February 1, 2013

HOUSE BILL No. 1293

DIGEST OF HB 1293 (Updated January 30, 2013 12:50 pm - DI 14)

Citations Affected: IC 7.1-1; IC 7.1-2; IC 7.1-3; IC 7.1-4; IC 7.1-5.

Synopsis: Artisan distiller's permit. Creates an artisan distiller's permit for a person who desires to commercially manufacture not more than 10,000 gallons of liquor in a calendar year (excluding the amount of any liquor sold through a liquor wholesaler). Allows an artisan distiller to do the following: (1) Manufacture, blend, bottle, store, transport, and sell liquor to a wholesaler. (2) Serve complimentary samples and sell liquor to consumers by the drink, bottle, or case at the artisan's distillery. (3) Hold an interest in a farm winery permit or microbrewery permit. Provides that the holder of an artisan distiller permit may be: (1) an individual; (2) a firm; (3) a corporation; (4) a partnership; (5) a limited partnership; (6) a limited liability company; (7) an incorporated or unincorporated association; or (8) other legal entity. Provides that an applicant must do the following to be eligible for an artisan distiller's permit: (1) Hold a farm winery permit, brewer's permit, or distiller's permit for the three year period preceding the date of the application. (2) Not have more than one violation of the same alcoholic beverage law during the three year period immediately preceding the date of the application. (3) Not have a violation of any alcoholic beverage law during the year preceding the date of the application. Provides that the holder of an artisan distiller's permit that provides samples or sells liquor by the glass must furnish the minimum food requirements prescribed by the commission. Allows the alcohol and tobacco commission to collect an annual $250 permit fee for a biennial artisan distiller's permit. Provides that a percentage of the artisan distiller's permit fee is deposited in the enforcement and administration fund and the state general fund. Makes conforming amendments.

Effective: July 1, 2013.

Clere, Behning, Rhoads, DeLaney

January 14, 2013, read first time and referred to Committee on Public Policy.
January 31, 2013, amended, reported — Do Pass.

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February 1, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1293

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:

SECTION 1. IC 7.1-1-3-32.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 32.5. The term "primary source of supply" means, in regard to the alcoholic beverage being sold to a wholesaler:

(1) ~~a~~ **an artisan distiller or** distiller of the alcoholic beverage;
(2) a producer of the alcoholic beverage;
(3) a vintner of the alcoholic beverage;
(4) a rectifier of the alcoholic beverage;
(5) an importer into the United States of the alcoholic beverage;
(6) an owner of the alcoholic beverage at the time it becomes a marketable product;
(7) a bottler of the alcoholic beverage;
(8) a brewer of the alcoholic beverage; or
(9) an agent specifically authorized to make sales to an Indiana wholesaler by a person listed in subdivisions (1) through (8).

SECTION 2. IC 7.1-2-3-16.5, AS AMENDED BY P.L.15-2011, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2013]: Sec. 16.5. (a) As used in this section, "facility" includes the following:

(1) A facility to which IC 7.1-3-1-25(a) applies.

(2) A tract that contains a premises that is described in IC 7.1-3-1-14(c)(2).

(3) A horse track or satellite facility to which IC 7.1-3-17.7 applies.

(4) A riverboat or racetrack to which IC 7.1-3-17.5 applies.

(5) A tract that contains an entertainment complex.

(b) As used in this section, "tract" has the meaning set forth in IC 6-1.1-1-22.5.

(c) A facility may advertise alcoholic beverages:

(1) in the facility's interior; or

(2) on the facility's exterior.

(d) The commission may not exercise the prohibition power contained in section 16(a) of this chapter on advertising by a brewer, distiller, rectifier, or vintner in or on a facility.

(e) Notwithstanding IC 7.1-5-5-10 and IC 7.1-5-5-11, a facility may provide advertising to a permittee that is a brewer, **an artisan distiller, a** distiller, **a** rectifier, or **a** vintner in exchange for compensation from that permittee.

SECTION 3. IC 7.1-3-8-3, AS AMENDED BY P.L.94-2008, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) The holder of a liquor wholesaler's permit shall be entitled to sell liquor at wholesale.

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

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

(1) liquor retailer's permit;

(2) supplemental caterer's permit;

(3) liquor dealer's permit; or

(4) liquor wholesaler's permit.

The sale, transportation, and delivery of liquor shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery, and only in permissible containers and is subject to the rules of the commission fixing the quantity which may be sold or delivered at any one (1) time.

