
SENATE BILL No. 332

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3; IC 7.1-4-4-3; IC 7.1-5-10-12.

Synopsis: Direct wine sales. Provides that a person who engages in the retail sale of wine is eligible for a direct wine seller's permit. Removes requirements that before a direct wine seller (seller) may sell to a consumer: (1) the consumer must provide information in one face-to-face transaction at the seller's place of business; or (2) under certain circumstances, the consumer must provide a verified statement that the consumer is at least 21 years of age, and the seller must provide information to the alcohol and tobacco commission (commission). Amends the eligibility requirements for a direct wine seller's permit. Requires a consumer to provide the consumer's name, valid delivery address and telephone number, payment, and proof of age by a state issued driver's license or identification card, electronically or otherwise transmitted, before a seller may sell wine directly to a consumer. Requires sellers to remit quarterly to the department of state revenue all Indiana excise taxes and sales and use taxes due on the shipments made into Indiana. (Current law requires the sellers to remit the taxes monthly.) Allows a holder of an alcoholic beverage permit to sell or offer to sell an alcoholic beverage on credit to an individual who does not hold an alcoholic beverage permit. Makes it a Class C infraction for a consumer to resell wine purchased from a holder of a direct wine seller's permit. Makes conforming changes. Repeals provisions that: (1) require a consumer to provide certain information to a seller; (2) restrict the amount of wine a seller may direct ship in Indiana during a permit year; and (3) restrict the amount of wine a consumer may receive in a calendar year.

Effective: July 1, 2009.

Steele

January 8, 2009, read first time and referred to Committee on Rules and Legislative Procedure.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 332



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 7.1-3-12-5, AS AMENDED BY P.L.165-2006,
- 2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2009]: Sec. 5. (a) The holder of a farm winery permit:
- 4 (1) is entitled to manufacture wine and to bottle wine produced by
- 5 the permit holder's farm winery;
- 6 (2) is entitled to serve complimentary samples of the winery's
- 7 wine on the licensed premises or an outside area that is
- 8 contiguous to the licensed premises as approved by the
- 9 commission if each employee who serves wine on the licensed
- 10 premises:
- 11 (A) holds an employee permit under IC 7.1-3-18-9; and
- 12 (B) completes a server training program approved by the
- 13 commission;
- 14 (3) is entitled to sell the winery's wine on the licensed premises to
- 15 consumers either by the glass, or by the bottle, or both;
- 16 (4) is entitled to sell the winery's wine to consumers by the bottle
- 17 at a farmers' market that is operated on a nonprofit basis;



- 1 (5) is entitled to sell wine by the bottle or by the case to:
- 2 (A) a person who is the holder of a permit to sell wine at
- 3 wholesale; or
- 4 (B) a consumer if the holder of the farm winery permit
- 5 holds a direct wine seller's permit under IC 7.1-3-26;
- 6 (6) is exempt from the provisions of IC 7.1-3-14;
- 7 (7) is entitled to advertise the name and address of any retailer or
- 8 dealer who sells wine produced by the permit holder's winery;
- 9 (8) for wine described in IC 7.1-1-2-3(a)(4):
- 10 (A) may allow transportation to and consumption of the wine
- 11 on the licensed premises; and
- 12 (B) may not sell, offer to sell, or allow the sale of the wine on
- 13 the licensed premises;
- 14 (9) is entitled to purchase and sell bulk wine as set forth in this
- 15 chapter;
- 16 (10) is entitled to sell wine as authorized by this section for
- 17 carryout on Sunday; and
- 18 (11) is entitled to sell and ship the farm winery's wine to a person
- 19 located in another state in accordance with the laws of the other
- 20 state.
- 21 (b) With the approval of the commission, a holder of a permit under
- 22 this chapter may conduct business at not more than three (3) additional
- 23 locations that are separate from the winery. At the additional locations,
- 24 the holder of a permit may conduct any business that is authorized at
- 25 the first location, except for the manufacturing or bottling of wine.
- 26 (c) With the approval of the commission, a holder of a permit under
- 27 this chapter may, individually or with other permit holders under this
- 28 chapter, participate in a trade show or an exposition at which products
- 29 of each permit holder participant are displayed, promoted, and sold.
- 30 The commission may not grant approval under this subsection to a
- 31 holder of a permit under this chapter for more than thirty (30) days in
- 32 a calendar year.
- 33 SECTION 2. IC 7.1-3-26-6, AS ADDED BY P.L.165-2006,
- 34 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 35 JULY 1, 2009]: Sec. 6. A seller may sell and ship wine directly only to
- 36 a consumer who meets all of the following requirements:
- 37 (1) The consumer is at least twenty-one (21) years of age.
- 38 (2) The consumer has an Indiana address.
- 39 (3) The consumer intends to use wine purchased under this
- 40 chapter for personal use only and not for resale or other
- 41 commercial purposes.
- 42 (4) Except as provided in subdivision (5), the consumer has

