



February 18, 2011

HOUSE BILL No. 1132

DIGEST OF HB 1132 (Updated February 16, 2011 4:57 pm - DI 14)

Citations Affected: IC 7.1-2; IC 7.1-3.

Synopsis: Farm wineries and direct wine sellers. Farm wineries and direct wine sellers. Requires the alcohol and tobacco commission to submit a report, not later than November 1, 2011, to the general assembly concerning direct wine shipment to consumers in Indiana. Removes provisions concerning certain requirements for applicants of direct wine seller's permits. Allows a direct wine seller to ship directly to a consumer in Indiana only wine manufactured, produced, or bottled by the seller. Increases the number of days that a holder of a farm winery permit may participate in a trade show or an exposition with the approval of the alcohol and tobacco commission from 30 days to 45 days in a calendar year.

Effective: July 1, 2011.

Koch, Welch, Clere, Rhoads

January 6, 2011, read first time and referred to Committee on Public Policy.
February 17, 2011, amended, reported — Do Pass.

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HB 1132—LS 6285/DI 110+



February 18, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1132



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 7.1-2-3-34 IS ADDED TO THE INDIANA CODE
- 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2011]: **Sec. 34. (a) The commission shall submit a report, not**
- 4 **later than November 1, 2011, to the general assembly concerning**
- 5 **the viability and efficacy of instituting a policy to permit the direct**
- 6 **shipment of wine to consumers in Indiana. The report must be in**
- 7 **an electronic format under IC 5-14-6.**
- 8 **(b) The report under subsection (a) must include the following:**
- 9 **(1) An evaluation of the best practices of each state, including**
- 10 **the District of Columbia, that allows direct wine shipment.**
- 11 **(2) An evaluation of related fiscal, tax, and other public policy**
- 12 **and regulatory issues related to direct wine shipment.**
- 13 **(3) A determination regarding:**
- 14 **(A) the best practices for preventing access by minors to**
- 15 **wine shipped directly to consumers;**
- 16 **(B) any significant increase or decrease in access to or**
- 17 **demand for wine by minors that has been documented as**

HB 1132—LS 6285/DI 110+



- 1 **related to direct wine shipment laws;**
- 2 **(C) the best practices for collecting tax revenues on wine;**
- 3 **(D) the benefits and costs of direct wine shipment to**
- 4 **consumers; and**
- 5 **(E) the effect of direct wine shipment laws on in-state**
- 6 **wineries, alcoholic beverage licensees, and other local**
- 7 **businesses.**

8 **(c) This section expires July 1, 2012.**

9 SECTION 2. IC 7.1-3-12-5, AS AMENDED BY P.L.165-2006,
10 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2011]: Sec. 5. (a) The holder of a farm winery permit:

- 12 (1) is entitled to manufacture wine and to bottle wine produced by
- 13 the permit holder's farm winery;
- 14 (2) is entitled to serve complimentary samples of the winery's
- 15 wine on the licensed premises or an outside area that is
- 16 contiguous to the licensed premises as approved by the
- 17 commission if each employee who serves wine on the licensed
- 18 premises:
- 19 (A) holds an employee permit under IC 7.1-3-18-9; and
- 20 (B) completes a server training program approved by the
- 21 commission;
- 22 (3) is entitled to sell the winery's wine on the licensed premises to
- 23 consumers either by the glass, or by the bottle, or both;
- 24 (4) is entitled to sell the winery's wine to consumers by the bottle
- 25 at a farmers' market that is operated on a nonprofit basis;
- 26 (5) is entitled to sell wine by the bottle or by the case to a person
- 27 who is the holder of a permit to sell wine at wholesale;
- 28 (6) is exempt from the provisions of IC 7.1-3-14;
- 29 (7) is entitled to advertise the name and address of any retailer or
- 30 dealer who sells wine produced by the permit holder's winery;
- 31 (8) for wine described in IC 7.1-1-2-3(a)(4):
- 32 (A) may allow transportation to and consumption of the wine
- 33 on the licensed premises; and
- 34 (B) may not sell, offer to sell, or allow the sale of the wine on
- 35 the licensed premises;
- 36 (9) is entitled to purchase and sell bulk wine as set forth in this
- 37 chapter;
- 38 (10) is entitled to sell wine as authorized by this section for
- 39 carryout on Sunday; and
- 40 (11) is entitled to sell and ship the farm winery's wine to a person
- 41 located in another state in accordance with the laws of the other
- 42 state.

