to a person who holds a wine wholesaler's permit and a liquor wholesaler's permit.

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**Effective:** July 1, 2010.

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January 7, 2010, read first time and referred to Committee on Public Policy.

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Second Regular Session 116th General Assembly (2010)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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# HOUSE BILL No. 1191



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 7.1-3-3-4, AS AMENDED BY P.L.94-2008,  
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]: Sec. 4. (a) The premises to be used as a warehouse by  
4 an applicant shall be described in the application for the permit. The  
5 commission shall not issue a beer wholesaler's permit to an applicant  
6 for any other warehouse or premises than that described in the  
7 application. The commission shall issue only one (1) beer wholesaler's  
8 permit to an applicant, but a permittee may be permitted to transfer the  
9 permittee's warehouse to another location within the county that is not  
10 required to be within the corporate limits of an incorporated city or  
11 town, upon application to, and approval of, the commission.

12 **(b) Notwithstanding subsection (a), the holder of a beer**  
13 **wholesaler's permit may have a minority interest in another entity**  
14 **that holds a beer wholesaler's permit if:**

- 15 (1) the entity is a:  
16 (A) women-owned business enterprise (as defined in  
17 IC 5-16-6.5-3); or



1                   **(B) minority business enterprise (as defined in**  
 2                   **IC 4-13-16.5-1); and**  
 3                   **(2) the entity's permit premises or warehouse is located in a**  
 4                   **county bordering the Ohio River.**

5                   ~~(b)~~ **(c)** As used in this subsection, "immediate relative" means the  
 6 father, the mother, a brother, a sister, a son, or a daughter of a  
 7 wholesaler permittee. Notwithstanding subsection (a), the commission,  
 8 upon the death or legally adjudged mental incapacitation of a  
 9 wholesaler permittee, may allow the transfer of the wholesaler permit  
 10 only to an immediate relative of the wholesaler permittee who  
 11 concurrently holds a majority share in a valid wholesaler permit.

12                   SECTION 2. IC 7.1-3-13-1 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) The commission  
 14 may issue a wine wholesaler's permit to sell wine, or wine and brandy,  
 15 at wholesale to a person who:

- 16                   (1) ~~notwithstanding IC 7.1-5-9-4~~, holds a beer wholesaler's  
 17 permit;
- 18                   (2) holds a liquor wholesaler's permit; or
- 19                   (3) does not hold an alcoholic beverage wholesaler's permit, but  
 20 meets the qualifications to hold either a beer or a liquor  
 21 wholesaler's permit.

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

- 24                   (1) is considered the same as a person who holds a wine  
 25 wholesaler's permit under subsection (a)(3) for purposes of  
 26 conducting activities and operations under the wine wholesaler's  
 27 permit; and
- 28                   (2) may operate the beer or liquor wholesale business  
 29 independently of the wine wholesale business.

30                   SECTION 3. IC 7.1-3-13-3, AS AMENDED BY P.L.165-2006,  
 31 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2010]: Sec. 3. (a) The holder of a wine wholesaler's permit  
 33 may purchase, import, and transport wine, brandy, or flavored malt  
 34 beverage from the primary source of supply. A wine wholesaler may  
 35 export and transport wine, brandy, or flavored malt beverage by the  
 36 bottle, barrel, cask, or other container, to points outside Indiana. A  
 37 wine wholesaler is entitled to sell, furnish, and deliver wine or flavored  
 38 malt beverage from inventory that has been located on the wholesaler's  
 39 premises before the time of invoicing and delivery to a wine  
 40 wholesaler, a wine retailer, a supplemental caterer, a temporary wine  
 41 permittee, and a wine dealer, but not at retail. A wine wholesaler may  
 42 sell, furnish, and deliver brandy from inventory that has been located

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1 on the wholesaler's premises before the time of invoicing and delivery,  
2 but not at retail, only to a person who holds a liquor retailer's permit,  
3 a supplemental caterer's permit, or a liquor dealer's permit. A holder of  
4 a wine wholesaler's permit may sell wine to the wine wholesaler's bona  
5 fide regular employees.

