



January 21, 2011

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## SENATE BILL No. 112

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DIGEST OF SB 112 (Updated January 19, 2011 5:37 pm - DI 110)

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

**Synopsis:** Alcoholic beverage wholesalers. Allows a person to wholesale beer, wine, and liquor. (Current law allows a person to wholesale only wine and beer or wine and liquor.) Allows a wine wholesaler that also holds a liquor wholesaler's permit to sell more than 1,000,000 gallons of flavored malt beverage during a calendar year. Makes it unlawful for a primary source of supply to cancel or terminate an agreement or contract between a beer wholesaler and a primary source of supply for the purpose of transferring an existing brand of beer or flavored malt beverage or a territory for an existing brand of beer or flavored malt beverage to the holder of a liquor wholesaler's permit. Repeals a provision that prohibits the alcohol and tobacco commission from issuing a beer wholesaler's permit to a person who holds both a wine wholesaler's permit and a liquor wholesaler's permit.

**Effective:** July 1, 2011.

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### Merritt, Steele, Arnold, Taylor

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January 5, 2011, read first time and referred to Committee on Public Policy.  
January 20, 2011, amended, reported favorably — Do Pass.

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SB 112—LS 6558/DI 87+



January 21, 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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## SENATE BILL No. 112

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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 7.1-3-13-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The commission  
3 may issue a wine wholesaler's permit to sell wine, or wine and brandy,  
4 at wholesale to a person who:  
5 (1) ~~notwithstanding IC 7.1-5-9-4~~, holds a beer wholesaler's  
6 permit;  
7 (2) holds a liquor wholesaler's permit; ~~or~~  
8 **(3) holds a beer wholesaler's permit and a liquor wholesaler's**  
9 **permit; or**  
10 ~~(3)~~ **(4)** does not hold an alcoholic beverage wholesaler's permit,  
11 but meets the qualifications to hold either a beer or a liquor  
12 wholesaler's permit.  
13 (b) The holder of a wine wholesaler's permit under subsection  
14 (a)(1), ~~or~~ (a)(2), **or (a)(3):**  
15 (1) is considered the same as a person who holds a wine  
16 wholesaler's permit under subsection ~~(a)(3)~~ **(a)(4)** for purposes of  
17 conducting activities and operations under the wine wholesaler's

SB 112—LS 6558/DI 87+



1 permit; and  
 2 (2) may operate the beer or liquor wholesale business  
 3 independently of the wine wholesale business.  
 4 SECTION 2. IC 7.1-3-13-3, AS AMENDED BY P.L.165-2006,  
 5 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2011]: Sec. 3. (a) The holder of a wine wholesaler's permit  
 7 may purchase, import, and transport wine, brandy, or flavored malt  
 8 beverage from the primary source of supply. A wine wholesaler may  
 9 export and transport wine, brandy, or flavored malt beverage by the  
 10 bottle, barrel, cask, or other container, to points outside Indiana. A  
 11 wine wholesaler is entitled to sell, furnish, and deliver wine or flavored  
 12 malt beverage from inventory that has been located on the wholesaler's  
 13 premises before the time of invoicing and delivery to a wine  
 14 wholesaler, a wine retailer, a supplemental caterer, a temporary wine  
 15 permittee, and a wine dealer, but not at retail. A wine wholesaler may  
 16 sell, furnish, and deliver brandy from inventory that has been located  
 17 on the wholesaler's premises before the time of invoicing and delivery,  
 18 but not at retail, only to a person who holds a liquor retailer's permit,  
 19 a supplemental caterer's permit, or a liquor dealer's permit. A holder of  
 20 a wine wholesaler's permit may sell wine to the wine wholesaler's bona  
 21 fide regular employees.  
 22 (b) As used in this section, "brandy" means:  
 23 (1) any alcoholic distillate described in 27 CFR 5.22(d) as in  
 24 effect on January 1, 1983; or  
 25 (2) a beverage product that:  
 26 (A) is prepared from a liquid described in subdivision (1);  
 27 (B) is classified as a cordial or liqueur as defined in 27 CFR  
 28 5.22(h) as in effect on January 1, 1997; and  
 29 (C) meets the following requirements:  
 30 (i) At least sixty-six and two-thirds percent (66 2/3%) of the  
 31 product's alcohol content is composed of a substance  
 32 described in subdivision (1).  
 33 (ii) The product's label makes no reference to any distilled  
 34 spirit other than brandy.  
 35 (iii) The product's alcohol content is not less than sixteen  
 36 percent (16%) by volume or thirty-two (32) degrees proof.  
 37 (iv) The product contains dairy cream.  
 38 (v) The product's sugar, dextrose, or levulose content is at  
 39 least twenty percent (20%) of the product's weight.  
 40 (vi) The product contains caramel coloring.  
 41 (c) Nothing in this section allows a wine wholesaler to sell, give,  
 42 purchase, transport, or export beer (as defined in IC 7.1-1-3-6) unless

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1 the wine wholesaler also holds a beer wholesaler's permit under  
2 IC 7.1-3-3-1.