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

SECTION 4. IC 7.1-3-23-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. The commission, pursuant to section 2 of this chapter, may impose upon a permittee the following civil penalties:

(1) An amount of not more than four thousand dollars ($4,000) for each violation if the permittee is a brewer, ~~or~~ **an artisan distiller, or a** distiller.

(2) An amount of not more than two thousand dollars ($2,000) for each violation if the permittee is a wholesaler of any type.

(3) An amount of not more than one thousand dollars ($1,000) for each violation if the permittee is the holder of a permit of a type not listed in subdivision (1) or (2).

SECTION 5. IC 7.1-3-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. ~~Additional Fine.~~ The commission, if a fine imposed pursuant to IC ~~1971,~~ 7.1-3-23-2 is not paid according to the order of commission, may suspend or add to the period of suspension of a permit in the following increments:

~~(a)~~ **(1)** A period of one (1) day for each one hundred dollars ($100) remaining unpaid if the permittee is a brewer, ~~or~~ **an artisan distiller, or a** distiller.

~~(b)~~ **(2)** A period of one (1) day for each fifty dollars ($50) remaining unpaid if the permittee is a wholesaler of any type. ~~and,~~

~~(c)~~ **(3)** A period of one (1) day for each twenty-five dollars ($25) remaining unpaid if the permittee is the holder of a permit of a type not listed in ~~(a) or (b) of this section.~~ **subdivision (1) or (2).**

SECTION 6. IC 7.1-3-27 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 27. Artisan Distiller's Permit

Sec. 1. As used in this chapter, "artisan distiller" means a person who holds an artisan distiller's permit under this title.

Sec. 2. The commission may issue an artisan distiller's permit as provided in this chapter to a person who desires to commercially manufacture liquor.

Sec. 3. An artisan distiller may produce not more than ten thousand (10,000) gallons of liquor in any calendar year. Liquor produced by an artisan distiller that is sold through a wholesaler licensed under IC 7.1-3-8 may not be counted toward the gallonage limit.

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Sec. 4. The commission may issue an artisan distiller's permit to a person if the person is qualified to obtain the necessary permit or license from the United States to own or operate an establishment to manufacture liquor.

Sec. 5. (a) An applicant for an artisan distiller's permit must meet all the following requirements to be eligible for an artisan distiller's permit:

(1) The permit applicant must hold one (1) of the following permits for the three (3) year period immediately preceding the date of the application:

(A) A farm winery permit under IC 7.1-3-12.

(B) A brewer's permit for a brewery described in IC 7.1-3-2-7(5).

(C) A distiller's permit under IC 7.1-3-7.

(2) The permit applicant may not have more than one (1) violation of this title during the three (3) year period immediately preceding the date of the application.

(3) The permit applicant may not have any violation of this title during the twelve (12) month period immediately preceding the date of the permit application.

(b) As used in this subsection, "qualifying permit" means a farm winery, brewer's, or distiller's permit under subsection (a)(1)(A), (a)(1)(B), or (a)(1)(C) that is required in order to hold an artisan distiller's permit. The same persons must directly or indirectly own and control one hundred percent (100%) of the entity that holds the qualifying permit and the artisan distiller's permit.

Sec. 6. (a) A holder of an artisan distiller's permit may also hold one (1) of the following:

(1) A farm winery permit.

(2) A brewer's permit for a brewery described in IC 7.1-3-2-7(5).

(b) If a holder of a distiller's permit is issued an artisan distiller's permit, the distiller's permit expires on the date the artisan distiller's permit is issued. The commission shall prorate and reimburse the holder for the permit fee remaining on the permit as of the date the permit expires.

Sec. 7. (a) The holder of an artisan distiller's permit may do only the following:

(1) Manufacture liquor, including blending liquor purchased from another manufacturer with liquor the artisan distiller manufactures under section 10 of this chapter.

(2) Bottle liquor manufactured by the artisan distiller.

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(3) Store liquor manufactured by the artisan distiller.
(4) Transport, sell, and deliver liquor manufactured by the artisan distiller to:
(A) places outside Indiana; or
(B) the holder of a liquor wholesaler's permit under IC 7.1-3-8.
(5) Sell liquor manufactured by the artisan distiller to consumers by the drink, bottle, or case from the premises of the distillery where the liquor was manufactured.
(6) Serve complimentary samples of the liquor manufactured by the artisan distiller to consumers on the premises of the distillery where the liquor was manufactured.
(7) Hold an interest in a farm winery permit that allows the artisan distiller to:
(A) sell liquor; and
(B) serve complimentary samples of liquor;
manufactured by the artisan distiller to consumers at the farm winery's licensed premises under section 11 of this chapter.
(8) Hold an interest in a brewer's permit:
(A) for a brewery described in IC 7.1-3-2-7(5); and
(B) under which an artisan distiller may:
(i) sell liquor; and
(ii) serve complimentary samples of liquor;
manufactured by the artisan distiller to consumers at the brewery's premises under section 12 of this chapter.