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1 provided to the seller in one (1) initial face-to-face transaction at
2 the seller's place of business appearing on the seller's application
3 for a direct wine seller's permit or any locations authorized by
4 IC 7.1-3-12-5 all the following:

5 (A) Name, telephone number, Indiana address, or consumer's
6 Indiana business address.

7 (B) Proof of age by a state issued driver's license or state
8 issued identification card showing the consumer to be at least
9 twenty-one (21) years of age.

10 (C) A verified statement, made under penalties for perjury,
11 that the consumer satisfies the requirements of subdivisions
12 (1) through (3).

13 (5) If:

14 (A) before April 1, 2006, the consumer has engaged in a
15 transaction with a seller in which the seller sold wine to the
16 consumer and; after April 1, 2006, but before December 31,
17 2006, the consumer provides the seller with a verified
18 statement, made under penalties for perjury, that the consumer
19 is at least twenty-one (21) years of age; and

20 (B) the seller provides the name and Indiana address of the
21 consumer to the commission before January 15, 2007;

22 the seller may sell directly to the consumer in accordance with
23 this chapter.

24 SECTION 3. IC 7.1-3-26-7, AS AMENDED BY P.L.54-2008,
25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2009]: Sec. 7. (a) The commission may issue a direct wine
27 seller's permit to an applicant who meets all of the following
28 requirements:

29 (1) The applicant is domiciled and has its principal place of
30 business in the United States.

31 (2) The applicant is engaged in:

32 (A) the manufacture of wine;

33 (B) the retail sale of wine; or

34 (C) the manufacture of wine and the retail sale of wine.

35 (3) The applicant holds and acts within the scope of authority of
36 an alcoholic beverage license or permit to manufacture wine or
37 sell wine at retail that is required:

38 (A) in Indiana or the state where the applicant is domiciled;
39 and

40 (B) by the Tax and Trade Bureau of the United States
41 Department of the Treasury.

42 (4) The applicant, ~~qualifies with the secretary of state to do~~

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1 **business in Indiana and in a writing filed with the commission**
 2 **with the applicant's application**, consents to the personal
 3 jurisdiction of the commission, **the department of state revenue**,
 4 and the courts of Indiana **with respect to the applicant's**
 5 **obligation to pay and account for all Indiana excise taxes and**
 6 **sales and use taxes and for the applicant's compliance with the**
 7 **applicant's obligations under this title.**

8 (5) The applicant files a surety bond with the commission in
 9 accordance with IC 7.1-3-1, or deposits cash in an escrow account
 10 with the commission, in the amount required of an applicant for
 11 a vintner's permit under IC 7.1-3-1-7.

12 (6) (5) The applicant:

- 13 (A) does not hold a permit or license to wholesale alcoholic
 14 beverages issued by **any authority; the state of Indiana**; and
 15 (B) is not owned in whole or in part or controlled by a person
 16 who holds a permit or license **issued by the state of Indiana**
 17 to wholesale alcoholic beverages.