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

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

9 (2) a beverage product that:

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

11 (B) is classified as a cordial or liqueur as defined in 27 CFR  
12 5.22(h) as in effect on January 1, 1997; and

13 (C) meets the following requirements:

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

17 (ii) The product's label makes no reference to any distilled  
18 spirit other than brandy.

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

21 (iv) The product contains dairy cream.

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

24 (vi) The product contains caramel coloring.

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

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

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

32 ~~(2) possess, sell, or transport beer; or~~

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

35 SECTION 4. IC 7.1-3-23-23 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 23. (a) This section  
37 applies to a brewer that manufactures more than twenty thousand  
38 (20,000) barrels of beer in a calendar year.

39 (b) The commission shall revoke the permit of a brewer ~~or beer~~  
40 ~~wholesaler~~ who holds an interest in another permit in violation of  
41 IC 7.1-5-9-3.

42 SECTION 5. IC 7.1-3-25.5 IS ADDED TO THE INDIANA CODE

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1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2010]:

3 **Chapter 25.5. Transfers of Liquor and Wine Brands Between**  
4 **Wholesalers**

5 **Sec. 1. As used in this chapter, "brand" means a:**

- 6 (1) liquor product that is publicly distinguished from other
- 7 liquor products; or
- 8 (2) wine product that is publicly distinguished from other
- 9 wine products;

10 **and that bears a unique name. All package, size, flavor, and other**  
11 **variations bearing the unique brand name are part of the brand.**

12 **Sec. 2. As used in this chapter, "existing wholesaler" means a:**

- 13 (1) liquor wholesaler; or
- 14 (2) wine wholesaler;

15 **that distributes a brand under distribution rights granted by that**  
16 **brand's primary source of supply immediately before notice of the**  
17 **transfer of those distribution rights to a successor wholesaler.**

18 **Sec. 3. As used in this chapter, "successor wholesaler" means**  
19 **one (1) or more liquor or wine wholesalers designated by a**  
20 **primary source of supply to distribute a brand in all or any part of**  
21 **an existing wholesaler's territory under section 4 of this chapter.**

22 **Sec. 4. A primary source of supply and a successor wholesaler**  
23 **shall comply with this chapter if:**

- 24 (1) the primary source of supply wants to:
  - 25 (A) terminate or not renew an existing wholesaler's
  - 26 distribution rights for a brand; and
  - 27 (B) appoint a successor wholesaler for the brand in the
  - 28 territory to be lost by the existing wholesaler;
- 29 (2) the primary source of supply wants to:
  - 30 (A) reduce the existing wholesaler's territory for a brand;
  - 31 and
  - 32 (B) appoint a successor wholesaler for the brand in the
  - 33 territory to be lost by the existing wholesaler;
- 34 (3) the primary source of supply wants to appoint another
- 35 wholesaler for any brand distributed by an existing
- 36 wholesaler in all or any part of the existing wholesaler's
- 37 territory for the brand; or
- 38 (4) the primary source of supply acquires the right to
- 39 manufacture or distribute a brand and wants to:
  - 40 (A) not reappoint the existing wholesaler to distribute the
  - 41 brand in all or any part of the existing wholesaler's
  - 42 territory;

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1           **(B) reduce the existing wholesaler's territory for the**  
 2           **brand; or**  
 3           **(C) terminate or not renew the distribution rights of the**  
 4           **existing wholesaler for the brand in all or part of the**  
 5           **existing wholesaler's territory;**  
 6           **without compensating the existing wholesaler for the fair market**  
 7           **value of the distribution rights for the brand lost by the existing**  
 8           **wholesaler.**

9           **Sec. 5. (a) The primary source of supply shall notify the existing**  
 10           **wholesaler of the primary source of supply's intent to take any**  
 11           **action under section 4 of this chapter.**

12           **(b) The primary source of supply shall give notice to the existing**  
 13           **wholesaler by certified mail, return receipt requested. The notice**  
 14           **must include the successor wholesaler's:**

- 15           **(1) name;**
- 16           **(2) address; and**
- 17           **(3) telephone number.**

