
SENATE BILL No. 406

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3-1; IC 7.1-3-19.

Synopsis: Alcoholic beverage permit hearing procedures. Allows the local board of the alcohol and tobacco commission (ATC) to require an applicant for: (1) a renewal permit to sell alcoholic beverages, if the applicant has violated a law or rule or had complaints filed against the permittee; or (2) a new liquor dealer permit or transfer of a liquor dealer permit; to provide notice of the application by mail to neighboring property owners, schools, churches, and neighborhood associations that have registered with the circuit court clerk. Allows an applicant for any other retailer or dealer permit to provide notice by mail or post notice at the premises. Requires the local board to consider the limited criminal history of an applicant for a retailer or dealer permit. Specifies that the local board and the ATC must consider the applicant's moral character and the esteem in which the applicant is held by members of the community. Allows the local board to receive newspaper articles in determining the esteem in which the applicant is held by members of the community.

Effective: July 1, 2002.

Miller

January 10, 2002, read first time and referred to Committee on Public Policy.

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Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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SENATE BILL No. 406



A BILL FOR AN ACT to amend the Indiana Code concerning alcoholic beverages.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-3-1-5.7 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2002]: **Sec. 5.7. (a) Except as provided in subsection (b), this**
- 4 **section applies to a municipality or a county.**
- 5 **(b) This section does not apply to a county having a consolidated**
- 6 **city.**
- 7 **(c) As used in this section, "contiguous property owner" refers**
- 8 **to a property owner who has real property that is geographically**
- 9 **adjacent to or in contact with any point on the border of the**
- 10 **property of a person who seeks a permit to sell alcoholic beverages**
- 11 **for consumption on the licensed premises.**
- 12 **(d) As used in this section, "neighboring property owner"**
- 13 **means:**
- 14 **(1) a contiguous property owner; or**
- 15 **(2) a property owner who has real property that:**
- 16 **(A) is geographically adjacent to or in contact with any**
- 17 **point on the border of the property of a contiguous**



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property owner; and
(B) some part of which is within five hundred (500) feet of the property of a person who seeks a permit to sell alcoholic beverages for consumption on the licensed premises.

(e) As used in this section, "principal owner" means any person or entity holding at least a fifteen percent (15%) interest in the business for which a permit is sought to sell alcoholic beverages.

(f) As used in this section, "property owner" means any person whose name and address appears in the county assessor's real property tax assessment records as a person responsible for the payment of property taxes on a parcel of real property.

(g) In addition to the notice required by section 5 of this chapter, the applicant for a new permit or a transfer of a permit to sell alcoholic beverages of any type or at any location must, at least fifteen (15) days before the date of the local board hearing, mail notice of the hearing at the applicant's expense to the following:

- (1) Each neighboring property owner.
- (2) The circuit court clerk of the county where the premises is located.
- (3) The following entities that have registered with the circuit court clerk of the county where the premises is located:
 - (A) The principal, headmaster, or other primary administrator of each public, private, or parochial elementary or secondary school located less than one thousand (1,000) feet from the property line of the applicant's property.
 - (B) Each church that is located less than one thousand (1,000) feet from the property line of the applicant's property.
 - (C) Each neighborhood association that represents the area in which the applicant's property is located.

(h) The notice that the applicant mails must provide the following information:

- (1) The name and address of the applicant, or if the applicant is a corporation, a club, an association, or an organization, the name and address of the applicant's president, secretary, and principal owners who will be responsible to the public for the sale of alcoholic beverages.
- (2) A statement that the applicant has filed an application with the alcohol and tobacco commission for the sale of alcoholic beverages.

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- (3) The specific address where alcoholic beverages are asked to be sold.**
- (4) The type of alcoholic beverage permit applied for.**
- (5) The date, time, and location of the public hearing before the local alcoholic beverage board regarding the application.**
- (6) That if there is a desire to remonstrate against the application, the recipient of the notice may attend this public hearing.**

(i) The applicant shall furnish evidence of the applicant's compliance with this section by filing an affidavit with the local board at the public hearing on the application. The affidavit must list the names and addresses of the individuals or other entities to which notice was mailed by the applicant.

(j) In addition to the information required by subsection (i), the applicant shall file with the local board at the public hearing the following information:

- (1) If the area where the premises is located is within the jurisdiction of a planning commission, verification from the plan commission that the applicant is in compliance with zoning requirements for the premises to be licensed.**
- (2) Verification from the department of state revenue that the applicant does not have any outstanding income tax, excise tax, or sales tax liabilities.**
- (3) Verification from the county treasurer that the applicant does not have any outstanding property tax liability.**

(k) Subsection (j)(1) does not apply to a permit holder that received and held a permit before July 1, 2002.

