

# HOUSE BILL No. 1299

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-2-3-9.1; IC 7.1-3.

**Synopsis:** Alcoholic beverage matters. Makes certain changes concerning the requirements for the alcohol and tobacco commission (commission) in maintaining the registry of all retailer's and dealer's permits. Removes and repeals certain provisions concerning residency requirements for alcoholic beverage retailer's and dealer's permits and liquor wholesaler's permits. Prohibits the commission from issuing any permit to foreign corporations, limited liability partnerships, or limited liability companies not qualified to do business in Indiana. (Current law prohibits the commission from issuing certain permits to foreign corporations, limited liability partnerships, or limited liability companies not qualified to do business in Indiana.) Allows the commission to issue an order directing a holder of an alcoholic beverage permit to cease and desist in: (1) the manufacturing, rectifying, distributing, transporting, or selling of; or (2) otherwise dealing in; an alcoholic beverage that the commission reasonably believes has a dangerously harmful effect on the health or well-being of individuals who consume the alcoholic beverage. Allows the permittee to: (1) request a hearing regarding the commission's determination that the alcoholic beverage is harmful; and (2) seek judicial review of the final action by the commission. Allows the commission to fine, suspend, or revoke the permit of a permittee who violates a cease and desist order issued under this provision. Makes conforming changes.

**Effective:** Upon passage; July 1, 2012.

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## Davis, Welch, Turner

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January 11, 2012, read first time and referred to Committee on Public Policy.

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Second Regular Session 117th General Assembly (2012)

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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# HOUSE BILL No. 1299



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 7.1-2-3-9.1 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9.1. (a) The  
 3 commission shall ~~prepare and~~ maintain, available for public inspection,  
 4 **a an electronic** registry of all ~~retailer and dealer~~ **retailer's and**  
 5 **dealer's** permits (including supplemental permits) issued by ~~it, the~~  
 6 **commission**, categorized by type of permit. ~~and by the type of~~  
 7 ~~establishment to which it is issued.~~ The registry of permits shall:  
 8 (1) be ~~subdivided in a format that is capable of being~~  
 9 **subdivided** on a county by county basis, and further ~~subdivided~~  
 10 **capable of being subdivided** by city, town, and unincorporated  
 11 area;  
 12 (2) contain the number of permits authorized by the quota, and the  
 13 number of permits currently issued;  
 14 (3) contain the name of the owner of the permit, the address of the  
 15 licensed premises, the assumed business name under which the  
 16 business is conducted, and, if a corporation, the names of the  
 17 president and secretary; and



1 (4) be made current annually, to indicate by specific notation any  
 2 new permits that were issued ~~or any existing permits that were~~  
 3 ~~transferred in any manner within the prior year:~~ **as a result of an**  
 4 **increase in population or annexation.**

5 (b) The commission shall distribute one (+) complete copy of the  
 6 registry of permits for that particular county to each county clerk, at no  
 7 cost to the county clerk, **make the registry**, each time the registry is  
 8 made current, ~~The county clerk shall immediately notify the county~~  
 9 ~~treasurer that the registry has been received and make the registry~~  
 10 ~~available for copying by the county treasurer. Each county clerk shall~~  
 11 ~~maintain a copy of the registry of permits available for public~~  
 12 ~~inspection in the county clerk's office during normal business hours.~~  
 13 **available for public inspection on the Internet through the**  
 14 **computer gateway administered by the office of technology**  
 15 **established by IC 4-13.1-2-1.**

16 (c) The commission shall provide for the sale of the registry of  
 17 permits to the public on a cost basis, both as a complete statewide  
 18 registry and as a countywide registry. **The registry must be available**  
 19 **for sale on the Internet through the computer gateway**  
 20 **administered by the office of technology established by**  
 21 **IC 4-13.1-2-1.**

22 SECTION 2. IC 7.1-3-2-2, AS AMENDED BY P.L.186-2011,  
 23 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 UPON PASSAGE]: Sec. 2. (a) Except as provided in subsection (b),  
 25 the commission may issue a brewer's permit only to:

- 26 (1) an individual;  
 27 (2) a partnership; ~~all the partners of which are bona fide residents~~  
 28 ~~of Indiana;~~  
 29 (3) a limited liability company; ~~all the members of which are bona~~  
 30 ~~fide residents of Indiana;~~ or  
 31 (4) a corporation ~~organized and~~ existing under the laws of Indiana  
 32 and having authority under ~~its~~ **the corporation's** charter to  
 33 manufacture or sell beer.

