



February 9, 2007

# HOUSE BILL No. 1479

DIGEST OF HB 1479 (Updated February 7, 2007 10:49 am - DI 14)

**Citations Affected:** IC 7.1-3; IC 7.1-5; IC 34-30; noncode.

**Synopsis:** Various alcoholic beverage matters. Allows a brewer of a small brewery to sell and deliver beer to a consumer. Removes a provision that allows a brewer of a large brewery to sell and deliver beer to a consumer. Prohibits a beer wholesaler from selling beer to a consumer other than an employee of the wholesaler. Allows liquor retailers and liquor dealers to provide samples of flavored malt beverages and hard cider that do not exceed six ounces. Establishes requirements that a wine wholesaler must meet to resell wine purchased at an estate sale. Provides a wholesaler with immunity from civil liability for product liability or negligence regarding wine the wholesaler purchased at an estate auction and resold. Makes it a Class D felony for a wholesaler to sell a brand of alcoholic beverages that the permittee has not been authorized to sell by the brand's primary source of supply and allows an injured permittee to bring a civil action against the wholesaler. Prohibits a permittee from coercing another permittee to enter into an agreement or take an action that violates the alcoholic beverage statutes and rules. (Current law prohibits only a primary source of supply or a beer wholesaler from coercing a beer wholesaler.)

**Effective:** July 1, 2007.

**Van Haaften, Kuzman, Whetstone,  
Stutzman**

January 23, 2007, read first time and referred to Committee on Public Policy.  
February 8, 2007, amended, reported — Do Pass.

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February 9, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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## HOUSE BILL No. 1479

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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 7.1-3-2-7 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The holder of a  
3 brewer's permit or an out-of-state brewer holding either a primary  
4 source of supply permit or an out-of-state brewer's permit may do the  
5 following:
- 6 (1) Manufacture beer.
  - 7 (2) Place beer in containers or bottles.
  - 8 (3) Transport beer.
  - 9 (4) Sell and deliver beer to a person holding a beer wholesaler's  
10 permit issued under IC 7.1-3-3.
  - 11 (5) If the brewer's brewery manufactures not more than twenty  
12 thousand (20,000) barrels of beer in a calendar year, do the  
13 following:
    - 14 (A) Sell and deliver beer to a person holding a retailer or a  
15 dealer permit under this title.
    - 16 (B) Be the proprietor of a restaurant.
    - 17 (C) Hold a beer retailer's permit, a wine retailer's permit, or a

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- 1 liquor retailer's permit for a restaurant established under clause
- 2 (B).
- 3 (D) Transfer beer directly from the brewery to the restaurant
- 4 by means of:
- 5 (i) bulk containers; or
- 6 (ii) a continuous flow system.
- 7 (E) Install a window between the brewery and an adjacent
- 8 restaurant that allows the public and the permittee to view both
- 9 premises.
- 10 (F) Install a doorway or other opening between the brewery
- 11 and an adjacent restaurant that provides the public and the
- 12 permittee with access to both premises.
- 13 (G) Sell the brewery's beer by the glass for consumption on the
- 14 premises. Brewers permitted to sell beer by the glass under
- 15 this clause must furnish the minimum food requirements
- 16 prescribed by the commission.
- 17 **(H) Sell and deliver beer to a consumer at the permit**
- 18 **premises of the brewer or at the residence of the consumer.**
- 19 **The delivery to a consumer may be made only in a quantity**
- 20 **at any one (1) time of not more than one-half (1/2) barrel,**
- 21 **but the beer may be contained in bottles or other**
- 22 **permissible containers.**
- 23 (6) If the brewer's brewery manufactures more than twenty
- 24 thousand (20,000) barrels of beer in a calendar year, own a
- 25 portion of the corporate stock of another brewery that:
- 26 (A) is located in the same county as the brewer's brewery;
- 27 (B) manufactures less than twenty thousand (20,000) barrels
- 28 of beer in a calendar year; and
- 29 (C) is the proprietor of a restaurant that operates under
- 30 subdivision (5).
- 31 ~~(7) Sell and deliver beer to a consumer at the plant of the brewer~~
- 32 ~~or at the residence of the consumer. The delivery to a consumer~~
- 33 ~~shall be made only in a quantity at any one (1) time of not more~~
- 34 ~~than one-half (1/2) barrel; but the beer may be contained in bottles~~
- 35 ~~or other permissible containers.~~
- 36 ~~(8) (7) Provide complimentary samples of beer that are:~~
- 37 (A) produced by the brewer; and
- 38 (B) offered to consumers for consumption on the brewer's
- 39 premises.
- 40 ~~(9) (8) Own a portion of the corporate stock of a sports~~
- 41 ~~corporation that:~~
- 42 (A) manages a minor league baseball stadium located in the