18           **(c) The primary source of supply shall give the notice under**  
 19           **subsection (b) of an action taken under section 4(4) to the existing**  
 20           **wholesaler not later than sixty (60) days after the closing of the**  
 21           **transaction in which the successor primary source of supply**  
 22           **acquires the brand.**

23           **Sec. 6. (a) A successor wholesaler shall negotiate with the**  
 24           **existing wholesaler to determine the fair market value of the**  
 25           **existing wholesaler's distribution rights for the brand to be**  
 26           **acquired by the successor wholesaler.**

27           **(b) In the case of an announced loss of all of an existing**  
 28           **wholesaler's distribution rights for a brand, the fair market value**  
 29           **of the existing wholesaler's distribution rights is the value that**  
 30           **would have been ascribed to the existing wholesaler's distribution**  
 31           **rights for the brand in an arms length transaction entered into**  
 32           **without duress or threat of termination of the existing wholesaler's**  
 33           **distribution rights.**

34           **(c) In the case of the announced loss of part of the distribution**  
 35           **rights for a brand by:**

- 36           **(1) reduction in the existing wholesaler's territory;**
- 37           **(2) the appointment of another wholesaler to distribute a**  
 38           **brand in addition to the existing wholesaler; or**
- 39           **(3) a means other than subdivision (1) or (2);**

40           **the fair market value of the existing wholesaler's distribution**  
 41           **rights is the loss in value that would have been ascribed to the**  
 42           **existing wholesaler's distribution rights for the brand in an arms**

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length transaction entered into without duress or threat of termination of the existing wholesaler's distribution rights.

Sec. 7. The existing wholesaler shall continue to distribute the brand until payment of the compensation agreed to under section 6 of this chapter or awarded under section 11 of this chapter is received.

Sec. 8. (a) The successor wholesaler and the existing wholesaler shall negotiate in good faith. If the parties fail to reach an agreement not later than thirty (30) days after the existing wholesaler receives the notice under section 5 of this chapter, the successor's wholesaler or the existing wholesaler may send a written notice to the:

- (1) other party;
- (2) primary source of supply; and
- (3) American Arbitration Association or its successor in interest;

declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules.

(b) Notice of intent to arbitrate shall be sent under subsection (a) not later than forty-five (45) days after the existing wholesaler receives notice under section 5 of this chapter. The arbitration proceedings must conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party, unless extended by the arbitrator.

Sec. 9. (a) The arbitration shall be conducted in the city within Indiana that:

- (1) is closest to the existing wholesaler; and
- (2) has a population of more than fifty thousand (50,000).

(b) The arbitration shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Sec. 10. The arbitrator's award must be monetary only and may not enjoin or compel conduct. The arbitration is instead of all other remedies and procedures.

Sec. 11. (a) The cost of the arbitrator and other direct costs of the arbitration shall be equally divided by the existing wholesaler and the successor wholesaler. All other costs shall be paid by the party incurring them.

(b) The arbitrator shall render a decision not later than thirty

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1 (30) days after the conclusion of the arbitration unless this period  
 2 is extended by mutual agreement of the parties or by the  
 3 arbitrator. The decision of the arbitrator is final and binding on  
 4 the parties. Under no circumstances may the parties appeal the  
 5 decision of the arbitrator.

6 (c) A party who fails to participate in the arbitration hearings  
 7 waives all rights the party would have had in the arbitration and  
 8 is considered to have consented to the determination of the  
 9 arbitrator.

10 Sec. 12. If the existing wholesaler does not receive payment of  
 11 the compensation under section 6 or 11 of this chapter not later  
 12 than thirty (30) days after the date of the settlement or arbitration  
 13 award:

14 (1) the existing wholesaler shall remain the distributor of the  
 15 brand in the existing wholesaler's territory to at least the  
 16 same extent that the existing wholesaler distributed the brand  
 17 immediately before the announcement of any of the actions  
 18 described in section 4 of this chapter;

19 (2) the successor wholesaler shall not have any rights to  
 20 distribute the brand in the existing wholesaler's territory; and

21 (3) the existing wholesaler is not entitled to the settlement or  
 22 arbitration award.