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

6 (c) With the approval of the commission, a holder of a permit under
7 this chapter may, individually or with other permit holders under this
8 chapter, participate in a trade show or an exposition at which products
9 of each permit holder participant are displayed, promoted, and sold.
10 The commission may not grant approval under this subsection to a
11 holder of a permit under this chapter for more than ~~thirty (30)~~
12 **forty-five (45)** days in a calendar year.

13 SECTION 3. IC 7.1-3-13-2.5, AS AMENDED BY P.L.165-2006,
14 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2011]: Sec. 2.5. ~~(a)~~ All premises to be used by an applicant for
16 a wine wholesaler's permit must be described in the application for the
17 permit and in the permit, if the permit is issued. A wine wholesaler may
18 not keep or store wine at any place other than the premises described
19 in the wine wholesaler's application and permit. A person who holds a
20 wine wholesaler's permit and who also holds a beer wholesaler's permit
21 is not disqualified from using multiple premises for the storage of wine
22 because the person holds a beer wholesaler's permit. The holder of a
23 wine wholesaler's permit issued under IC 7.1-4-4.1-13(c) may enter
24 into an agreement to:

- 25 (1) locate the wine wholesaler's business within the licensed
26 premises of a farm winery or a farm winery brandy distiller; or
27 (2) use goods and services provided by a farm winery or a farm
28 winery brandy distiller;
29 or both.

30 ~~(b) A direct wine seller under IC 7.1-3-26 is not considered an~~
31 ~~affiliate of a wine wholesaler for purposes of IC 7.1-3-26-7(9) for an~~
32 ~~agreement under this section.~~

33 SECTION 4. IC 7.1-3-26-7, AS AMENDED BY P.L.54-2008,
34 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2011]: Sec. 7. (a) The commission may issue a direct wine
36 seller's permit to an applicant who meets all of the following
37 requirements:

- 38 (1) The applicant is domiciled and has its principal place of
39 business in the United States.
40 (2) The applicant is engaged in the manufacture of wine.
41 (3) The applicant holds and acts within the scope of authority of
42 an alcoholic beverage license or permit to manufacture wine that

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is required:

- (A) in Indiana or the state where the applicant is domiciled; and
- (B) by the Tax and Trade Bureau of the United States Department of the Treasury.

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

(5) The applicant files a surety bond with the commission in accordance with IC 7.1-3-1, or deposits cash in an escrow account with the commission, in the amount required of an applicant for a vintner's permit under IC 7.1-3-1-7.

~~(6) The applicant:~~

- ~~(A) does not hold a permit or license to wholesale alcoholic beverages issued by any authority; and~~
- ~~(B) is not owned in whole or in part or controlled by a person who holds a permit or license to wholesale alcoholic beverages.~~

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

~~(8) (6) The applicant:~~

- ~~(A) has not distributed wine through a wine wholesaler in Indiana within the one hundred twenty (120) days immediately preceding the applicant's application for a direct wine seller's permit and does not distribute wine through a wine wholesaler in Indiana during the term of the direct wine seller's permit; or~~
- ~~(B) has operated as a farm winery under IC 7.1-3-12.~~

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

~~(10) (7) The applicant completes documentation regarding the applicant's application required by the commission.~~

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

- (1) meets the requirements under subsection (a); and
- (2) holds a permit issued under this title that allows the sale of an alcoholic beverage at retail.

SECTION 5. IC 7.1-3-26-9, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. A direct wine seller's permit entitles a seller to sell and ship wine to a consumer by receiving and filling orders that the consumer transmits by electronic or other means if all of the following

