

IC 7.1-3-3

Chapter 3. Beer Wholesalers' Permits

IC 7.1-3-3-1

Application

Sec. 1. Application. The commission may issue a beer wholesaler's permit to a person who desires to sell beer at wholesale and who meets the qualifications required by this title. The commission may require additional proof, by affidavit or otherwise, that an applicant possesses any or all of the required qualifications. *(Formerly: Acts 1973, P.L.55, SEC.1.)*

IC 7.1-3-3-2

Necessary investment

Sec. 2. Necessary Investment. An applicant for a beer wholesaler's permit shall have available for investment, capital, in cash or property, necessary and useful in his business, exclusively as a beer wholesaler, of at least fifteen thousand dollars (\$15,000), exclusive of motor vehicles. If his application is granted, the investment shall actually be made and proof of it submitted to the commission before the applicant shall engage in business as a beer wholesaler. The provisions of this section shall not apply to a permittee who held a valid beer wholesaler's permit as of April 2, 1965. *(Formerly: Acts 1973, P.L.55, SEC.1.)*

IC 7.1-3-3-3

Building requirements

Sec. 3. Building Requirements. The building to be occupied by a beer wholesaler shall be owned or leased by him, or storage space in it shall be leased to him. If the building or storage space is held by lease, the lease shall be for the full term of the permit, and no other person, or stockholder of a corporation, interested in the manufacture of, or in the sale at retail of, alcoholic beverages shall own the building or have any interest in it. *(Formerly: Acts 1973, P.L.55, SEC.1.)*

IC 7.1-3-3-4

Premises described in application

Sec. 4. (a) The premises to be used as a warehouse by an applicant shall be described in the application for the permit. The commission shall not issue a beer wholesaler's permit to an applicant for any other warehouse or premises than that described in the application. The commission shall issue only one (1) beer wholesaler's permit to an applicant, but a permittee may be permitted to transfer the permittee's warehouse to another location within the county that is not required to be within the corporate limits of an incorporated city or town, upon application to, and approval of, the commission.

(b) As used in this subsection, "immediate relative" means the father, the mother, a brother, a sister, a son, or a daughter of a wholesaler permittee. Notwithstanding subsection (a), the

commission, upon the death or legally adjudged mental incapacitation of a wholesaler permittee, may allow the transfer of the wholesaler permit only to an immediate relative of the wholesaler permittee who concurrently holds a majority share in a valid wholesaler permit.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.205-1999, SEC.13; P.L.94-2008, SEC.27.

IC 7.1-3-3-5

Scope of permit

Sec. 5. (a) The holder of a beer wholesaler's permit may purchase and import from the primary source of supply, possess, and sell at wholesale, beer and flavored malt beverages manufactured within or without this state.

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

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

located within this state. The sale, transportation, and delivery of beer shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery.

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

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

at any one (1) time.

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

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

- (1) A beer wholesaler or wine wholesaler permit, if the wholesaler is authorized by the primary source of supply to sell the brand of flavored malt beverage purchased.
- (2) A wine retailer's permit, wine dealer's permit, temporary wine permit, dining car wine permit, boat permit, airplane permit, or supplemental caterer's permit.

(f) A beer wholesaler may:

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

beer;

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

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

(Formerly: Acts 1973, P.L.55, SEC.1; Acts 1973, P.L.60, SEC.3; Acts 1974, P.L.25, SEC.2.) As amended by Acts 1978, P.L.52, SEC.1; P.L.57-1984, SEC.6; P.L.78-1986, SEC.3; P.L.72-1996, SEC.4; P.L.72-1997, SEC.2; P.L.224-2005, SEC.5; P.L.94-2008, SEC.28.

IC 7.1-3-3-6

Renewals

Sec. 6. Renewals. A permittee who holds a beer wholesaler's permit and who desires that it be renewed shall file an application for renewal with the commission not less than thirty (30) days prior to the expiration of the existing permit. The application shall be made in the same manner that an application for an original permit is made.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-7

Action of commission on renewals

Sec. 7. Action of Commission on Renewals. The commission shall notify the applicant in writing of its determination to grant or deny the renewal of a beer wholesaler's permit not more than ten (10) days after the filing of the application. The notice may be given by personal service upon the applicant or by registered mail, addressed to applicant at the address shown in the application for renewal. The registration and deposit of the notice, properly addressed, in the post office within the ten (10) day period shall be sufficient when the notice is given by registered mail.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-8

Notice of renewal

Sec. 8. Notice of Renewal. The determination shall be final and conclusive if the notice advises the applicant that his beer wholesaler's permit will be renewed at the expiration of the existing permit term. Prior to the expiration of the existing permit term, the commission shall issue a renewal beer wholesaler's permit to the applicant for the ensuing year. The failure on the part of the commission to issue the renewal permit prior to the expiration of the existing permit shall not deprive the applicant of the right to continue in operation pending its issuance.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-9

Demand for public hearing

Sec. 9. Demand for Public Hearing. The commission shall state in the notice to the applicant the reasons for the denial of the renewal of his beer wholesaler's permit if they decide not to renew the permit.

