

# HOUSE BILL No. 1132

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3; IC 7.1-4; IC 7.1-5-11.

**Synopsis:** Farm wineries and direct wine sellers. Allows a farm winery permittee to sell not more than a total of 12,000 gallons of wine to a person who is the holder of a wine dealer's permit and a wine retailer's permit. Removes a provision that requires an initial face-to-face transaction between a consumer and a direct wine seller permittee before the permittee may ship to the consumer in Indiana. Removes provisions concerning certain requirements for applicants of direct wine seller's permits. Allows a direct wine seller permittee to ship wine to a consumer if the consumer: (1) sends to the direct wine seller permittee a copy of an approved government issued identification showing that the consumer is at least 21 years of age; or (2) uses an Internet based service that is approved by the alcohol and tobacco commission and specializes in age and identification verification. 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. Allows a direct wine seller permittee to directly ship not more than 18,000 gallons of wine in Indiana in any permit year. (Current law allows 27,000 liters.) Requires a direct wine seller permittee to pay the wine excise tax or the hard cider excise tax on an alcoholic beverage to which the tax is applicable and that has been manufactured or imported by the direct wine seller permittee. Makes conforming changes. Repeals a provision that creates a defense to a charge that a wine seller permittee sold to a consumer that did not meet certain requirements.

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**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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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 7.1-3-12-5, AS AMENDED BY P.L.165-2006,  
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 5. (a) The holder of a farm winery permit:  
4 (1) is entitled to manufacture wine and to bottle wine produced by  
5 the permit holder's farm winery;  
6 (2) is entitled to serve complimentary samples of the winery's  
7 wine on the licensed premises or an outside area that is  
8 contiguous to the licensed premises as approved by the  
9 commission if each employee who serves wine on the licensed  
10 premises:  
11 (A) holds an employee permit under IC 7.1-3-18-9; and  
12 (B) completes a server training program approved by the  
13 commission;  
14 (3) is entitled to sell the winery's wine on the licensed premises to  
15 consumers either by the glass, or by the bottle, or both;  
16 (4) is entitled to sell the winery's wine to consumers by the bottle  
17 at a farmers' market that is operated on a nonprofit basis;



1 (5) is entitled to sell wine by the bottle or by the case to a person  
 2 who is the holder of a permit to sell wine at wholesale **issued**  
 3 **under IC 7.1-3-13;**  
 4 **(6) is entitled to sell to holders of:**  
 5 (A) wine retailer's permits issued under IC 7.1-3-14; and  
 6 (B) wine dealer's permits issued under IC 7.1-3-15;  
 7 **not more than a total of twelve thousand (12,000) gallons of**  
 8 **wine, by the bottle or by the case, during a permit year;**  
 9 ~~(6)~~ (7) is exempt from the provisions of IC 7.1-3-14;  
 10 ~~(7)~~ (8) is entitled to advertise the name and address of any retailer  
 11 or dealer who sells wine produced by the permit holder's winery;  
 12 ~~(8)~~ (9) for wine described in IC 7.1-1-2-3(a)(4):  
 13 (A) may allow transportation to and consumption of the wine  
 14 on the licensed premises; and  
 15 (B) may not sell, offer to sell, or allow the sale of the wine on  
 16 the licensed premises;  
 17 ~~(9)~~ (10) is entitled to purchase and sell bulk wine as set forth in  
 18 this chapter;  
 19 ~~(10)~~ (11) is entitled to sell wine as authorized by this section for  
 20 carryout on Sunday; and  
 21 ~~(11)~~ (12) is entitled to sell and ship the farm winery's wine to a  
 22 person located in another state in accordance with the laws of the  
 23 other state.  
 24 (b) With the approval of the commission, a holder of a permit under  
 25 this chapter may conduct business at not more than three (3) additional  
 26 locations that are separate from the winery. At the additional locations,  
 27 the holder of a permit may conduct any business that is authorized at  
 28 the first location, except for the manufacturing or bottling of wine.  
 29 (c) With the approval of the commission, a holder of a permit under  
 30 this chapter may, individually or with other permit holders under this  
 31 chapter, participate in a trade show or an exposition at which products  
 32 of each permit holder participant are displayed, promoted, and sold.  
 33 The commission may not grant approval under this subsection to a  
 34 holder of a permit under this chapter for more than ~~thirty (30)~~  
 35 **forty-five (45)** days in a calendar year.  
 36 SECTION 2. IC 7.1-3-13-2.5, AS AMENDED BY P.L.165-2006,  
 37 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 2011]: Sec. 2.5. ~~(a)~~ All premises to be used by an applicant for  
 39 a wine wholesaler's permit must be described in the application for the  
 40 permit and in the permit, if the permit is issued. A wine wholesaler may  
 41 not keep or store wine at any place other than the premises described  
 42 in the wine wholesaler's application and permit. A person who holds a

