

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.

HOUSE ENROLLED ACT No. 1132

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

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

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**

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wineries, alcoholic beverage licensees, and other local businesses.

(c) This section expires July 1, 2012.

SECTION 2. IC 7.1-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as provided in subsection (b), the commission may issue a brewer's permit only to:

- (1) an individual;
- (2) a partnership, all the partners of which are bona fide residents of Indiana;
- (3) a limited liability company, all the members of which are bona fide residents of Indiana; or
- (4) a corporation organized and existing under the laws of Indiana and having authority under its charter to manufacture or sell beer.

(b) The commission may issue a brewer's permit to a brewer for a brewery that manufactures not more than ~~twenty~~ **thirty** thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year to:

- (1) an individual;
- (2) a partnership organized and existing under the laws of Indiana;
- (3) a limited liability company organized and existing under the laws of Indiana; or
- (4) a corporation organized and existing under the laws of Indiana.

SECTION 3. IC 7.1-3-2-7, AS AMENDED BY P.L.10-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. The holder of a brewer's permit or an out-of-state brewer holding either a primary source of supply permit or an out-of-state brewer's permit may do the following:

- (1) Manufacture beer.
- (2) Place beer in containers or bottles.
- (3) Transport beer.
- (4) Sell and deliver beer to a person holding a beer wholesaler's permit issued under IC 7.1-3-3.
- (5) If the brewer's brewery manufactures not more than ~~twenty~~ **thirty** thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year, do the following:
 - (A) Sell and deliver beer to a person holding a retailer or a dealer permit under this title.
 - (B) Be the proprietor of a restaurant.
 - (C) Hold a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant established under clause

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(B).

(D) Transfer beer directly from the brewery to the restaurant by means of:

- (i) bulk containers; or
- (ii) a continuous flow system.

(E) Install a window between the brewery and an adjacent restaurant that allows the public and the permittee to view both premises.

(F) Install a doorway or other opening between the brewery and an adjacent restaurant that provides the public and the permittee with access to both premises.

(G) Sell the brewery's beer by the glass for consumption on the premises. Brewers permitted to sell beer by the glass under this clause must furnish the minimum food requirements prescribed by the commission.

(H) Sell and deliver beer to a consumer at the permit premises of the brewer or at the residence of the consumer. The delivery to a consumer may be made only in a quantity at any one (1) time of not more than one-half (1/2) barrel, but the beer may be contained in bottles or other permissible containers.

(I) Sell the brewery's beer as authorized by this section for carryout on Sunday in a quantity at any one (1) time of not more than five hundred seventy-six (576) ounces. A brewer's beer may be sold under this clause only at the address for which the brewer's permit was issued under this chapter.

(6) If the brewer's brewery manufactures more than ~~twenty thirty~~ thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year, own a portion of the corporate stock of another brewery that:

- (A) is located in the same county as the brewer's brewery;
- (B) manufactures less than ~~twenty thirty~~ thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year; and
- (C) is the proprietor of a restaurant that operates under subdivision (5).

(7) Provide complimentary samples of beer that are:

- (A) produced by the brewer; and
- (B) offered to consumers for consumption on the brewer's premises.

(8) Own a portion of the corporate stock of a sports corporation that:

- (A) manages a minor league baseball stadium located in the same county as the brewer's brewery; and
- (B) holds a beer retailer's permit, a wine retailer's permit, or a

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liquor retailer's permit for a restaurant located in that stadium.

(9) For beer described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the beer on the licensed premises; and

(B) may not sell, offer to sell, or allow sale of the beer on the licensed premises.

SECTION 4. IC 7.1-3-12-5, AS AMENDED BY P.L.165-2006, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The holder of a farm winery permit:

(1) is entitled to manufacture wine and to bottle wine produced by the permit holder's farm winery;

(2) is entitled to serve complimentary samples of the winery's wine on the licensed premises or an outside area that is contiguous to the licensed premises as approved by the commission if each employee who serves wine on the licensed premises:

(A) holds an employee permit under IC 7.1-3-18-9; and

(B) completes a server training program approved by the commission;

(3) is entitled to sell the winery's wine on the licensed premises to consumers either by the glass, or by the bottle, or both;

(4) is entitled to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a nonprofit basis;

(5) is entitled to sell wine by the bottle or by the case to a person who is the holder of a permit to sell wine at wholesale;

(6) is exempt from the provisions of IC 7.1-3-14;

(7) is entitled to advertise the name and address of any retailer or dealer who sells wine produced by the permit holder's winery;

(8) for wine described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the wine on the licensed premises; and

(B) may not sell, offer to sell, or allow the sale of the wine on the licensed premises;

(9) is entitled to purchase and sell bulk wine as set forth in this chapter;

(10) is entitled to sell wine as authorized by this section for carryout on Sunday; and

(11) is entitled to sell and ship the farm winery's wine to a person located in another state in accordance with the laws of the other state.

