



Reprinted
January 28, 2022

HOUSE BILL No. 1109

DIGEST OF HB 1109 (Updated January 27, 2022 3:12 pm - DI 144)

Citations Affected: IC 24-5.

Synopsis: Wholesale pricing of nonalcoholic beverages. Prohibits, with certain exceptions, a supplier of nonalcoholic packaged beverages (supplier) from discriminating among retailers as to a delivery method, price, discount, allowance, or service charge. Specifies restrictions concerning: (1) a distribution agreement to which a supplier is a party; (2) means of delivery; (3) communication by a supplier; and (4) the purchase and sale of beverages from one retailer to another.

Effective: July 1, 2022.

**Soliday, Steuerwald, Lehman,
Hatcher**

January 4, 2022, read first time and referred to Committee on Commerce, Small Business and Economic Development.
January 20, 2022, reported — Do Pass.
January 27, 2022, read second time, amended, ordered engrossed.

HB 1109—LS 6761/DI 92



Reprinted
January 28, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1109

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

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

1 SECTION 1. IC 24-5-0.5-11 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2022]: **Sec. 11. (a) This section applies only to transactions
4 concerning the sale of nonalcoholic packaged beverages. This
5 section does not apply to a transaction concerning the sale of
6 alcoholic beverages conducted by licensees under IC 7.1.**
7 **(b) As used in this section, "beverage" means a nonalcoholic
8 packaged beverage.**
9 **(c) As used in this section, "nonalcoholic packaged beverage"
10 means a packaged beverage product that:**
11 **(1) is not an alcoholic beverage (as defined in IC 7.1-1-3-5);**
12 **(2) has a volume of at least eight (8) fluid ounces; and**
13 **(3) is enclosed in a container or wrapped in any manner in
14 advance of the sale of the product at wholesale or retail.**
15 **(d) As used in this section, "retailer" means a person, and any
16 entity affiliated and under common control with the person, that
17 engages in the business of selling tangible personal property to**

HB 1109—LS 6761/DI 92



1 consumers. For purposes of this section, "retailer" does not include
2 a supplier.

3 (e) For purposes of this section, "supplier" means a supplier:

- 4 (1) in a sale of beverages, contract to sell beverages, or
5 franchise agreement to sell beverages; and
6 (2) whose gross revenues are at least eighty percent (80%)
7 comprised from supplying nonalcoholic packaged beverages.

8 For purposes of this section, the term does not include a retailer or
9 a supplier that primarily supplies dairy products.

10 (f) Except as provided in subsection (g), a supplier may not
11 discriminate among retailers by granting a delivery method, price,
12 discount, allowance, or service charge that is not available to all
13 retailers at the same time.

14 (g) A supplier may only charge a retailer a price for a beverage
15 that is different than the price the supplier charges another retailer
16 in one (1) or more of the following circumstances:

17 (1) The supplier charges the retailer a volume based discount
18 price that is based on a volume of not more than one (1)
19 semitrailer (as defined in IC 9-13-2-164) load delivered to a
20 single location of the retailer per stock keeping unit of the
21 beverage not offered to other retailers.

22 (2) The supplier charges the retailer a higher price for the
23 beverages based only on a greater cost to the supplier to
24 deliver the beverages to the retailer.

25 (3) The supplier charges a different price for the beverages in
26 response to changing conditions affecting the market for or
27 marketability of the beverage, including:

28 (A) obsolescence of seasonal beverages; or

29 (B) distressed sales in anticipation of discontinuance of
30 business in beverages.

31 (4) The supplier and retailer enter an exclusive agreement in
32 which the retailer promises not to deal with other suppliers.

33 (h) A supplier, franchise, or other distribution agreement to
34 which a supplier is a party may not include an agreement that
35 prohibits the disclosure of the prices, discounts, allowances, or
36 service charges to a retailer.

37 (i) If a retailer or the retailer's designated wholesaler is capable
38 of receiving delivery of the beverages by a certain means of
39 delivery, a supplier must offer the retailer, directly or through the
40 retailer's designated wholesaler, the choice to receive the beverages
41 by that means of delivery.

42 (j) A supplier of nonalcoholic beverages is prohibited from



1 **engaging in any communication, in any form either directly or**
2 **indirectly, that instructs, encourages, discourages, threatens, or**
3 **otherwise influences a retailer to stop selling nonalcoholic**
4 **beverages to a specific consumer or other retailer, or group of**
5 **consumers or other retailers.**

6 **(k) A supplier may not limit the quantity of beverages that may**
7 **be bought by one (1) retailer and sold to another retailer.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred House Bill 1109, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1109 as introduced.)

MORRIS

Committee Vote: Yeas 8, Nays 4

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1109 be amended to read as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 6.

Page 7, delete lines 1 through 22.

Page 7, delete lines 31 through 32.

Page 7, line 33, delete "(d)" and insert "(c)".

Page 7, line 39, delete "(e)" and insert "(d)".

Page 8, line 2, delete "(f)" and insert "(e)".

Page 8, line 9, delete "(g)" and insert "(f)".

Page 8, line 9, delete "(h)," and insert "(g)."

Page 8, line 12, delete "Not later than the first day of each".

Page 8, delete lines 13 through 18.

Page 8, line 19, delete "(h)" and insert "(g)".

Page 8, delete lines 22 through 29, begin a new line block indented and insert:

"(1) The supplier charges the retailer a volume based discount price that is based on a volume of not more than one (1) semitrailer (as defined in IC 9-13-2-164) load delivered to a single location of the retailer per stock keeping unit of the beverage not offered to other retailers."

Page 8, delete lines 39 through 42, begin a new line block indented and insert:

"(4) The supplier and retailer enter an exclusive agreement in which the retailer promises not to deal with other suppliers."

Page 9, line 1, delete "(i)" and insert "(h)".

Page 9, line 5, delete "(j)" and insert "(i)".

Page 9, line 10, delete "(k)" and insert "(j)".



Page 9, delete lines 16 through 38, begin a new paragraph and insert:

"(k) A supplier may not limit the quantity of beverages that may be bought by one (1) retailer and sold to another retailer."

Renumber all SECTIONS consecutively.

(Reference is to HB 1109 as printed January 20, 2022.)

STEUERWALD

