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## SENATE BILL No. 244

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3-23-26.1; IC 7.1-5-7-5.1; IC 34-30-2; IC 35-46-1-10.1.

**Synopsis:** Penalty for serving alcohol to minor patron. Provides that an alcoholic beverage retailer or dealer may not: (1) be fined; (2) have that person's retailer or dealer permit suspended; (3) have that person's retailer or dealer permit revoked; or (4) have a civil judgment assessed against the person; if an employee or agent of the retailer or dealer commits the violation and the employee or agent has an unexpired server certificate at the time the violation occurs.

**Effective:** July 1, 2011.

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January 6, 2011, read first time and referred to Committee on Public Policy.

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Introduced

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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## SENATE BILL No. 244



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 7.1-3-23-26.1, AS AMENDED BY P.L.161-2005,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 26.1. (a) **Except as provided in subsection (c)**,  
4 a retailer permittee or dealer permittee who violates IC 7.1-3-1.5-13,  
5 IC 7.1-5-7-4, or IC 7.1-5-7-8 through IC 7.1-5-7-13 may be fined, have  
6 the permittee's permit suspended, or be fined and have the permittee's  
7 permit suspended, as determined by the commission. However, if the  
8 penalty imposed by the commission exceeds a fine and three (3) day  
9 suspension, the commission must issue written findings of fact and  
10 conclusions which show the necessity of the penalty. If the retailer or  
11 dealer permittee commits a subsequent violation of the provisions  
12 listed in this subsection within twelve (12) months of the first violation,  
13 the commission may fine the permittee, fine the permittee and suspend  
14 the permittee's permit, or revoke the permittee's permit. However, if the  
15 penalty exceeds a fine and suspension of more than fifteen (15) days,  
16 the commission must issue written findings of fact and conclusions  
17 which show the necessity of the penalty.



(b) The holder of an employee permit who violates IC 7.1-5-7-4 or IC 7.1-5-7-8 through IC 7.1-5-7-13 may be fined, have the permittee's permit suspended, be both fined and have the permittee's permit suspended, or have the permittee's permit revoked, as determined by the commission.

**(c) The holder of a retailer or dealer permit may not:**

**(1) be fined;**

**(2) have the holder's permit suspended;**

**(3) be fined and have the holder's permit suspended; or**

**(4) have the holder's permit revoked;**

**under this section for a violation of IC 7.1-5-7-8 by an employee or agent of the retailer or dealer if, at the time the violation occurred, the employee or agent had an unexpired server certificate issued under IC 7.1-3-1.5.**

SECTION 2. IC 7.1-5-7-5.1, AS AMENDED BY P.L.10-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5.1. (a) A permittee in a criminal prosecution or in a proceeding before the commission or a local board based upon a charge of unlawfully furnishing an alcoholic beverage to a minor may offer ~~either or both~~ **one (1) or more** of the following proofs as a defense or defenses to the prosecution or proceeding:

(1) That:

(A) the purchaser:

(i) falsely represented the purchaser's age in a written statement, such as that prescribed by subsection (b), supported by two (2) forms of identification showing the purchaser to be at least twenty-one (21) years of age;

(ii) produced a driver's license bearing the purchaser's photograph;

(iii) produced a photographic identification card, issued under IC 9-24-16-1 or a similar card, issued under the laws of another state or the federal government, showing that the purchaser was of legal age to make the purchase; or

(iv) produced a government issued document bearing the purchaser's photograph and showing the purchaser to be at least twenty-one (21) years of age;

(B) the appearance of the purchaser was such that an ordinary prudent person would believe the purchaser to be of legal age to make the purchase; and

(C) the sale was made in good faith based upon the reasonable belief that the purchaser was actually of legal age to make the purchase.