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

- 37 (1) an individual;  
 38 (2) a partnership ~~organized and~~ existing under the laws of  
 39 Indiana;  
 40 (3) a limited liability company ~~organized and~~ existing under the  
 41 laws of Indiana; or  
 42 (4) a corporation ~~organized and~~ existing under the laws of

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1 Indiana.

2 SECTION 3. IC 7.1-3-6-2 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~Persons Eligible~~  
 4 ~~for Permits~~. The commission may issue a temporary beer permit to a  
 5 person who is qualified to hold a beer retailer's permit and who has  
 6 such other qualifications as the commission may prescribe by a  
 7 provisional order until it adopts a rule or regulation on the matter.  
 8 However, the special disqualifications listed in ~~IC 1971, 7.1-3-4-2(e);~~  
 9 ~~(h); and (m) and the residency requirements provided in IC 1971,~~  
 10 ~~7.1-3-21-3; IC 7.1-3-4-2(3), IC 7.1-3-4-2(8), and IC 7.1-3-4-2(13)~~  
 11 shall not apply to an applicant for a temporary beer permit.

12 SECTION 4. IC 7.1-3-16-6 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. ~~Persons Eligible~~  
 14 ~~for Permits~~. The commission may issue a temporary wine permit to a  
 15 person who is qualified to hold a beer retailer's permit and who has  
 16 such other qualifications as the commission may prescribe by a  
 17 provisional order until it adopts a rule or regulation on the matter.  
 18 However, the special disqualifications listed in ~~IC 1971, 7.1-3-4-2(e);~~  
 19 ~~(h); and (m) and the residency requirements provided in IC 1971,~~  
 20 ~~7.1-3-21-3; IC 7.1-3-4-2(3), IC 7.1-3-4-2(8), and IC 7.1-3-4-2(13)~~  
 21 shall not apply to an applicant for a temporary wine permit.

22 SECTION 5. IC 7.1-3-21-0.1, AS ADDED BY P.L.220-2011,  
 23 SECTION 174, IS AMENDED TO READ AS FOLLOWS  
 24 [EFFECTIVE UPON PASSAGE]: Sec. 0.1. Notwithstanding the  
 25 amendments made to sections 3 (**repealed**), 5, 5.2, and 5.4 of this  
 26 chapter by P.L.72-2004, the residency requirement of five (5) years for  
 27 beer wholesalers under sections 3 (**repealed**), 5, 5.2, and 5.4 of this  
 28 chapter (as those provisions existed on June 30, 2004) shall remain in  
 29 effect for all contracts entered into before July 1, 2004, under which a  
 30 permit is to be transferred from an Indiana resident to a person who  
 31 was not an Indiana resident at the time of execution of the contract.

32 SECTION 6. IC 7.1-3-21-3 IS REPEALED [EFFECTIVE UPON  
 33 PASSAGE]. Sec. 3. ~~The commission shall not issue:~~

- 34 (1) an alcoholic beverage retailer's or dealer's permit of any type;  
 35 or  
 36 (2) a liquor wholesaler's permit;

37 to a person who has not been a continuous and bona fide resident of  
 38 Indiana for five (5) years immediately preceding the date of the  
 39 application for a permit.