(l) An applicant seeking a transfer of a permit from a permit holder to a new permit holder when the new permit holder does not intend to change the nature of the business operated under the permit may apply to the local board for a waiver of the notice requirement in subsection (h). The local board may consider any information the local board considers relevant in making a determination to approve or deny the waiver request. The local board must approve or deny a waiver request at the first regularly scheduled meeting that occurs at least fifteen (15) days after the local board receives the waiver request from the applicant.

SECTION 2. IC 7.1-3-1-5.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 5.8. (a) Except as provided in subsection (b), this section applies to a municipality or a county.**

(b) This section does not apply to a county having a consolidated

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- 1 city.
- 2 (c) This section applies only to an application for the renewal of
- 3 a permit to sell alcoholic beverages.
- 4 (d) The definitions set forth in section 5.7 of this chapter apply
- 5 to this section.
- 6 (e) The renewal of a permit is subject to IC 7.1-3-19-9.5.
- 7 (f) If:
- 8 (1) an applicant has been cited for a violation of law or a rule
- 9 of the commission; or
- 10 (2) the local board has received at least five (5) written
- 11 complaints against the applicant alleging a violation of law or
- 12 a rule of the commission;
- 13 then upon direction of the local board, the applicant shall, at least
- 14 fifteen (15) days before the date of the local board hearing, mail
- 15 notice of the hearing at the applicant's expense as provided in
- 16 subsection (g).
- 17 (g) The applicant shall mail the notice required under
- 18 subsection (f) to the following:
- 19 (1) Each neighboring property owner.
- 20 (2) The circuit court clerk of the county where the premises is
- 21 located.
- 22 (3) The following entities that have registered with the circuit
- 23 court clerk of the county where the premises is located:
- 24 (A) The principal, headmaster, or other primary
- 25 administrator of each public, private, or parochial
- 26 elementary or secondary school located less than one
- 27 thousand (1,000) feet from the property line of the
- 28 applicant's property.
- 29 (B) Each church that is located less than one thousand
- 30 (1,000) feet from the property line of the applicant's
- 31 property.
- 32 (C) Each neighborhood association that represents the
- 33 area in which the applicant's property is located.
- 34 (h) The notice that the applicant mails must provide the
- 35 following information:
- 36 (1) The name and address of the applicant, or if the applicant
- 37 is a corporation, a club, an association, or an organization, the
- 38 name and address of the applicant's president, secretary, and
- 39 principal owners who will be responsible to the public for the
- 40 sale of alcoholic beverages.
- 41 (2) A statement that the applicant has filed an application
- 42 with the alcohol and tobacco commission for the sale of

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alcoholic beverages.

(3) The specific address where alcoholic beverages are asked to be sold.

(4) The type of alcoholic beverage permit applied for.

(5) The date, time, and location of the public hearing before the local board regarding the application.

(6) That if there is a desire to remonstrate against the application, the recipient of the notice may attend this public hearing.

(i) The applicant shall furnish evidence of the applicant's compliance with this section by filing an affidavit with the local board at the public hearing on the application. The affidavit must list the names and addresses of the persons to whom notice was mailed by the applicant.

(j) In addition to the information required by subsection (i), the applicant shall file with the local board at the public hearing the following information:

(1) If the area where the premises is located is within the jurisdiction of a planning commission, verification from the plan commission that the applicant is in compliance with zoning requirements for the premises to be licensed.

(2) Verification from the department of state revenue that the applicant does not have any outstanding income tax, excise tax, or sales tax liabilities.

(3) Verification from the county treasurer that the applicant does not have any outstanding property tax liability.

(k) Subsection (j)(1) does not apply to a permit holder that received and held a permit before July 1, 2002.

SECTION 3. IC 7.1-3-1-28, AS ADDED BY P.L.204-2001, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28. (a) This section applies to the initial issuance, transfer of location, or transfer of ownership of the following:

(1) Any form of retailer's permit issued under this title.

(2) Any form of dealer's permit issued under this title.

(b) To qualify for approval of an application, an applicant must show proof to the commission that the applicant has provided notice concerning the application in conformity with this section.