(b) The holder of an artisan distiller's permit who provides samples or sells liquor by the glass must furnish the minimum food requirements prescribed by the commission.

Sec. 8. An artisan distiller may not sell liquor to a retailer or dealer.

Sec. 9. An artisan distiller may not ship liquor or cause liquor to be shipped to a consumer.

Sec. 10. An artisan distiller may blend liquor that the artisan distiller obtains from another manufacturer with liquor that the artisan distiller manufactures. The artisan distiller may sell the blended liquor as liquor that the artisan distiller manufactures only if the final product contains at least sixty percent (60%) of liquor that was fermented and distilled from raw materials by the artisan distiller at the licensed premises of the artisan distiller.

Sec. 11. (a) This section applies only to a person who:
(1) holds an artisan distiller's permit; and

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(2) holds an interest in a farm winery permit under IC 7.1-3-12.

(b) An artisan distiller may:

(1) serve samples of liquor that the artisan distiller manufactures; and

(2) sell bottles and cases of liquor that the artisan distiller manufactures;

on the licensed premises where the wine is manufactured, regardless of whether the wine is manufactured on the same premises where the artisan distiller manufactures liquor.

Sec. 12. (a) This section applies only to a person who:

(1) holds an artisan distiller's permit; and

(2) holds an interest in a brewer's permit for a brewery described in IC 7.1-3-2-7(5).

(b) An artisan distiller may:

(1) serve samples of liquor that the artisan distiller manufactures; and

(2) sell bottles and cases of liquor that the artisan distiller manufactures;

on the licensed premises where the beer is manufactured, regardless of whether the beer is manufactured on the same premises where the artisan distiller manufactures liquor.

Sec. 13. (a) An artisan distiller's permit shall be issued for a period of two (2) years.

(b) The commission shall charge a permit fee of two hundred fifty dollars ($250) annually to the holder of an artisan distiller's permit. The holder of an artisan distiller's permit shall pay the permit fee to the chairman on the anniversary of the date of the issuance of the original permit.

Sec. 14. Notwithstanding IC 7.1-5, a person who holds an interest in a farm winery permit under IC 7.1-3-12 or a brewer's permit under IC 7.1-3-2-7(5) may hold an interest in an artisan liquor distiller's permit.

SECTION 7. IC 7.1-4-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. ~~Persons Liable for Tax.~~ The liquor excise tax shall be levied against a permittee who holds **an artisan distiller's permit,** a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a dining car liquor permit, a vintner's permit, a wine wholesaler's permit, a dining car wine permit, or a boat wine permit, whether the sale or gift, or withdrawal for sale or gift, is to a person authorized to purchase or receive it or not. However, the same article shall be taxed only once for liquor excise tax purposes.

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SECTION 8. IC 7.1-4-7-1, AS AMENDED BY P.L.165-2006, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. The chairman shall collect the required annual license fee paid in connection with the issuance of a brewer's permit, a beer wholesaler's permit, a temporary beer permit, a dining car permit of any type, a boat permit of any type, **an artisan distiller's permit,** a distiller's permit, a rectifier's permit, a liquor wholesaler's permit, a vintner's permit, a farm winery permit, a farm winery brandy distiller's permit, a wine wholesaler's permit, a wine bottler's permit, a temporary wine permit, a direct wine seller's permit, a salesman's permit, and a carrier's alcoholic permit.

SECTION 9. IC 7.1-5-1-9.5, AS AMENDED BY P.L.1-2006, SECTION 150, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9.5. (a) An in state or an out of state vintner, **artisan distiller,** distiller, brewer, rectifier, or importer that:

(1) holds a basic permit from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives; and

(2) knowingly violates IC 7.1-5-11-1.5;

commits a Class A misdemeanor.

(b) A person who:

(1) is not described in subsection (a); and

(2) knowingly violates IC 7.1-5-11-1.5;

commits a Class D felony.

(c) If the chairman of the alcohol and tobacco commission or the attorney general determines that a vintner, **an artisan distiller, a** distiller, **a** brewer, **a** rectifier, or **an** importer that holds a basic permit from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives has made an illegal shipment of an alcoholic beverage to consumers in Indiana, the chairman shall:

(1) notify the federal Bureau of Alcohol, Tobacco, Firearms and Explosives in writing and by certified mail of the official determination that state law has been violated; and

(2) request the federal bureau to take appropriate action.