40 SECTION 7. IC 7.1-3-21-5, AS AMENDED BY P.L.165-2006,  
 41 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 UPON PASSAGE]: Sec. 5. (a) ~~The commission shall not issue:~~

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1 (1) an alcoholic beverage retailer's or dealer's permit of any type;  
 2 or  
 3 (2) a liquor wholesaler's permit;  
 4 to a corporation unless sixty percent (60%) of the outstanding common  
 5 stock is owned by persons who have been continuous and bona fide  
 6 residents of Indiana for five (5) years:

7 (b) The commission shall not issue a liquor wholesaler's permit to  
 8 a corporation unless at least one (1) of the stockholders shall have been  
 9 a resident, for at least one (1) year immediately prior to making  
 10 application for the permit, of the county in which the licensed premises  
 11 are to be situated:

12 (c) **The commission shall not issue:**

13 (1) **an alcoholic beverage retailer's or dealer's permit; or**

14 (2) **a liquor wholesaler's permit;**

15 **of any type to a corporation unless** each officer and stockholder of a  
 16 **the** corporation shall possess all other possesses the same  
 17 qualifications **as those** required of an individual applicant for that  
 18 particular type of permit.

19 SECTION 8. IC 7.1-3-21-5.2, AS AMENDED BY P.L.165-2006,  
 20 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 UPON PASSAGE]: Sec. 5.2. (a) The commission shall not issue:

22 (1) an alcoholic beverage retailer's or dealer's permit of any type;

23 or

24 (2) a liquor wholesaler's permit;

25 to a limited partnership unless at least sixty percent (60%) of the  
 26 partnership interest is owned by persons who have been continuous and  
 27 bona fide residents of Indiana for five (5) years:

28 (b) The commission shall not issue a liquor wholesaler's permit to  
 29 a limited partnership unless for at least one (1) year immediately before  
 30 making application for the permit, at least one (1) of the persons having  
 31 a partnership interest has been a resident of the county in which the  
 32 licensed premises are to be situated:

33 (c) **The commission shall not issue:**

34 (1) **an alcoholic beverage retailer's or dealer's permit; or**

35 (2) **a liquor wholesaler's permit;**

36 **of any type to a limited partnership unless** each general partner and  
 37 limited partner of a **the** limited partnership **must possess all other**  
 38 **possesses the same** qualifications **as those** required of an individual  
 39 applicant for that particular type of permit.

40 SECTION 9. IC 7.1-3-21-5.4, AS AMENDED BY P.L.165-2006,  
 41 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 UPON PASSAGE]: Sec. 5.4. (a) The commission shall not issue:

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1 (1) an alcoholic beverage retailer's or dealer's permit of any type;  
 2 or  
 3 (2) a liquor wholesaler's permit;  
 4 to a limited liability company unless at least sixty percent (60%) of the  
 5 membership interest is owned by persons who have been continuous  
 6 and bona fide residents of Indiana for five (5) years:

7 (b) The commission shall not issue a liquor wholesaler's permit to  
 8 a limited liability company unless for at least one (1) year immediately  
 9 before making application for the permit, at least one (1) of the persons  
 10 having a membership interest has been a resident of the county in  
 11 which the licensed premises are to be situated:

12 (c) **The commission shall not issue:**

13 **(1) an alcoholic beverage retailer's or dealer's permit; or**

14 **(2) a liquor wholesaler's permit;**

15 **of any type to a limited liability company unless** each manager and  
 16 member of a **the** limited liability company **must possess all other**  
 17 **possesses the same** qualifications **as those** required of an individual  
 18 applicant for that particular type of permit.