18 (7) The applicant sells not more than one million (1,000,000)
 19 gallons of wine per year in Indiana, excluding wine shipped to an
 20 out-of-state address.

21 (8) The applicant:

- 22 (A) has not distributed wine through a wine wholesaler in
 23 Indiana within the one hundred twenty (120) days immediately
 24 preceding the applicant's application for a direct wine seller's
 25 permit and does not distribute wine through a wine wholesaler
 26 in Indiana during the term of the direct wine seller's permit; or
 27 (B) has operated as a farm winery under IC 7.1-3-12.

28 (9) The applicant is not the parent, subsidiary, or affiliate of
 29 another entity manufacturing any alcoholic beverage.

30 (10) (6) The applicant completes documentation regarding the
 31 applicant's application required by the commission.

32 (b) The commission may issue a direct wine seller's permit to an
 33 applicant who:

- 34 (1) meets the requirements under subsection (a); and
 35 (2) holds a permit issued under this title that allows the sale of an
 36 alcoholic beverage at retail.

37 SECTION 4. IC 7.1-3-26-9, AS ADDED BY P.L.165-2006,
 38 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2009]: Sec. 9. A direct wine seller's permit entitles a seller to
 40 sell and ship wine to a consumer **in Indiana** by receiving and filling
 41 orders that the consumer transmits by **electronic mail, telephone,**
 42 **Internet, computer**, or other means if all of the following conditions

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are satisfied before the sale or by the times set forth as follows:

(1) The consumer provides the direct wine seller with the following:

(A) The verification required by section 6(4) of this chapter in an initial face-to-face transaction.

(B) Notwithstanding clause (A), if the consumer provided the information specified in section 6(5)(A) of this chapter after April 1, 2006, but before December 31, 2006, and the seller provides the name and Indiana address of the consumer under section 6(5)(B) of this chapter to the commission before January 15, 2007, the consumer is not required to comply with section 6(4) of this chapter.

(A) The consumer's name.

(B) A valid delivery address and telephone number.

(C) A credit card number, a check, or other valid payment.

(D) Proof of the consumer's age by a state issued driver's license or identification card showing the consumer is at least twenty-one (21) years of age. The proof under this clause may be evidenced in person, by a photocopy or facsimile copy that is mailed or electronically transmitted, or by a computer scanned electronically transmitted copy.

(2) The direct wine seller meets the following requirements:

(A) Maintains for two (2) years all records of wine sales made under this chapter. If the records are requested by the commission, a direct wine seller shall:

(i) make the records available to the commission during the direct wine seller's regular business hours; or

(ii) at the direction of the commission, deliver copies to the commission.

(B) Stamps, prints, or labels on the outside of the shipping container the following: "CONTAINS WINE. SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

(C) Causes the wine to be delivered by the holder of a valid carrier's alcoholic beverage permit under IC 7.1-3-18.

(D) Directs the carrier to verify that the individual personally receiving the wine shipment is at least twenty-one (21) years of age.

(E) Does not ship to any individual consumer more than two hundred sixteen (216) liters of wine in any calendar year.

(F) Remits to the department of state revenue ~~monthly~~ quarterly all Indiana excise taxes and sales and use taxes due

COPY



1 on the shipments made into Indiana by the direct wine seller
2 during the previous ~~month~~ **quarter**.

3 SECTION 5. IC 7.1-3-26-14.5 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2009]: **Sec. 14.5. (a) A consumer who**
6 **purchases wine from the holder of a direct wine seller's permit**
7 **may not resell the wine.**

8 **(b) A consumer who violates this section commits a Class C**
9 **infraction.**

10 SECTION 6. IC 7.1-3-26-15, AS ADDED BY P.L.165-2006,
11 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2009]: Sec. 15. (a) Except as provided in subsections (b) and
13 (c), a seller who violates this chapter commits a Class A infraction.