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1 (2) That the permittee or the permittee's agent had taken all  
 2 reasonable precautions in instructing the permittee's employees,  
 3 in hiring the permittee's employees, and in supervising them as to  
 4 sale of alcoholic beverages to minors.  
 5 **(3) That the sale of the alcoholic beverages was done by an**  
 6 **employee or agent of the holder of the retailer or dealer**  
 7 **permit who held an unexpired server certificate issued under**  
 8 **IC 7.1-3-1.5 at the time the sale occurred. The defense in this**  
 9 **subdivision is available only to the holder of a retailer or**  
 10 **dealer permit in a proceeding under IC 7.1-3-23-26.1 or**  
 11 **IC 35-46-1-10.1.**

12 (b) The following written statement is sufficient for the purposes of  
 13 subsection (a)(1)(A)(i):

14 REPRESENTATION AND STATEMENT  
 15 OF AGE  
 16 FOR PURCHASE OF ALCOHOLIC  
 17 BEVERAGES

18 I understand that misrepresentation of age to induce the sale,  
 19 service, or delivery of alcoholic beverages to me is cause for my arrest  
 20 and prosecution, which can result in punishment as follows:

- 21 (1) Possible payment of a fine of up to \$500.
- 22 (2) Possible imprisonment for up to 60 days.
- 23 (3) Possible loss or deferment of driver's license privileges for up  
 24 to one year.
- 25 (4) Possible requirement to participate in an alcohol education or  
 26 treatment program.

27 Knowing the possible penalties for misstatement, I hereby represent  
 28 and state, for the purpose of inducing \_\_\_\_\_

29 (Name of licensee)

30 to sell, serve, or deliver alcoholic beverages to me, that I was born:

31 \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and am \_\_\_\_\_ years of age.

32 (Month) (Day) (Year)

33 Date \_\_\_\_\_

Signed \_\_\_\_\_

34 Address \_\_\_\_\_

35  
 36 Other Identification  
 37 Presented:  
 38 Nonphoto driver's  
 39 license: (number & state)

Signature of person  
 who witnessed completion  
 of this statement  
 by patron:

40 \_\_\_\_\_  
 41 Social Security Number

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1 Other \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

4 SECTION 3. IC 34-30-2-19.7 IS ADDED TO THE INDIANA  
5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
6 [EFFECTIVE JULY 1, 2011]: **Sec. 19.7. IC 7.1-3-23-26.1**  
7 **(Concerning the furnishing of alcoholic beverages to a minor by an**  
8 **employee or agent of an alcoholic beverage retailer or dealer).**

9 SECTION 4. IC 34-30-2-151.5 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2011]: **Sec. 151.5. IC 35-46-1-10.1**  
12 **(Concerning the furnishing of alcoholic beverages to a minor by an**  
13 **employee or agent of an alcoholic beverage retailer or dealer).**

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

20 (1) If the licensed premises at that specific business location has  
21 not been issued a citation or summons for a violation of  
22 IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil  
23 penalty of up to two hundred dollars (\$200).

24 (2) If the licensed premises at that specific business location has  
25 had one (1) citation or summons for a violation of IC 7.1-5-7-8 in  
26 the previous one hundred eighty (180) days, a civil penalty of up  
27 to four hundred dollars (\$400).

28 (3) If the licensed premises at that specific business location has  
29 had two (2) citations or summonses for a violation of IC 7.1-5-7-8  
30 in the previous one hundred eighty (180) days, a civil penalty of  
31 up to seven hundred dollars (\$700).

32 (4) If the licensed premises at that specific business location has  
33 had three (3) or more citations or summonses for a violation of  
34 IC 7.1-5-7-8 in the previous one hundred eighty (180) days, a civil  
35 penalty of up to one thousand dollars (\$1,000).

36 (b) The defenses set forth in IC 7.1-5-7-5.1 are available to a permit  
37 holder in an action under this section.

38 **(c) A retailer or dealer permit holder may not be assessed a civil**  
39 **judgment under this section for a violation of IC 7.1-5-7-8 if:**

40 **(1) an employee or agent of the retailer or dealer committed**  
41 **the violation; and**

42 **(2) at the time the violation occurred, the employee or agent**

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1           **had an unexpired server certificate issued under IC 7.1-3-1.5.**  
2           ~~(c)~~ **(d)** Unless a person less than twenty-one (21) years of age buys  
3 or receives an alcoholic beverage under the direction of a law  
4 enforcement officer as part of an enforcement action, a permit holder  
5 that sells alcoholic beverages is not liable under this section unless the  
6 person less than twenty-one (21) years of age who bought or received  
7 the alcoholic beverage is charged for violating IC 7.1-5-7-7.  
8           ~~(d)~~ **(e)** All civil penalties collected under this section shall be  
9 deposited in the alcohol and tobacco commission's enforcement and  
10 administration fund under IC 7.1-4-10.

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