19 SECTION 10. IC 7.1-3-21-6, AS AMENDED BY P.L.233-2007,  
 20 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 UPON PASSAGE]: Sec. 6. (a) The provisions of sections 4, 5, 5.2, and  
 22 5.4 of this chapter concerning retail and dealer partnerships,  
 23 corporations, limited partnerships, and limited liability companies shall  
 24 not apply to the issuance of:

25 (1) a dining car permit;

26 (2) a boat permit;

27 (3) a drug store permit;

28 (4) a grocery store permit;

29 (5) a hotel permit;

30 (6) an airplane permit;

31 (7) a gaming site permit;

32 (8) a horse track permit;

33 (9) a satellite facility permit; or

34 (10) a retail permit to an establishment:

35 (A) that is sufficiently served by adequate law enforcement at  
 36 its permit location; and

37 (B) whose annual gross food sales at the permit location:

38 (i) exceed one hundred thousand dollars (\$100,000); or

39 (ii) in the case of a new application and as proved by the  
 40 applicant to the local board and the commission, will exceed  
 41 two hundred thousand dollars (\$200,000) by the end of the  
 42 two (2) year period from the date of the issuance of the

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- 1 permit:
- 2 (b) The commission shall not issue ~~a~~ **any alcoholic beverage** permit
- 3 ~~listed in subsection (a)~~ to a foreign:
- 4 (1) corporation;
- 5 (2) limited partnership; or
- 6 (3) limited liability company;
- 7 that is not duly qualified to do business in Indiana.
- 8 SECTION 11. IC 7.1-3-21-7 IS REPEALED [EFFECTIVE UPON
- 9 PASSAGE]. ~~Sec. 7. Restaurant Corporations: Exception. The~~
- 10 ~~provisions of IC 1971; 7.1-3-21-5, shall not apply to the common stock~~
- 11 ~~ownership of a corporation holding a restaurant permit and having less~~
- 12 ~~than sixty per cent (60%) resident ownership prior to March 14, 1963.~~
- 13 SECTION 12. IC 7.1-3-23-2, AS AMENDED BY P.L.3-2008,
- 14 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 15 JULY 1, 2012]: Sec. 2. (a) The commission may:
- 16 (1) fine or suspend or revoke the permit of; or
- 17 (2) fine and suspend or revoke the permit of;
- 18 a permittee for the violation of a provision of this title, ~~or of~~ a rule or
- 19 regulation of the commission, ~~or a cease and desist order issued by~~
- 20 **the commission under section 46 of this chapter.** The commission
- 21 may fine a permittee for each day the violation continues if the
- 22 violation is of a continuing nature.
- 23 (b) The commission shall revoke the permit of a permittee for the
- 24 violation of IC 35-45-5-3, IC 35-45-5-3.5, or IC 35-45-5-4. A finding
- 25 that a permittee has violated IC 35-45-5-3, IC 35-45-5-3.5, or
- 26 IC 35-45-5-4 must be supported by a preponderance of the evidence.
- 27 SECTION 13. IC 7.1-3-23-46 IS ADDED TO THE INDIANA
- 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 29 [EFFECTIVE JULY 1, 2012]: **Sec. 46. (a) The commission may, with**
- 30 **or without a prior hearing, issue an order directing a permittee to**
- 31 **cease and desist in:**
- 32 (1) **the manufacturing, rectifying, distributing, transporting,**
- 33 **or selling of; or**
- 34 (2) **otherwise dealing in;**
- 35 **an alcoholic beverage that the commission reasonably believes has**
- 36 **a dangerously harmful effect on the health or well-being of**
- 37 **individuals who consume the alcoholic beverage.**
- 38 (b) **Within fifteen (15) days after a cease and desist order has**
- 39 **been served under subsection (a), the permittee may request a**
- 40 **hearing on the question of whether the alcoholic beverage has a**
- 41 **dangerously harmful effect on the health or well-being of**
- 42 **individuals who consume the alcoholic beverage.**

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**(c) The commission shall:**

**(1) not later than fifteen (15) days after the date of a hearing described under subsection (b), take final action and enter an appropriate order on the matter; and**

**(2) notify the permittee of the commission's action in the manner provided by IC 4-21.5-3-1(b).**

**(d) The permittee may, not later than ten (10) days after the date the permittee receives the notice of final action from the commission, seek judicial review under IC 4-21.5-5. The jurisdiction for judicial review of this section is limited under IC 7.1-2-8-1.**

**SECTION 14. An emergency is declared for this act.**

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