



February 11, 2011

# HOUSE BILL No. 1320

DIGEST OF HB 1320 (Updated February 9, 2011 1:05 pm - DI 14)

**Citations Affected:** IC 7.1-3; IC 35-46.

**Synopsis:** Retailer permittee employee serving to minor. Provides that if the alcohol and tobacco commission (commission) initiates a permit violation proceeding against a holder of a dealer permit for a package liquor store for furnishing an alcoholic beverage to a minor, the commission must also initiate a permit violation proceeding against the employee of the dealer who served the minor. Provides that any employee permit violation for serving alcohol to a minor becomes inactive two years after the date of the violation and may not be counted in assessing any future violations, suspensions, or civil penalties.

**Effective:** July 1, 2011.

**Yarde**

January 13, 2011, read first time and referred to Committee on Public Policy.  
February 10, 2011, amended, reported — Do Pass.

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February 11, 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. 1320



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 7.1-3-23-3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. The commission,  
3 pursuant to section 2 of this chapter, **and subject to section 9.5 of this**  
4 **chapter**, may impose upon a permittee the following civil penalties:

- 5 (1) An amount of not more than four thousand dollars (\$4,000) for
- 6 each violation if the permittee is a brewer or distiller.
- 7 (2) An amount of not more than two thousand dollars (\$2,000) for
- 8 each violation if the permittee is a wholesaler of any type.
- 9 (3) An amount of not more than one thousand dollars (\$1,000) for
- 10 each violation if the permittee is the holder of a permit of a type
- 11 not listed in subdivision (1) or (2).

12 SECTION 2. IC 7.1-3-23-26.1, AS AMENDED BY P.L.161-2005,  
13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2011]: Sec. 26.1. (a) A retailer permittee or dealer permittee  
15 who violates IC 7.1-3-1.5-13, IC 7.1-5-7-4, or IC 7.1-5-7-8 through  
16 IC 7.1-5-7-13 may be fined, have the permittee's permit suspended, or  
17 be fined and have the permittee's permit suspended, as determined by

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1 the commission; however, if the penalty imposed by the commission  
 2 exceeds a fine and three (3) day suspension, the commission must issue  
 3 written findings of fact and conclusions which show the necessity of  
 4 the penalty. If the retailer or dealer permittee commits a subsequent  
 5 violation of the provisions listed in this subsection within twelve (12)  
 6 months of the first violation, the commission may fine the permittee,  
 7 fine the permittee and suspend the permittee's permit, or revoke the  
 8 permittee's permit; however, if the penalty exceeds a fine and  
 9 suspension of more than fifteen (15) days, the commission must issue  
 10 written findings of fact and conclusions which show the necessity of  
 11 the penalty.

12 (b) The holder of an employee permit who violates IC 7.1-5-7-4 or  
 13 ~~IC 7.1-5-7-8~~ **IC 7.1-5-7-9** through IC 7.1-5-7-13 may be fined, have the  
 14 permittee's permit suspended, be both fined and have the permittee's  
 15 permit suspended, or have the permittee's permit revoked, as  
 16 determined by the commission. **The holder of an employee permit  
 17 who violates IC 7.1-5-7-8 is subject to the penalties set forth in  
 18 section 9.5 of this chapter.**

19 SECTION 3. IC 7.1-3-23-9.5 IS ADDED TO THE INDIANA  
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 21 [EFFECTIVE JULY 1, 2011]: **Sec. 9.5. (a) If:**

22 **(1) the commission initiates a permit violation proceeding  
 23 against the holder of:**

24 **(A) a retailer permit; or**

25 **(B) a dealer permit for a package liquor store;  
 26 for a violation of IC 7.1-5-7-8; and**

27 **(2) the permit violation under subdivision (1) occurred  
 28 because an employee of the retailer or dealer permit  
 29 unlawfully furnished an alcoholic beverage to a minor in  
 30 violation of IC 7.1-5-7-8;**

31 **the commission shall also initiate a permit violation proceeding  
 32 against the employee's employee permit under IC 7.1-3-18-9 for  
 33 violating IC 7.1-5-7-8.**

34 **(b) This subsection applies only to a violation by an employee  
 35 that occurs after June 30, 2011. Except as provided in subsection  
 36 (d), if the commission finds as a result of the proceeding that the  
 37 holder of the employee permit violated IC 7-1-5-7-8, the  
 38 commission shall do the following:**

39 **(1) If the violation is the employee's first violation, the  
 40 commission shall:**