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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 3. IC 7.1-3-26-6, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. A seller may sell and ship wine directly only to a consumer who meets all of the following requirements:

- (1) The consumer is at least twenty-one (21) years of age.
- (2) The consumer has an Indiana address.
- (3) The consumer intends to use wine purchased under this chapter for personal use only and not for resale or other commercial purposes.
- (4) Except as provided in subdivision (5), the consumer has provided to the seller in one (1) initial face-to-face transaction at the seller's place of business appearing on the seller's application for a direct wine seller's permit or any locations authorized by IC 7.1-3-12-5 all the following:

(A) Name, telephone number, Indiana address, or consumer's Indiana business address:

(B) Proof of age by a state issued driver's license or state issued identification card showing the consumer to be at least twenty-one (21) years of age:

(C) A verified statement, made under penalties for perjury, that the consumer satisfies the requirements of subdivisions (1) through (3):

(5) If:

(A) before April 1, 2006, the consumer has engaged in a transaction with a seller in which the seller sold wine to the consumer and; after April 1, 2006, but before December 31, 2006, the consumer provides the seller with a verified statement, made under penalties for perjury, that the consumer is at least twenty-one (21) years of age; and

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1 (B) the seller provides the name and Indiana address of the  
2 consumer to the commission before January 15, 2007;  
3 the seller may sell directly to the consumer in accordance with  
4 this chapter:

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

- 10 (1) The applicant is domiciled and has its principal place of
- 11 business in the United States.
- 12 (2) The applicant is engaged in the manufacture of wine.
- 13 (3) The applicant holds and acts within the scope of authority of
- 14 an alcoholic beverage license or permit to manufacture wine that
- 15 is required:
  - 16 (A) in Indiana or the state where the applicant is domiciled;
  - 17 and
  - 18 (B) by the Tax and Trade Bureau of the United States
  - 19 Department of the Treasury.
- 20 (4) The applicant qualifies with the secretary of state to do
- 21 business in Indiana and consents to the personal jurisdiction of
- 22 the commission and the courts of Indiana.
- 23 (5) The applicant files a surety bond with the commission in
- 24 accordance with IC 7.1-3-1, or deposits cash in an escrow account
- 25 with the commission, in the amount required of an applicant for
- 26 a vintner's permit under IC 7.1-3-1-7.
- 27 (6) The applicant:
  - 28 (A) does not hold a permit or license to wholesale alcoholic
  - 29 beverages issued by any authority; and
  - 30 (B) is not owned in whole or in part or controlled by a person
  - 31 who holds a permit or license to wholesale alcoholic
  - 32 beverages.
- 33 (7) The applicant sells not more than one million (1,000,000)
- 34 gallons of wine per year in Indiana; excluding wine shipped to an
- 35 out-of-state address.
- 36 (8) The applicant:
  - 37 (A) has not distributed wine through a wine wholesaler in
  - 38 Indiana within the one hundred twenty (120) days immediately
  - 39 preceding the applicant's application for a direct wine seller's
  - 40 permit and does not distribute wine through a wine wholesaler
  - 41 in Indiana during the term of the direct wine seller's permit; or
  - 42 (B) has operated as a farm winery under IC 7.1-3-12.

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- 1           ~~(9)~~ The applicant is not the parent, subsidiary, or affiliate of
- 2           another entity manufacturing any alcoholic beverage.
- 3           ~~(10)~~ **(6)** The applicant completes documentation regarding the
- 4           applicant's application required by the commission.
- 5           ~~(b)~~ The commission may issue a direct wine seller's permit to an
- 6           applicant who:
- 7            ~~(1)~~ meets the requirements under subsection (a); and
- 8            ~~(2)~~ holds a permit issued under this title that allows the sale of an
- 9            alcoholic beverage at retail.