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1 same county as the brewer's brewery; and  
 2 (B) holds a beer retailer's permit, a wine retailer's permit, or a  
 3 liquor retailer's permit for a restaurant located in that stadium.  
 4 ~~(10)~~ **(9)** For beer described in IC 7.1-1-2-3(a)(4):  
 5 (A) may allow transportation to and consumption of the beer  
 6 on the licensed premises; and  
 7 (B) may not sell, offer to sell, or allow sale of the beer on the  
 8 licensed premises.

9 SECTION 2. IC 7.1-3-3-5, AS AMENDED BY P.L.224-2005,  
 10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2007]: Sec. 5. (a) The holder of a beer wholesaler's permit  
 12 may purchase and import from the primary source of supply, possess,  
 13 and sell at wholesale, beer and flavored malt beverages manufactured  
 14 within or without this state.

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

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

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

26 (c) ~~Delivery of beer to a consumer shall be made in barrels only~~  
 27 ~~with the exception of~~ The beer wholesaler's bona fide regular  
 28 employees ~~who~~ may purchase beer from the wholesaler in:

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

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

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

- 42 (1) A beer wholesaler or wine wholesaler permit, if the wholesaler

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1 is authorized by the primary source of supply to sell the brand of  
 2 flavored malt beverage purchased.  
 3 (2) A wine retailer's permit, wine dealer's permit, temporary wine  
 4 permit, dining car wine permit, boat permit, airplane permit, or  
 5 supplemental caterer's permit.  
 6 (f) A beer wholesaler may:  
 7 (1) store beer for an out-of-state brewer described in IC 7.1-3-2-9  
 8 and deliver the stored beer to another beer wholesaler that the  
 9 out-of-state brewer authorizes to sell the beer;  
 10 (2) perform all necessary accounting and auditing functions  
 11 associated with the services described in subdivision (1); and  
 12 (3) receive a fee from an out-of-state brewer for the services  
 13 described in subdivisions (1) through (2).  
 14 SECTION 3. IC 7.1-3-9-11 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A liquor retailer  
 16 may allow customers to sample the following:  
 17 (1) Beer.  
 18 (2) Wines.  
 19 (3) Liquors.  
 20 (4) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).  
 21 **(5) Flavored malt beverages.**  
 22 **(6) Hard cider.**  
 23 (b) Sampling is permitted only:  
 24 (1) on the liquor retailer's permit premises; and  
 25 (2) during the permittee's regular business hours.  
 26 (c) A liquor retailer may not charge for the samples provided to  
 27 customers.  
 28 (d) Sample size of wines may not exceed one (1) ounce.  
 29 (e) In addition to the other provisions of this section, a liquor retailer  
 30 who allows customers to sample liquors, liqueurs, or cordials shall  
 31 comply with all of the following:  
 32 (1) A liquor retailer may allow a customer to sample only a  
 33 combined total of two (2) liquor, liqueur, or cordial samples per  
 34 day.  
 35 (2) Sample size of liqueurs or cordials may not exceed one-half  
 36 (1/2) ounce.  
 37 (3) Sample size of liquors may not exceed four-tenths (0.4) ounce.  
 38 (f) A sample size of beer may not exceed six (6) ounces.  
 39 **(g) A sample size of flavored malt beverage or hard cider may**  
 40 **not exceed six (6) ounces.**  
 41 SECTION 4. IC 7.1-3-10-13 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) A liquor dealer

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1        permittee who is a proprietor of a package liquor store may allow  
2 customers to sample the following:

- 3            (1) Beer.
- 4            (2) Wines.
- 5            (3) Liquors.
- 6            (4) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

7            **(5) Flavored malt beverages.**

8            **(6) Hard cider.**

9            (b) Sampling is permitted:

- 10            (1) only on the package liquor store permit premises; and
- 11            (2) only during the store's regular business hours.

12            (c) No charge may be made for the samples provided to the  
13 customers.

14            (d) Sample size of wines may not exceed one (1) ounce.

