

SENATE BILL No. 138

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-3; IC 7.1-3; IC 7.1-4-4.1-13; IC 7.1-5-9-12.

Synopsis: Alcoholic beverage wholesalers. Allows a wholesaler or an affiliate of a wholesaler to provide or coordinate the transportation, distribution, or warehousing of alcoholic beverages on behalf of another wholesaler of alcoholic beverages of any type. Imposes an additional annual permit fee of \$50,000 on a wholesaler or an affiliate of a wholesaler that, on behalf of another wholesaler in a permit year, provides or coordinates the transportation, distribution, or warehousing of any type of alcoholic beverage that the wholesaler is not authorized to wholesale under the wholesaler's permit.

Effective: July 1, 2012.

Kenley, Steele, Arnold, Taylor

January 4, 2012, read first time and referred to Committee on Public Policy.

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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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 138



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 7.1-1-3-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 3.5. "Affiliate" means a person that directly, or**
4 **indirectly through one (1) or more intermediaries, controls, is**
5 **controlled by, or is under common control with a specified person.**

6 SECTION 2. IC 7.1-1-3-22.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2012]: **Sec. 22.5. (a) "Logistic services"**
9 **means providing or coordinating the:**

- 10 (1) **transportation;**
- 11 (2) **distribution; or**
- 12 (3) **warehousing;**
- 13 **of alcoholic beverages.**

14 (b) **The term does not include the sale of alcoholic beverages.**

15 SECTION 3. IC 7.1-1-3-23.8 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2012]: **Sec. 23.8. "Contracting wholesaler"**



1 means a wholesaler that contracts to have logistic services
2 performed by a wholesaler-carrier.

3 SECTION 4. IC 7.1-1-3-48.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2012]: Sec. 48.5. "Wholesaler-carrier"
6 means:

7 (1) a wholesaler of alcoholic beverages; or
8 (2) an affiliate of a wholesaler of alcoholic beverages;
9 that holds a carrier's alcoholic permit under IC 7.1-3-18-1.

10 SECTION 5. IC 7.1-3-3-5, AS AMENDED BY P.L.94-2008,
11 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2012]: Sec. 5. (a) The holder of a beer wholesaler's permit
13 may purchase and import from the primary source of supply, possess,
14 and sell at wholesale, beer and flavored malt beverages manufactured
15 within or without this state.

16 (b) A beer wholesaler permittee may possess, transport, sell, and
17 deliver beer to:

18 (1) another beer wholesaler authorized by the brewer to sell the
19 brand purchased;
20 (2) an employee; or
21 (3) a holder of a beer retailer's permit, beer dealer's permit,
22 temporary beer permit, dining car permit, boat permit, airplane
23 permit, or supplemental caterer's permit;

24 located within this state. **Except as provided in IC 7.1-3-27**, the sale,
25 transportation, and delivery of beer shall be made only from inventory
26 that has been located on the wholesaler's premises before the time of
27 invoicing and delivery.

28 (c) The beer wholesaler's bona fide regular employees may purchase
29 beer from the wholesaler in:

30 (1) bottles, cans, or any other type of permissible containers in an
31 amount not to exceed forty-eight (48) pints; or
32 (2) one (1) keg;
33 at any one (1) time.

34 (d) The importation, transportation, possession, sale, and delivery
35 of beer shall be subject to the rules of the commission and subject to
36 the same restrictions provided in this title for a person holding a
37 brewer's permit.

38 (e) The holder of a beer wholesaler's permit may purchase, import,
39 possess, transport, sell, and deliver any commodity listed in
40 IC 7.1-3-10-5, unless prohibited by this title. However, a beer
41 wholesaler may deliver flavored malt beverages only to the holder of
42 one (1) of the following permits:

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1 (1) A beer wholesaler or wine wholesaler permit, if the wholesaler
 2 is authorized by the primary source of supply to sell the brand of
 3 flavored malt beverage purchased.

4 (2) A wine retailer's permit, wine dealer's permit, temporary wine
 5 permit, dining car wine permit, boat permit, airplane permit, or
 6 supplemental caterer's permit.

7 (f) A beer wholesaler may:

8 (1) store beer for an out-of-state brewer described in IC 7.1-3-2-9
 9 and deliver the stored beer to another beer wholesaler that the
 10 out-of-state brewer authorizes to sell the beer;

11 (2) perform all necessary accounting and auditing functions
 12 associated with the services described in subdivision (1); and

13 (3) receive a fee from an out-of-state brewer for the services
 14 described in subdivisions (1) through (2).