The commission shall grant a public hearing to the applicant on the matter if, within five (5) days after receipt by the applicant of the notice of denial, he files with the commission a written demand for a public hearing. The hearing shall be held either in the offices of the commission or in the county seat of the county in which the applicant's place of business is located after ten (10) days' notice to the applicant of the time and place of the hearing.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-10

Conduct of hearing

Sec. 10. Conduct of Hearing. The hearing on the denial of the renewal shall be conducted by a member of the commission or by a special examiner designated by it for this purpose. A deputy attorney general of the state shall represent the State of Indiana at the hearing and he shall present the written and oral evidence in support of the reasons given in the notice of the denial of the renewal of the beer wholesaler's permit. The applicant, in person or by counsel, shall present his evidence in support of his right to the renewal and in rebuttal of the evidence presented by the state. The burden shall be upon the state to establish the existence and sufficiency of the reasons for the denial of the renewal of the permit.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-11

Findings and conclusions; action of commission

Sec. 11. Findings and Conclusions: Action of Commission. The person who conducted the hearing shall make a report of the recommended findings of fact and conclusions to the commission following the hearing. The commission, upon receipt of the report, by a majority vote of its membership, shall make findings of fact and state its conclusions affirming or reversing the proposed denial of renewal. The commission shall enter its order accordingly and that order shall be final and conclusive except as otherwise provided in this title. The commission shall serve the applicant, personally or by registered mail, with a copy of the findings of fact, conclusions, and order.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-12

Petition for review

Sec. 12. Petition for Review. The applicant, if the order of the commission affirms the denial of the renewal of his permit, may file, within ten (10) days following its receipt by him, an action to review the findings, conclusions and order in the Superior Court of Marion County, or in the circuit or superior court of the county in which the applicant has his licensed premises, to set aside and enjoin the enforcement of the order of denial on the grounds that it is unlawful, unreasonable, or insufficient, or that it was obtained by wrongful, fraudulent or other unlawful methods.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-13

Contents of petition

Sec. 13. Contents of Petition. The petition for review shall be verified by the applicant, or by someone in his behalf having knowledge of the matters stated in the petition, and may include a prayer that a temporary restraining order be issued against the commission, temporarily restraining it from enforcing its order denying the renewal. The temporary restraining order, if issued, shall be issued in accordance with the procedures provided in the Indiana Rules of Civil Procedure.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-14

Ad interim operations

Sec. 14. Ad Interim Operations. The denial of the renewal of the permit shall not become effective until ten (10) days following the receipt by the applicant of a copy of the findings of fact, conclusions, and order of the commission affirming the denial if notice of denial of renewal has been given and a public hearing has been demanded as provided in this chapter. The enforcement of the commission's order of denial of renewal shall be suspended pending the expiration or dissolution of the temporary restraining order if one has been sought and issued as provided in this chapter. During the period that the order of denial is ineffective or suspended, the applicant shall be fully authorized and entitled to operate as a beer wholesaler to the same extent and effect as though a renewal permit had been issued concurrently with the expiration of his previous permit, and without being liable, criminally or civilly, on the ground of operating his beer wholesaler's business without a permit.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-15

Trial

Sec. 15. Trial. The court shall give preference to the action for review in order that, consistent with justice, the matters in issue may be determined speedily. A change of venue from the county shall not be granted in an action for review, but either party may apply for and secure a change of judge under the Indiana Rules of Civil Procedure. The trial of the action shall be by the court without the intervention of a jury.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-16

Costs

Sec. 16. Costs. The commission, in the event the denial of renewal becomes final as a result of a failure to bring an action for review, or as a result of the final judgment of the court in which the action was brought, shall deduct from the annual license fee accompanying the

application the amount of court costs taxed against the applicant and shall pay it to the clerk of the court. The commission shall apply the balance of the annual license fee to the payment of a license fee for the period of the beer wholesaler's continued operation computed at the rate of two dollars and seventy-five cents (\$2.75) per day for the number of calendar days, including Sundays and holidays, elapsed during the period of continued operation.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-17

Cancellation of franchise agreement

Sec. 17. Cancellation of Franchise Agreement. The circuit or superior court of the county in which the licensed premises of a beer wholesaler are located shall have jurisdiction to enjoin the cancellation or termination of a franchise or agreement between a beer wholesaler and a brewer in violation of IC 1971, 7.1-5-5-9. The action may be brought by a beer wholesaler or brewer who is or might be adversely affected by the cancellation or termination. The court, in granting an injunction under this section, shall provide that the brewer shall not supply the customers or territory of the beer wholesaler through servicing the customers or territory through another beer wholesaler or by any other means while the injunction is in effect. An injunction issued under this section shall require the posting of proper bond against damages for an injunction improvidently granted and a showing that the danger of irrevocable loss or damage is immediate. The beer wholesaler shall continue to service the accounts of the brewer in good faith during the term of the injunction.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-18

Certain transactions void

Sec. 18. Certain Transactions Void. The transfer, sale, acquisition, assignment, control of, or beneficial interest, direct or indirect, in or to a beer wholesaler's permit, or in its business, or in its corporate stock, by a brewer contrary to the provisions of IC 1971, 7.1-5-9-2, or the transfer, assignment upon the capital stock book, or other corporate record, of a corporation holding a beer wholesaler's permit, of the capital stock, or a part of it, is wholly void and not capable of validation.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-3-3-19

Permits prohibited to persons holding wine wholesaler's permit and liquor wholesaler's permit

Sec. 19. The commission may not issue a beer wholesaler's permit to a person who holds a wine wholesaler's permit and a liquor wholesaler's permit.

As added by P.L.72-1996, SEC.5.