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at not more than three (3) additional

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locations that are separate from the winery. At the additional locations, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

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

SECTION 5. IC 7.1-3-13-2.5, AS AMENDED BY P.L.165-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2.5. ~~(a)~~ All premises to be used by an applicant for a wine wholesaler's permit must be described in the application for the permit and in the permit, if the permit is issued. A wine wholesaler may not keep or store wine at any place other than the premises described in the wine wholesaler's application and permit. A person who holds a wine wholesaler's permit and who also holds a beer wholesaler's permit is not disqualified from using multiple premises for the storage of wine because the person holds a beer wholesaler's permit. The holder of a wine wholesaler's permit issued under IC 7.1-4-4.1-13(c) may enter into an agreement to:

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

or both.

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

SECTION 6. IC 7.1-3-22-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) This section applies to a brewer that manufactures more than ~~twenty thousand (20,000)~~ **(30,000)** barrels of beer in a calendar year.

(b) The commission may issue and have outstanding only one (1) brewer's permit for each unit of population of this state of one hundred and seventy-five thousand (175,000) or major fraction thereof. The commission, however, shall not issue more than four (4) brewer's permits in the same congressional district.

SECTION 7. IC 7.1-3-23-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 23. (a) This section applies to a brewer that manufactures more than ~~twenty thirty~~

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thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year.

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

SECTION 8. IC 7.1-3-26-7, AS AMENDED BY P.L.54-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) The commission may issue a direct wine seller's permit to an applicant who meets all of the following requirements:

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

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~~(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 9. 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 conditions are satisfied before the sale or by the times set forth as follows:

(1) The consumer provides the direct wine seller with the following:

(A) The verification required by section 6(4) of this chapter in an initial face-to-face transaction.

(B) Notwithstanding clause (A), if the consumer provided the information specified in section 6(5)(A) of this chapter after April 1, 2006, but before December 31, 2006, and the seller provides the name and Indiana address of the consumer under section 6(5)(B) of this chapter to the commission before January 15, 2007, the consumer is not required to comply with section 6(4) of this chapter.

(2) The direct wine seller meets the following requirements:

(A) Maintains for two (2) years all records of wine sales made under this chapter. If the records are requested by the commission, a direct wine seller shall:

- (i) make the records available to the commission during the direct wine seller's regular business hours; or
- (ii) at the direction of the commission, deliver copies to the commission.

(B) Stamps, prints, or labels on the outside of the shipping container the following: "CONTAINS WINE. SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

(C) Causes the wine to be delivered by the holder of a valid carrier's alcoholic beverage permit under IC 7.1-3-18.

(D) Directs the carrier to verify that the individual personally

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receiving the wine shipment is at least twenty-one (21) years of age.

(E) Does not ship to any consumer more than two hundred sixteen (216) liters of wine in any calendar year.

(F) Remits to the department of state revenue monthly all Indiana excise, sales, and use taxes on the shipments made into Indiana by the direct wine seller during the previous month.

(G) Ships to a consumer in Indiana only wine manufactured, produced, or bottled by the applicant.

SECTION 10. IC 7.1-4-4.1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) This section applies to the following permits:

- (1) Brewer's permit for the manufacture of more than ~~twenty~~ **thirty** thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year.
- (2) Distiller's permit.
- (3) Malt manufacturer's permit.
- (4) Rectifier's permit.
- (5) Vintner's permit.
- (6) Wine bottler's permit.

(b) A permit fee of two thousand dollars (\$2,000) is annually imposed for the issuance of each permit described in subsection (a).

SECTION 11. IC 7.1-4-4.1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 16. The annual fee for a brewer's permit for the manufacture of not more than ~~twenty~~ **thirty** thousand ~~(20,000)~~ **(30,000)** barrels of beer in a calendar year is five hundred dollars (\$500).

SECTION 12. IC 7.1-5-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) This section applies to a brewer that manufactures more than ~~twenty~~ **thirty** thousand ~~(20,000)~~ **(30,000)** 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 13. IC 7.1-5-9-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) Except as provided in subsection (b), it is unlawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in a manufacturer's or wholesaler's permit of any type.

(b) It is lawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in a brewer's permit for a brewery that manufactures not more than ~~twenty~~ **thirty**

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thousand (~~20,000~~) **(30,000)** barrels of beer in a calendar year.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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