15 **(g) A beer wholesaler may perform logistic services for a**
 16 **reasonable fee on behalf of another wholesaler of any type of**
 17 **alcoholic beverage under IC 7.1-3-27.**

18 SECTION 6. IC 7.1-3-8-2 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. ~~Premises Described~~
 20 ~~in Application.~~ (a) The premises to be used by an applicant for a liquor
 21 wholesaler's permit shall be described in the application for the permit
 22 and in the permit if it is issued. **Except as provided in subsection (b),**
 23 a liquor wholesaler shall not be entitled to keep or store liquor at a
 24 place other than the premises described in the application and the
 25 permit.

26 **(b) A holder of a wholesaler's permit of any type may perform**
 27 **logistic services on behalf of the holder of a liquor wholesaler's**
 28 **permit as provided in IC 7.1-3-27.**

29 SECTION 7. IC 7.1-3-8-3, AS AMENDED BY P.L.94-2008,
 30 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2012]: Sec. 3. (a) The holder of a liquor wholesaler's permit
 32 shall be entitled to sell liquor at wholesale.

33 (b) A liquor wholesaler shall be entitled to purchase liquor within
 34 this state from a person who holds a distiller's permit, a rectifier's
 35 permit, or a liquor wholesaler's permit. A liquor wholesaler also may
 36 purchase liquor outside this state from the primary source of supply
 37 and, from that source, may transport and import liquor into this state.

38 (c) A liquor wholesaler may sell, transport, and deliver liquor only
 39 to a person who, under this title, holds a:

40 (1) liquor retailer's permit;

41 (2) supplemental caterer's permit;

42 (3) liquor dealer's permit; or

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1 (4) liquor wholesaler's permit.

2 **Except as provided in IC 7.1-3-27**, the sale, transportation, and
 3 delivery of liquor shall be made only from inventory that has been
 4 located on the wholesaler's premises before the time of invoicing and
 5 delivery, and only in permissible containers and is subject to the rules
 6 of the commission fixing the quantity which may be sold or delivered
 7 at any one (1) time.

8 (d) A liquor wholesaler's bona fide regular employees may purchase
 9 liquor from the wholesaler in an amount not to exceed eighteen (18)
 10 liters.

11 **(e) A liquor wholesaler may perform logistic services for a**
 12 **reasonable fee on behalf of another wholesaler of any type of**
 13 **alcoholic beverage under IC 7.1-3-27.**

14 SECTION 8. IC 7.1-3-13-2.5, AS AMENDED BY P.L.186-2011,
 15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2012]: Sec. 2.5. All premises to be used by an applicant for a
 17 wine wholesaler's permit must be described in the application for the
 18 permit and in the permit, if the permit is issued. **Except as provided**
 19 **in IC 7.1-3-27**, a wine wholesaler may not keep or store wine at any
 20 place other than the premises described in the wine wholesaler's
 21 application and permit. A person who holds a wine wholesaler's permit
 22 and who also holds a beer wholesaler's permit is not disqualified from
 23 using multiple premises for the storage of wine because the person
 24 holds a beer wholesaler's permit. The holder of a wine wholesaler's
 25 permit issued under IC 7.1-4-4.1-13(c) may enter into an agreement to:

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

30 or both.

31 SECTION 9. IC 7.1-3-13-3, AS AMENDED BY P.L.165-2006,
 32 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2012]: Sec. 3. (a) The holder of a wine wholesaler's permit
 34 may purchase, import, and transport wine, brandy, or flavored malt
 35 beverage from the primary source of supply. A wine wholesaler may
 36 export and transport wine, brandy, or flavored malt beverage by the
 37 bottle, barrel, cask, or other container, to points outside Indiana. A
 38 wine wholesaler is entitled to sell, furnish, and deliver wine or flavored
 39 malt beverage from inventory that has been located on the wholesaler's
 40 premises before the time of invoicing and delivery to a wine
 41 wholesaler, a wine retailer, a supplemental caterer, a temporary wine
 42 permittee, and a wine dealer, but not at retail. A wine wholesaler may

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1 sell, furnish, and deliver brandy from inventory that has been located
 2 on the wholesaler's premises before the time of invoicing and delivery,
 3 but not at retail, only to a person who holds a liquor retailer's permit,
 4 a supplemental caterer's permit, or a liquor dealer's permit. **However,**
 5 **a wine wholesaler may not sell wine, flavored malt beverage, or**
 6 **brandy from inventory located on the wholesaler's premises that**
 7 **the wine wholesaler is warehousing on behalf of another alcoholic**
 8 **beverage wholesaler under IC 7.1-3-27.** A holder of a wine
 9 wholesaler's permit may sell wine to the wine wholesaler's bona fide
 10 regular employees.

11 **(b) A wine wholesaler may perform logistic services for a**
 12 **reasonable fee on behalf of another wholesaler of any type of**
 13 **alcoholic beverage under IC 7.1-3-27.**

14 ~~(b)~~ (c) As used in this section, "brandy" means:

15 (1) any alcoholic distillate described in 27 CFR 5.22(d) as in
 16 effect on January 1, 1983; or

17 (2) a beverage product that:

18 (A) is prepared from a liquid described in subdivision (1);

19 (B) is classified as a cordial or liqueur as defined in 27 CFR
 20 5.22(h) as in effect on January 1, 1997; and

21 (C) meets the following requirements:

22 (i) At least sixty-six and two-thirds percent (66 2/3%) of the
 23 product's alcohol content is composed of a substance
 24 described in subdivision (1).