SECTION 10. IC 7.1-5-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. ~~Liquor Permittee's Interests Limited.~~ It is unlawful for the holder of a distiller's, rectifier's, or liquor wholesaler's permit to have an interest in a beer permit of any type under this title. **This section does not apply to the holder of an artisan distiller's permit that has an interest in a brewer's permit under IC 7.1-3-2-7(5).**

SECTION 11. IC 7.1-5-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. ~~Distillers and~~

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~~Rectifiers: Prohibited Interests.~~ It is unlawful for the holder of **an artisan distiller's,** a distiller's, or **a** rectifier's permit to own, acquire, possess or cause to be transferred to ~~him,~~ **the holder** shares of stock of a corporation that holds an Indiana permit to sell alcoholic beverages at retail, or in a permit to sell at retail in this state, or to own or acquire an interest in the business being conducted under the permit, or in or to shares of stock in a corporation that owns a permit to sell at retail.

SECTION 12. IC 7.1-5-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. ~~Certain Interests Prohibited.~~ The holder of **an artisan distiller's permit,** a distiller's permit, or **a** rectifier's permit may not own, acquire, or possess a permit to sell liquor at wholesale. A distiller or rectifier may not have an interest in the business of a permittee who is authorized to sell beer, liquor, or wine at wholesale or retail.

SECTION 13. IC 7.1-5-9-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. ~~Certain Interests Prohibited.~~ The proprietor of a drug store, a corporation holding **an artisan distiller's permit,** a distiller's **permit,** or **a** brewer's permit or a wholesaler's permit or a permit to retail or deal in alcoholic beverages, a wholesale drug company, and a person who is the proprietor of a wholesale drug company may not own or control or participate in the permit of a package liquor store, or in its business, or in its establishment.

SECTION 14. IC 7.1-5-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 12. ~~Credit Sales Prohibited.~~ It is unlawful for a permittee to sell, offer to sell, purchase or receive, an alcoholic beverage for anything other than cash. A permittee who extends credit in violation of this section shall have no right of action on the claim. This section shall not prohibit a permittee from crediting to a purchaser the actual price charged for a package or an original container returned by the original purchaser as a credit on a sale. This section shall not prohibit a permittee from refunding to a purchaser the amount paid by the purchaser for a container, or as a deposit on a container, if it is returned to the permittee. This section shall not prohibit a manufacturer from extending usual and customary credit for alcoholic beverages sold to a customer who maintains a place of business outside this state when the alcoholic beverages are actually shipped to a point outside this state. This section shall not prohibit **an artisan distiller,** a distiller, or a liquor or wine wholesaler from extending credit on liquor, flavored malt beverages, and wine sold to a permittee for a period of fifteen (15) days from the date of invoice, date of invoice included. However, if the fifteen (15) day period passes

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without payment in full, the wholesaler shall sell to that permittee on a cash on delivery basis only.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1293, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 38, delete "twenty" and insert "**ten**".

Page 3, line 39, delete "(20,000)" and insert "**(10,000)**".

Page 4, line 2, delete ":" and insert "**a person**".

Page 4, delete lines 3 through 4.

Page 4, line 5, delete "corporation" and insert "**person**".

Page 4, run in lines 2 through 5.

Page 4, line 8, after "5." insert "**(a)**".

Page 4, between lines 23 and 24, begin a new paragraph and insert:

"**(b) As used in this subsection, "qualifying permit" means a farm winery, brewer's, or distiller's permit under subsection (a)(1)(A), (a)(1)(B), or (a)(1)(C) that is required in order to hold an artisan distiller's permit. The same persons must directly or indirectly own and control one hundred percent (100%) of the entity that holds the qualifying permit and the artisan distiller's permit.**".

Page 4, line 34, after "7." insert "**(a)**".

Page 5, line 15, delete "additional locations" and insert **"licensed premises**".

Page 5, between lines 23 and 24, begin a new paragraph and insert:

"**(b) The holder of an artisan distiller's permit who provides samples or sells liquor by the glass must furnish the minimum food requirements prescribed by the commission.**".

Page 6, line 2, delete "at the additional farm winery locations under IC 7.1-3-12-5(b)," and insert "**on the licensed premises where the wine is manufactured,**".

and when so amended that said bill do pass.

(Reference is to HB 1293 as introduced.)

DAVIS, Chair

Committee Vote: yeas 10, nays 2.

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