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- 1 conditions are satisfied before the sale or by the times set forth as
- 2 follows:
- 3 (1) The consumer provides the direct wine seller with the
- 4 following:
- 5 (A) The verification required by section 6(4) of this chapter in
- 6 an initial face-to-face transaction.
- 7 (B) Notwithstanding clause (A), if the consumer provided the
- 8 information specified in section 6(5)(A) of this chapter after
- 9 April 1, 2006, but before December 31, 2006, and the seller
- 10 provides the name and Indiana address of the consumer under
- 11 section 6(5)(B) of this chapter to the commission before
- 12 January 15, 2007, the consumer is not required to comply with
- 13 section 6(4) of this chapter.
- 14 (2) The direct wine seller meets the following requirements:
- 15 (A) Maintains for two (2) years all records of wine sales made
- 16 under this chapter. If the records are requested by the
- 17 commission, a direct wine seller shall:
- 18 (i) make the records available to the commission during the
- 19 direct wine seller's regular business hours; or
- 20 (ii) at the direction of the commission, deliver copies to the
- 21 commission.
- 22 (B) Stamps, prints, or labels on the outside of the shipping
- 23 container the following: "CONTAINS WINE. SIGNATURE
- 24 OF PERSON AGE 21 OR OLDER REQUIRED FOR
- 25 DELIVERY."
- 26 (C) Causes the wine to be delivered by the holder of a valid
- 27 carrier's alcoholic beverage permit under IC 7.1-3-18.
- 28 (D) Directs the carrier to verify that the individual personally
- 29 receiving the wine shipment is at least twenty-one (21) years
- 30 of age.
- 31 (E) Does not ship to any consumer more than two hundred
- 32 sixteen (216) liters of wine in any calendar year.
- 33 (F) Remits to the department of state revenue monthly all
- 34 Indiana excise, sales, and use taxes on the shipments made
- 35 into Indiana by the direct wine seller during the previous
- 36 month.
- 37 **(G) Ships to a consumer in Indiana only wine**
- 38 **manufactured, produced, or bottled by the applicant.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1132, 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 7.1-2-3-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 34. (a) The commission shall submit a report, not later than November 1, 2011, to the general assembly concerning the viability and efficacy of instituting a policy to permit the direct shipment of wine to consumers in Indiana. The report must be in an electronic format under IC 5-14-6.**

(b) The report under subsection (a) must include the following:

- (1) An evaluation of the best practices of each state, including the District of Columbia, that allows direct wine shipment.**
- (2) An evaluation of related fiscal, tax, and other public policy and regulatory issues related to direct wine shipment.**
- (3) A determination regarding:**
 - (A) the best practices for preventing access by minors to wine shipped directly to consumers;**
 - (B) any significant increase or decrease in access to or demand for wine by minors that has been documented as related to direct wine shipment laws;**
 - (C) the best practices for collecting tax revenues on wine;**
 - (D) the benefits and costs of direct wine shipment to consumers; and**
 - (E) the effect of direct wine shipment laws on in-state wineries, alcoholic beverage licensees, and other local businesses.**

(c) This section expires July 1, 2012."

Page 2, line 2, delete "wholesale issued" and insert "wholesale;"

Page 2, delete lines 3 through 8.

Page 2, line 9, reset in roman "(6)".

Page 2, line 9, delete "(7)".

Page 2, line 10, reset in roman "(7)".

Page 2, line 10, delete "(8)".

Page 2, line 12, reset in roman "(8)".

Page 2, line 12, delete "(9)".

Page 2, line 17, reset in roman "(9)".

Page 2, line 17, delete "(10)".

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Page 2, line 19, reset in roman "(10)".
 Page 2, line 19, delete "(11)".
 Page 2, line 21, reset in roman "(11)".
 Page 2, line 21, delete "(12)".
 Page 3, delete lines 14 through 42.
 Page 4, delete lines 1 through 4.
 Page 4, line 7, reset in roman "(a)".
 Page 4, line 36, after "(8)" insert "(6)".
 Page 4, line 36, reset in roman "The applicant:".
 Page 4, reset in roman lines 37 through 42.
 Page 5, line 3, delete "(6)" and insert "(7)".
 Page 5, reset in roman lines 5 through 9.
 Page 5, line 17, delete ":".
 Page 5, line 17, reset in roman "provides the direct wine seller with
 the".
 Page 5, reset in roman lines 18 through 27.
 Page 5, delete lines 28 through 35.
 Page 6, delete lines 19 through 42.
 Delete page 7.
 Renumber all SECTIONS consecutively.
 and when so amended that said bill do pass.
 (Reference is to HB 1132 as introduced.)

DAVIS, Chair

Committee Vote: yeas 11, nays 0.

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