(c) Except as provided in subsection (d), the applicant shall post a sign for the period, in the location, and in the form specified in the rules adopted by the commission to indicate to the public that the applicant is seeking the issuance of a retailer's or dealer's permit. The rules adopted by the commission must require that:

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1 (1) the wording on the sign be in a sufficiently large type size; and

2 (2) the sign be posted in a sufficient manner in a window or
3 another area;

4 so that the sign is visible from the largest public thoroughfare or the
5 nearest public thoroughfare in the vicinity of the applicant's location.
6 The commission may require an applicant to use a sign prepared by the
7 commission. The commission may charge a fee for a sign prepared by
8 the commission that does not exceed the cost of the sign.

9 (d) ~~This subsection applies to a county having a consolidated city.~~
10 If the application is for a permit other than a liquor dealer's permit, the
11 applicant may:

12 (1) post notice of the application as set forth in subsection (c); or

13 (2) mail notice in accordance with:

14 (A) section 5.5 or 5.7 of this chapter if the application is for a
15 new permit or transfer of a permit; or

16 (B) section 5.6 or 5.8 of this chapter if the application is for
17 renewal of a permit.

18 SECTION 4. IC 7.1-3-19-8 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. ~~Testimony.~~ In the
20 discretion of the designated member of the local board, sworn oral
21 testimony may be heard, and affidavits or duly certified documents may
22 be received. The local board also may utilize any and all sources of
23 unsworn information. **The local board may receive newspaper
24 articles in considering the esteem in which an applicant or
25 permittee is held by members of the community under section 8.5
26 of this chapter.**

27 SECTION 5. IC 7.1-3-19-8.5 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2002]: **Sec. 8.5. (a) In determining an
30 applicant's or a permittee's eligibility to hold, renew, or continue
31 to hold a permit, particularly whether the applicant is of good
32 moral character and of good repute, the local board and the
33 commission shall consider whether acts or conduct of the:**

34 (1) applicant;

35 (2) permittee; or

36 (3) the employees or agents of the applicant or permittee;
37 would constitute action or conduct prohibited under IC 35 or a
38 criminal offense under federal law.

39 (b) The local board and the commission shall consider the
40 esteem in which the person is held by members of the community
41 and the assessment of the applicant's or permittee's character as
42 may be reasonably inferred from the following:

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- 1 **(1) Police reports.**
 2 **(2) Evidence admitted in court and commission proceedings.**
 3 **(3) Information contained in public records.**
 4 **(4) Other sources of information as set forth in sections 8 and**
 5 **10 of this chapter.**

6 SECTION 6. IC 7.1-3-19-8.6 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2002]: **Sec. 8.6. In conducting an**
 9 **investigation of an applicant or permittee under this chapter, the**
 10 **local board shall consider the limited criminal history of the**
 11 **applicant or permittee as provided in IC 5-2-5.**

12 SECTION 7. IC 7.1-3-19-9.5 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9.5. (a) The
 14 commission shall provide procedures and forms to allow an applicant
 15 for the renewal of a retailer's or dealer's permit to file a simplified
 16 application.

17 (b) An applicant for renewal does not have to be present during the
 18 local board proceedings on the renewal unless notified by the
 19 commission or the local board. However, a local board may not take
 20 any action to deny the renewal of a retailer's or dealer's permit unless
 21 the applicant has been notified and given an opportunity to be present
 22 at an investigation before the local board.

23 (c) For the purpose of implementing this section, the commissioner
 24 may prorate permits of persons holding more than one (1) retailer's or
 25 dealer's permit so that those permits terminate at one (1) time and the
 26 renewed permits of that person shall have the same termination date.

27 (d) In a county containing a consolidated city, the renewal of a
 28 retailer's or dealer's permit is subject to this section and IC 7.1-3-1-5.6.

29 **(e) In a municipality or a county other than a county containing**
 30 **a consolidated city, the renewal of a retailer's or dealer's permit is**
 31 **subject to this section and IC 7.1-3-1-5.8.**

32 SECTION 8. IC 7.1-3-1-5.3 IS REPEALED [EFFECTIVE JULY 1,
 33 2002].

34 SECTION 9. [EFFECTIVE JULY 1, 2002] **(a) 905 IAC 1-27-1 is**
 35 **void. The publisher of the Indiana Administrative Code and**
 36 **Indiana Register shall remove this section from the Indiana**
 37 **Administrative Code.**

38 **(b) This SECTION expires July 1, 2003.**

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