3 (d) A wine wholesaler that also holds a liquor wholesaler's permit  
4 under IC 7.1-3-8 may not:

- 5 (1) hold a beer wholesaler's permit under IC 7.1-3-3;
- 6 (2) possess, sell, or transport beer; or
- 7 (3) sell more than one million (1,000,000) gallons of flavored  
8 malt beverage during a calendar year.

9 SECTION 3. IC 7.1-5-5-9, AS AMENDED BY P.L.94-2008,  
10 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2011]: Sec. 9. (a) This section does not apply to product  
12 management (as described in 905 IAC 1-5.2-15) by a permittee.

13 (b) It is unlawful for a permittee to knowingly or intentionally  
14 coerce, or attempt to coerce, or persuade another permittee to enter into  
15 an agreement, or to take an action, which would violate a provision of  
16 this title or of the rules and regulations of the commission.

17 (c) It is unlawful for a beer wholesaler or a primary source of supply  
18 to cancel or terminate an agreement or contract between a beer  
19 wholesaler and a primary source of supply for the sale of beer, unfairly  
20 and without due regard for the equities of the other party.

21 (d) **As used in this subsection, "product" has the meaning set  
22 forth in IC 7.1-3-25-2. It is unlawful for a primary source of supply  
23 to cancel or terminate an agreement or contract between a beer  
24 wholesaler and a primary source of supply for the purpose of  
25 transferring a product or a territory for a product to the holder of  
26 a liquor wholesaler's permit.**

27 SECTION 4. IC 7.1-5-9-3 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) This ~~section~~  
29 **subsection** applies to a brewer that manufactures more than twenty  
30 thousand (20,000) barrels of beer in a calendar year. ~~(b)~~ It is unlawful  
31 for the holder of a brewer's ~~or beer wholesaler's~~ permit to have an  
32 interest in a liquor permit of any type under this title.

33 **(b) It is unlawful for the holder of a beer wholesaler's permit to  
34 have an interest in a liquor permit other than a liquor wholesaler's  
35 permit.**

36 SECTION 5. IC 7.1-5-9-4 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. Except as provided  
38 in IC 7.1-3-3-4, an applicant for a beer wholesaler's permit shall have  
39 no interest in the following:

- 40 (1) A permit to manufacture or to sell at retail alcoholic beverages  
41 of any kind.
- 42 (2) Any other permit to wholesale ~~alcoholic beverages:~~ **beer.**

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1 (3) Through stock ownership or otherwise, a partnership, limited  
 2 liability company, or corporation that holds ~~(A)~~ a permit to  
 3 manufacture or to sell at retail alcoholic beverages of any kind. ~~or~~  
 4 ~~(B) any other permit to wholesale alcoholic beverages of any~~  
 5 ~~kind.~~

6 SECTION 6. IC 7.1-5-9-6 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. ~~Liquor Permittee's~~  
 8 ~~Interests Limited:~~ It is unlawful for the holder of a distiller's, rectifier's,  
 9 or liquor wholesaler's permit to have an interest in a beer permit ~~of any~~  
 10 ~~type under this title.~~ **other than a beer wholesaler's permit.**

11 SECTION 7. IC 7.1-5-9-16 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 13 1, 2011]: **Sec. 16. A wholesaler of alcoholic beverages may hold**  
 14 **permits to wholesale beer, wine, and liquor.**

15 SECTION 8. IC 7.1-3-3-19 IS REPEALED [EFFECTIVE JULY 1,  
 16 2011].

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COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 112, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 3. IC 7.1-5-5-9, AS AMENDED BY P.L.94-2008, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) This section does not apply to product management (as described in 905 IAC 1-5.2-15) by a permittee.

(b) It is unlawful for a permittee to knowingly or intentionally coerce, or attempt to coerce, or persuade another permittee to enter into an agreement, or to take an action, which would violate a provision of this title or of the rules and regulations of the commission.

(c) It is unlawful for a beer wholesaler or a primary source of supply to cancel or terminate an agreement or contract between a beer wholesaler and a primary source of supply for the sale of beer, unfairly and without due regard for the equities of the other party.

**(d) As used in this subsection, "product" has the meaning set forth in IC 7.1-3-25-2. It is unlawful for a primary source of supply to cancel or terminate an agreement or contract between a beer wholesaler and a primary source of supply for the purpose of transferring a product or a territory for a product to the holder of a liquor wholesaler's permit."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 112 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 7, Nays 3.

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