15            (e) In addition to the other provisions of this section, a proprietor  
16 who allows customers to sample liquors, liqueurs, or cordials shall  
17 comply with all of the following:

- 18            (1) A proprietor may allow a customer to sample not more than a  
19 combined total of two (2) liquor, liqueur, or cordial samples per  
20 day.
- 21            (2) Sample size of liqueurs or cordials may not exceed one-half  
22 (1/2) ounce.
- 23            (3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

24            (f) A sample size of beer may not exceed six (6) ounces.

25            **(g) A sample size of flavored malt beverage or hard cider may  
26 not exceed six (6) ounces.**

27        SECTION 5. IC 7.1-3-13-3.5 IS ADDED TO THE INDIANA  
28 CODE AS A NEW SECTION TO READ AS FOLLOWS  
29 [EFFECTIVE JULY 1, 2007]: **Sec. 3.5. (a) A wine wholesaler may  
30 sell wine purchased from an estate sale only if the following  
31 requirements are met:**

- 32            **(1) The primary source of the wine sold at auction:**
  - 33            **(A) is authorized to sell wine in Indiana on the date the**
  - 34            **wine is resold by the wholesaler;**
  - 35            **(B) is given notice of the purchase by the wine wholesaler;**
  - 36            **and**
  - 37            **(C) authorizes the wine wholesaler to resell the wine**
  - 38            **purchased.**
- 39            **(2) The seller of wine at auction is a bona fide estate of an**
- 40            **Indiana decedent.**
- 41            **(3) Each wine bottle is affixed with a sticker indicating that**
- 42            **the wine was purchased from an estate.**

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1           **(b) The notice given to the primary source under subsection**  
2 **(a)(1) must include the following information:**  
3           **(1) The name of the seller.**  
4           **(2) The amount of the product purchased and the sale price at**  
5 **auction.**  
6           **(3) The vintage of the wine purchased.**  
7           **(c) A wholesaler is not liable for product liability or negligence**  
8 **for wine that the wholesaler sells from an estate auction purchase.**  
9           SECTION 6. IC 7.1-5-5-9, AS AMENDED BY P.L.224-2005,  
10 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2007]: Sec. 9. **(a) It is unlawful for a beer wholesaler or a**  
12 **primary source of supply to: permittee to (†) coerce, or attempt to**  
13 **coerce, or persuade a beer wholesaler another permittee to enter into**  
14 **an agreement, or to take an action, which will violate, or tend to violate,**  
15 **a provision of this title or of the rules and regulations of the**  
16 **commission. or**  
17 **(‡) (b) It is unlawful for a beer wholesaler or a primary source**  
18 **of supply to cancel or terminate an agreement or contract between a**  
19 **beer wholesaler and a primary source of supply for the sale of beer,**  
20 **unfairly and without due regard for the equities of the other party.**  
21           SECTION 7. IC 7.1-5-10-23 IS ADDED TO THE INDIANA CODE  
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
23 1, 2007]: **Sec. 23. (a) A wholesaler permittee who knowingly or**  
24 **intentionally sells a brand of alcoholic beverages that the**  
25 **wholesaler permittee has not been authorized to sell by the brand's**  
26 **primary source of supply commits a Class D felony.**  
27           **(b) A permittee who is injured as a result of a violation of this**  
28 **section has a private right of action to bring a civil action to**  
29 **recover compensatory damages against the wholesaler permittee**  
30 **who violates this section.**  
31           SECTION 8. IC 34-30-2-19.5 IS ADDED TO THE INDIANA  
32 CODE AS A NEW SECTION TO READ AS FOLLOWS  
33 [EFFECTIVE JULY 1, 2007]: **Sec. 19.5. IC 7.1-3-13-3.5 (Concerning**  
34 **wine purchased at an estate sale and resold by a wine wholesaler).**  
35           SECTION 9. [EFFECTIVE JULY 1, 2007] **IC 7.1-5-7-8, as**  
36 **amended by this act, and IC 7.1-5-10-23, as added by this act, apply**  
37 **only to offenses committed after June 30, 2007.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred House Bill 1479, 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 1, delete lines 1 through 17.
- Page 2, delete lines 1 through 3.
- Page 5, line 16, reset in roman "six (6)".
- Page 5, line 16, delete "twelve (12)".
- Page 6, line 2, reset in roman "six (6)".
- Page 6, line 2, delete "twelve (12)".
- Page 6, delete lines 41 through 42.
- Page 7, delete lines 1 through 15.
- Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1479 as introduced.)

VAN HAAFTEN, Chair

Committee Vote: yeas 9, nays 0.

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