41 **(A) issue the employee a disciplinary warning; and**

42 **(B) impose on the employee a civil penalty of one hundred**

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dollars (\$100).  
**(2) If the violation is the employee's second or subsequent violation, the commission shall:**  
**(A) suspend or deny the renewal of the employee's employee permit under IC 7.1-3-18-9 for two (2) years after the date of the violation; and**  
**(B) impose on the employee a civil penalty of two hundred dollars (\$200).**

**(c) If the employee does not pay a civil penalty imposed by the commission under subsection (b), the commission may suspend or lengthen the period of the suspension of the employee's employee permit as set forth in section 4 of this chapter.**

**(d) Any violation under subsection (b) becomes inactive two (2) years after the date of the violation and may not be counted in assessing any future violations, suspensions, or civil penalties under this section.**

SECTION 4. IC 35-46-1-10.1, AS ADDED BY P.L.94-2008, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10.1. (a) If a permit holder or an agent or employee of a permit holder violates IC 7.1-5-7-8 on the licensed premises, in addition to any other penalty, a civil judgment may be imposed against the permit holder as follows:

- (1) If the licensed premises at that specific business location has not been issued a citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to two hundred dollars (\$200).
- (2) If the licensed premises at that specific business location has had one (1) citation or summons for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to four hundred dollars (\$400).
- (3) If the licensed premises at that specific business location has had two (2) citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to seven hundred dollars (\$700).
- (4) If the licensed premises at that specific business location has had three (3) or more citations or summonses for a violation of IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil penalty of up to one thousand dollars (\$1,000).

**(b) Except as provided in IC 7.1-3-23-9.5(d), if an agent or employee of a permit holder violates IC 7.1-5-7-8 on the licensed premises, in addition to any other penalty, a civil judgment may be imposed against the agent or employee as follows:**

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**(1) A civil judgment of one hundred dollars (\$100) for the employee's or agent's first violation.**

**(2) A civil judgment of two hundred dollars (\$200) for the employee's or agent's second or subsequent offense.**

~~(b)~~ **(c)** The defenses set forth in IC 7.1-5-7-5.1 are available to a permit holder **or an agent or employee of a permit holder** in an action under this section.

~~(c)~~ **(d)** Unless a person less than twenty-one (21) years of age buys or receives an alcoholic beverage under the direction of a law enforcement officer as part of an enforcement action, a permit holder that sells alcoholic beverages is not liable under this section unless the person less than twenty-one (21) years of age who bought or received the alcoholic beverage is charged for violating IC 7.1-5-7-7.

~~(d)~~ **(e)** All civil penalties collected under this section shall be deposited in the alcohol and tobacco commission's enforcement and administration fund under IC 7.1-4-10.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1320, 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 2, delete lines 19 through 42, begin a new paragraph and insert:

"SECTION 3. IC 7.1-3-23-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9.5. (a) If:**

**(1) the commission initiates a permit violation proceeding against the holder of:**

**(A) a retailer permit; or**

**(B) a dealer permit for a package liquor store; for a violation of IC 7.1-5-7-8; and**

**(2) the permit violation under subdivision (1) occurred because an employee of the retailer or dealer permit unlawfully furnished an alcoholic beverage to a minor in violation of IC 7.1-5-7-8;**

**the commission shall also initiate a permit violation proceeding against the employee's employee permit under IC 7.1-3-18-9 for violating IC 7.1-5-7-8.**

**(b) This subsection applies only to a violation by an employee that occurs after June 30, 2011. Except as provided in subsection (d), if the commission finds as a result of the proceeding that the holder of the employee permit violated IC 7.1-5-7-8, the commission shall do the following:**

**(1) If the violation is the employee's first violation, the commission shall:**

**(A) issue the employee a disciplinary warning; and**

**(B) impose on the employee a civil penalty of one hundred dollars (\$100).**

**(2) If the violation is the employee's second or subsequent violation, the commission shall:**

**(A) suspend or deny the renewal of the employee's employee permit under IC 7.1-3-18-9 for two (2) years after the date of the violation; and**

**(B) impose on the employee a civil penalty of two hundred dollars (\$200).**

**(c) If the employee does not pay a civil penalty imposed by the commission under subsection (b), the commission may suspend or lengthen the period of the suspension of the employee's employee**

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permit as set forth in section 4 of this chapter.

**(d) Any violation under subsection (b) becomes inactive two (2) years after the date of the violation and may not be counted in assessing any future violations, suspensions, or civil penalties under this section."**

Page 3, delete lines 1 through 6.

Page 3, line 29, delete "If" and insert **"Except as provided in IC 7.1-3-23-9.5(d), if"**.

and when so amended that said bill do pass.

(Reference is to HB 1320 as introduced.)

DAVIS, Chair

Committee Vote: yeas 9, nays 0.

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