23 Sec. 13. This chapter may not be construed to limit or prohibit  
 24 good faith settlements voluntarily entered into by the parties.

25 Sec. 14. This chapter may not be construed to give an existing  
 26 wholesaler any right to compensation, if the primary source of  
 27 supply establishes that the primary source of supply legally  
 28 terminated or did not renew the distribution rights of the existing  
 29 wholesaler. A primary source of supply may legally terminate or  
 30 not renew the distribution rights if:

31 (1) the termination or nonrenewal is in accordance with  
 32 IC 7.1-5-5-9;

33 (2) the:

34 (A) existing wholesaler fails to comply substantially with a  
 35 material provision that is essential, fair, and reasonable, in  
 36 an agreement to distribute a brand;

37 (B) primary source of supply provides written notice to the  
 38 existing wholesaler describing in reasonable detail the  
 39 wholesaler's failure to comply; and

40 (C) existing wholesaler fails to substantially correct the  
 41 deficiency not later than ninety (90) days after the date of  
 42 receiving the notice; or

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- (3) the:**
    - (A) existing wholesaler fails to comply substantially with a material provision that is essential, fair, and reasonable, in an agreement to distribute a brand; and**
    - (B) it is impossible for the existing wholesaler to correct the deficiency;**
- the primary source of supply may terminate or not renew the agreement without providing the existing wholesaler with notice or an opportunity to correct the deficiency.**

SECTION 6. IC 7.1-5-5-9, AS AMENDED BY P.L.94-2008, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. (a) This section does not apply to product management (as described in 905 IAC 1-5.2-15) by a permittee.

(b) It is unlawful for a permittee to knowingly or intentionally coerce, or attempt to coerce, or persuade another permittee to enter into an agreement, or to take an action, which would violate a provision of this title or of the rules and regulations of the commission.

(c) It is unlawful for a beer wholesaler or a primary source of supply to cancel or terminate an agreement or contract between a beer wholesaler and a primary source of supply for the sale of beer, unfairly and without due regard for the equities of the other party.

**(d) Except as provided in IC 7.1-3-25.5, it is unlawful for a primary source of supply to terminate or not renew an agreement or contract between:**

- (1) the primary source of supply; and**
  - (2) the:**
    - (A) wine wholesaler for the sale of wine; or**
    - (B) liquor wholesaler for the sale of liquor;**
- unfairly and without due regard for the equities of the other party.**

SECTION 7. IC 7.1-5-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) This section applies to a brewer that manufactures more than twenty thousand (20,000) barrels of beer in a calendar year.

(b) It is unlawful for the holder of a brewer's ~~or beer wholesaler's~~ permit to have an interest in a liquor permit of any type under this title.

SECTION 8. IC 7.1-5-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. ~~Except as provided in IC 7.1-3-3-4,~~ 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) Any other permit to wholesale alcoholic beverages.~~

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1           (2) Through stock ownership or otherwise, a partnership,  
 2           limited liability company, or corporation that holds  
 3           (A) a permit to manufacture or to sell at retail alcoholic  
 4           beverages of any kind. or  
 5           (B) any other permit to wholesale alcoholic beverages of any  
 6           kind.

7           SECTION 9. IC 7.1-5-9-6 IS AMENDED TO READ AS  
 8           FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 6. ~~Liquor Permittee's~~  
 9           ~~Interests Limited.~~ It is unlawful for the holder of a distiller's or  
 10           rectifier's or ~~liquor wholesaler's~~ permit to have an interest in a beer  
 11           permit of any type under this title.

12           SECTION 10. IC 7.1-5-9-16 IS ADDED TO THE INDIANA CODE  
 13           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 14           1, 2010]: **Sec. 16. A wholesaler of alcoholic beverages may hold**  
 15           **permits to wholesale beer, wine, and liquor.**

16           SECTION 11. IC 7.1-3-3-19 IS REPEALED [EFFECTIVE JULY  
 17           1, 2010].

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