25 (ii) The product's label makes no reference to any distilled
 26 spirit other than brandy.

27 (iii) The product's alcohol content is not less than sixteen
 28 percent (16%) by volume or thirty-two (32) degrees proof.

29 (iv) The product contains dairy cream.

30 (v) The product's sugar, dextrose, or levulose content is at
 31 least twenty percent (20%) of the product's weight.

32 (vi) The product contains caramel coloring.

33 ~~(c)~~ (d) Nothing in this section allows a wine wholesaler to sell, give,
 34 purchase, transport, or export beer (as defined in IC 7.1-1-3-6) unless
 35 the wine wholesaler:

36 (1) also holds a beer wholesaler's permit under IC 7.1-3-3-1; or

37 (2) performs logistic services on behalf of another wholesaler
 38 under IC 7.1-3-27.

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

41 (1) hold a beer wholesaler's permit under IC 7.1-3-3;

42 (2) possess, sell, or transport beer, **except as provided in**

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1 **IC 7.1-3-27;** or
2 (3) sell more than one million (1,000,000) gallons of flavored
3 malt beverage during a calendar year.

4 SECTION 10. IC 7.1-3-27 IS ADDED TO THE INDIANA CODE
5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2012]:

7 **Chapter 27. Logistic Services**

8 **Sec. 1. Notwithstanding any other law, a wholesaler-carrier may**
9 **perform logistic services with regard to any type of alcoholic**
10 **beverage that the contracting wholesaler is permitted by this title**
11 **to wholesale.**

12 **Sec. 2. A wholesaler-carrier may not be required by the**
13 **commission to apply for or maintain a permit other than a**
14 **wholesaler permit or a carrier's alcoholic permit.**

15 **Sec. 3. A wholesaler-carrier that provides logistic services for**
16 **any type of alcoholic beverage that the wholesaler-carrier is not**
17 **authorized to wholesale under the wholesaler-carrier's wholesaler**
18 **permit must pay the permit fee established in IC 7.1-4-4.1-13(d).**

19 **Sec. 4. A wholesaler-carrier may not warehouse the alcoholic**
20 **beverage of a contracting wholesaler at a place other than the**
21 **premises described in the wholesaler application and permit of the**
22 **wholesaler-carrier.**

23 SECTION 11. IC 7.1-4-4.1-13, AS AMENDED BY P.L.165-2006,
24 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2012]: Sec. 13. (a) This section applies to the following
26 permits:

- 27 (1) Beer wholesaler's permit.
- 28 (2) Malt wholesaler's permit.
- 29 (3) Liquor wholesaler's permit.
- 30 (4) Wine wholesaler's permit.

31 (b) Except as provided in subsection (c), a permit fee of two
32 thousand dollars (\$2,000) is annually imposed for the issuance of each
33 of the permits described in subsection (a).

34 (c) A permit fee of one hundred dollars (\$100) is annually imposed
35 for the issuance of a wine wholesaler's permit to a permit applicant
36 who:

- 37 (1) has never previously held a wine wholesaler's permit and
38 anticipates selling less than twelve thousand (12,000) gallons of
39 wine and brandy in a year; or
- 40 (2) previously held a wine wholesaler's permit and certifies to the
41 commission that the permit applicant sold less than twelve
42 thousand (12,000) gallons of wine and brandy in the previous

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1 year.
2 **(d) If a wholesaler-carrier performs or intends to perform**
3 **logistic services on behalf of a contracting wholesaler under**
4 **IC 7.1-3-27 in a permit year for any type of alcoholic beverage that**
5 **the wholesaler-carrier is not authorized to wholesale under the**
6 **wholesaler-carrier's wholesaler permit, an additional permit fee of**
7 **fifty thousand dollars (\$50,000) is imposed on the**
8 **wholesaler-carrier for the issuance of a permit described in**
9 **subsection (a).**

10 SECTION 12. IC 7.1-5-9-12 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. ~~Use of Another's~~
12 ~~Warehouse Prohibited.~~ **Except as provided under IC 7.1-3-27,** it is
13 unlawful for a holder of a brewer's permit, beer or liquor wholesaler's
14 permit, or a beer or liquor retailer's permit, to own, operate, maintain
15 on ~~his~~ **the permittee's** own account, patronize, use, or employ a
16 warehouse, storage, or depot, owned or operated by another person for
17 the storage or keeping of an alcoholic beverage except at the plant or
18 premises which is covered by ~~his~~ **the permittee's** permit.

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