10           SECTION 5. IC 7.1-3-26-9, AS ADDED BY P.L.165-2006,  
 11           SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12           JULY 1, 2011]: Sec. 9. A direct wine seller's permit entitles a seller to  
 13           sell and ship wine to a consumer by receiving and filling orders that the  
 14           consumer transmits by electronic or other means if all of the following  
 15           conditions are satisfied before the sale or by the times set forth as  
 16           follows:

- 17           (1) The consumer: provides the direct wine seller with the
- 18           following:
  - 19            ~~(A)~~ The verification required by section ~~6(4)~~ of this chapter in
  - 20            an initial face-to-face transaction.
  - 21            ~~(B)~~ Notwithstanding clause (A), if the consumer provided the
  - 22            information specified in section ~~6(5)(A)~~ of this chapter after
  - 23            April 1, 2006, but before December 31, 2006, and the seller
  - 24            provides the name and Indiana address of the consumer under
  - 25            section ~~6(5)(B)~~ of this chapter to the commission before
  - 26            January 15, 2007, the consumer is not required to comply with
  - 27            section ~~6(4)~~ of this chapter.
  - 28            **(A) provides the direct wine seller with a copy of an**
  - 29            **approved government issued identification showing that**
  - 30            **the consumer is at least twenty-one (21) years of age; or**
  - 31            **(B) provides the direct wine seller proof that the individual**
  - 32            **is at least twenty-one (21) years of age by using an Internet**
  - 33            **based service that:**
    - 34              **(i) is approved by the commission; and**
    - 35              **(ii) specializes in age and identification verification.**
- 36           (2) The direct wine seller meets the following requirements:
  - 37            (A) Maintains for two (2) years all records of wine sales made
  - 38            under this chapter. If the records are requested by the
  - 39            commission, a direct wine seller shall:
    - 40              (i) make the records available to the commission during the
    - 41              direct wine seller's regular business hours; or
    - 42              (ii) at the direction of the commission, deliver copies to the

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- 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 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 6. IC 7.1-3-26-12, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. During a permit year, a direct wine seller may not direct ship in Indiana more than ~~twenty-seven~~ **eighteen** thousand ~~(27,000)~~ **(18,000)** gallons of wine.

SECTION 7. IC 7.1-3-26-15, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) Except as provided in subsections (b) and (c), a seller who violates this chapter commits a Class A infraction.

(b) ~~Except as provided in subsection (d)~~; A seller who:

- (1) knowingly or intentionally violates this chapter; and
- (2) has one (1) prior unrelated conviction or judgment for an infraction under this section for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class A misdemeanor.

(c) ~~Except as provided in subsection (d)~~; A seller who:

- (1) knowingly or intentionally violates this chapter; and
- (2) has at least two (2) prior unrelated convictions or judgments for infractions under this section for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class D felony.

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1 (d) A person who violates section 6(5) of this chapter commits a  
 2 Class A infraction. The commission may consider an infraction  
 3 committed under this subsection in its determination of whether to  
 4 renew a seller's permit.

5 SECTION 8. IC 7.1-4-4-3 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. ~~Persons Liable for~~  
 7 ~~Tax~~. The wine excise tax shall be paid by the holder of a vintner's  
 8 permit, a farm winery permit, a wine wholesaler's permit, **a direct wine**  
 9 **seller's permit**, a dining car wine permit, or a boat wine permit on the  
 10 alcoholic beverage to which the tax is applicable and which has been  
 11 manufactured or imported by ~~him~~ **the permit holder** into this state.  
 12 However, the same article shall be taxed only once for wine excise tax  
 13 purposes.

14 SECTION 9. IC 7.1-4-4.5-3 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. The hard cider  
 16 excise tax shall be paid by the holder of a vintner's permit, a farm  
 17 winery permit, a wine wholesaler's permit, **a direct wine seller's**  
 18 **permit**, a beer wholesaler's permit, a dining car wine permit, or a boat  
 19 wine permit on the hard cider to which the tax is applicable and that is  
 20 manufactured or imported by the person into this state. However, an  
 21 item may only be taxed once for hard cider excise tax purposes.

22 SECTION 10. IC 7.1-5-11-1.5, AS AMENDED BY P.L.165-2006,  
 23 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2011]: Sec. 1.5. (a) Except as provided in **IC 7.1-3-12-5 and**  
 25 **IC 7.1-3-26**, it is unlawful for a person in the business of selling  
 26 alcoholic beverages in Indiana or outside Indiana to ship or cause to be  
 27 shipped an alcoholic beverage directly to a person in Indiana who does  
 28 not hold a valid wholesaler permit under this title. This includes the  
 29 ordering and selling of alcoholic beverages over a computer network  
 30 (as defined by IC 35-43-2-3(a)).

31 (b) Upon a determination by the commission that a person has  
 32 violated subsection (a), a wholesaler may not accept a shipment of  
 33 alcoholic beverages from the person for a period of up to one (1) year  
 34 as determined by the commission.

35 (c) The commission shall adopt rules under IC 4-22-2 to implement  
 36 this section.

37 SECTION 11. IC 7.1-3-26-16 IS REPEALED [EFFECTIVE JULY  
 38 1, 2011].

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