14 (b) ~~Except as provided in subsection (d)~~; A seller who:
15 (1) knowingly or intentionally violates this chapter; and
16 (2) has one (1) prior unrelated conviction or judgment for an
17 infraction under this section for an act or omission that occurred
18 not more than ten (10) years before the act or omission that is the
19 basis for the most recent conviction or judgment for an infraction;
20 commits a Class A misdemeanor.

21 (c) ~~Except as provided in subsection (d)~~; A seller who:
22 (1) knowingly or intentionally violates this chapter; and
23 (2) has at least two (2) prior unrelated convictions or judgments
24 for infractions under this section for acts or omissions that
25 occurred not more than ten (10) years before the act or omission
26 that is the basis for the most recent conviction or judgment for an
27 infraction;
28 commits a Class D felony.

29 (d) ~~A person who violates section 6(5) of this chapter commits a~~
30 ~~Class A infraction. The commission may consider an infraction~~
31 ~~committed under this subsection in its determination of whether to~~
32 ~~renew a seller's permit.~~

33 SECTION 7. IC 7.1-3-26-16, AS AMENDED BY P.L.1-2007,
34 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2009]: Sec. 16. If a direct wine seller is charged under section
36 15 of this chapter with selling to a consumer who does not meet the
37 requirements of section 6 of this chapter, it is a defense to the charge
38 if the direct wine seller ~~obtained from the consumer the verified~~
39 ~~statement required under section 6(4)(C) or 6(5)(A) of this chapter and~~
40 ~~produces a copy of the verified statement. met all the requirements~~
41 ~~under section 9(1) and 9(2)(A) through 9(2)(E) of this chapter.~~

42 SECTION 8. IC 7.1-4-4-3 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. ~~Persons Liable for~~
 2 ~~Tax~~. The wine excise tax shall be paid by the holder of a vintner's
 3 permit, a farm winery permit, a wine wholesaler's permit, **a direct wine**
 4 **seller's permit**, a dining car wine permit, or a boat wine permit on the
 5 alcoholic beverage to which the tax is applicable and which has been
 6 manufactured or imported by ~~him~~ **the holder** into this state. However,
 7 the same article shall be taxed only once for wine excise tax purposes.

8 SECTION 9. IC 7.1-5-10-12 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. ~~Credit Sales~~
 10 ~~Prohibited~~. **(a) This section does not apply to a permittee who sells**
 11 **or offers to sell an alcoholic beverage to an individual who does not**
 12 **hold a permit under this title.**

13 **(b)** It is unlawful for a permittee to sell, offer to sell, purchase or
 14 receive, an alcoholic beverage for anything other than cash. A
 15 permittee who extends credit in violation of this section shall have no
 16 right of action on the claim. This section shall not prohibit a permittee
 17 from crediting to a purchaser the actual price charged for a package or
 18 an original container returned by the original purchaser as a credit on
 19 a sale. This section shall not prohibit a permittee from refunding to a
 20 purchaser the amount paid by the purchaser for a container, or as a
 21 deposit on a container, if it is returned to the permittee. This section
 22 shall not prohibit a manufacturer from extending usual and customary
 23 credit for alcoholic beverages sold to a customer who maintains a place
 24 of business outside this state when the alcoholic beverages are actually
 25 shipped to a point outside this state. This section shall not prohibit a
 26 distiller or a liquor or wine wholesaler from extending credit on liquor,
 27 flavored malt beverages, and wine sold to a permittee for a period of
 28 fifteen (15) days from the date of invoice, date of invoice included.
 29 However, if the fifteen (15) day period passes without payment in full,
 30 the wholesaler shall sell to that permittee on a cash on delivery basis
 31 only.

32 SECTION 10. THE FOLLOWING ARE REPEALED [EFFECTIVE
 33 JULY 1, 2009]: IC 7.1-3-26-11; IC 7.1-3-26-12; IC 7.1-3-26-14.

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