

HOUSE BILL No. 1163

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3-20-9.5.

Synopsis: Extension of carryout permit term. Allows certain retailer permittees that sell alcoholic beverages for carryout to continue to sell carryout until June 30, 2019 (instead of April 1, 2018) without complying with the gross retail income requirements to sell carryout.

Effective: July 1, 2018.

Cook, Austin

January 8, 2018, read first time and referred to Committee on Public Policy.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1163

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 7.1-3-20-9.5, AS AMENDED BY THE
2 TECHNICAL CORRECTIONS BILL OF THE 2018 GENERAL
3 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2018]: Sec. 9.5. (a) This section applies only to a retailer's
5 permit for a restaurant.
6 (b) This section does not apply to a retailer's permit that is issued or
7 transferred to the following:
8 (1) A city market under IC 7.1-3-20-25.
9 (2) A marina under IC 7.1-3-1-25.
10 (3) A state park under IC 7.1-3-17.8.
11 (4) A golf course.
12 (5) A hotel or resort hotel.
13 (6) A social or fraternal club.
14 (7) A restaurant, the proprietor of which is the holder of a
15 brewer's permit under IC 7.1-3-2-7(5).
16 (c) Except as provided in subsections (d) and (e), after May 14,
17 2017, a retailer permittee may not sell alcoholic beverages for carryout



1 unless at least sixty percent (60%) of the retailer permittee's gross retail
 2 income from the sale of alcoholic beverages is derived from the sale of
 3 alcoholic beverages for consumption on the licensed premises.

4 (d) This subsection applies only to a retailer's permit with carryout
 5 privileges that was initially:

6 (1) issued; or

7 (2) transferred as to ownership or to the premises location;
 8 before November 1, 2016. Notwithstanding IC 7.1-3-1-1.5, a retailer
 9 permittee may continue to sell carryout after May 14, 2017, and is not
 10 required to comply with the gross retail **income** requirements.
 11 However, if the permit is transferred to a new location after May 14,
 12 2017, and the location is not exempt under subsection (b), the gross
 13 retail income requirements of this section apply to the transferred
 14 permit.

15 (e) This subsection applies to a retailer's permit with carryout
 16 privileges that was initially:

17 (1) issued; or

18 (2) transferred to the premises location;

19 after October 31, 2016, and before May 15, 2017. Notwithstanding
 20 IC 7.1-3-1-1.5, a retailer permittee may continue to sell carryout after
 21 May 14, 2017, and is not required to comply with the gross retail
 22 income requirements until the retailer's permit is renewed. A retailer
 23 permittee may be issued a letter of extension, and subsequent renewals
 24 of the extension under IC 7.1-3-1-3.1, but the permit term may not be
 25 extended past ~~April 1, 2018~~. **June 30, 2019**. A retailer permittee may
 26 continue to sell carryout while the extension is in effect. If the permit
 27 is transferred as to ownership or to a location that is not exempt under
 28 subsection (b), the gross retail income requirements of this section
 29 apply upon transfer of the permit.

30 (f) Except for a retailer permittee described in subsection (d), a
 31 retailer permittee that has carryout privileges must apply for renewal
 32 of the carryout privileges when applying for renewal of the retailer's
 33 permit. The retailer permittee must provide the commission with a
 34 financial statement with information that shows the dollar amounts and
 35 percentages of the retailer permittee's gross retail income that is
 36 derived from sales of alcoholic beverages:

37 (1) for consumption on the licensed premises; and

38 (2) for carryout;

39 during the one hundred eighty (180) days preceding the date of the
 40 application for renewal.

41 (g) For subsequent applications for renewal, the commission may
 42 allow a retailer permittee to submit to the commission an affidavit of



1 compliance that is signed by the permittee, or by a responsible officer
 2 or partner, under the penalties of perjury, that states that the
 3 requirements of subsection (c) continue to be met. If the commission
 4 has reasonable grounds to doubt the truthfulness of an affidavit of
 5 compliance, the commission may require the retailer permittee to
 6 provide audited financial statements.

7 (h) If an applicant for renewal of carryout privileges does not meet
 8 the requirements of subsection (c) and the commission denies the
 9 application, the applicant may apply for a reinstatement of carryout
 10 privileges with the permittee's next application for renewal of the
 11 retailer's permit that is made in accordance with subsection (i).

12 (i) An applicant:

13 (1) for a retailer's permit and carryout privileges that has not
 14 opened for business; or

15 (2) for carryout privileges that:

16 (A) is the holder of a retailer's permit for an operating
 17 business; and

18 (B) has had the previous application for carryout privileges or
 19 renewal of carryout privileges denied by the commission;

20 must provide the commission with a verified certification stating that
 21 the projected gross retail income from alcoholic beverage sales during
 22 the business's first two (2) years of operations with carryout privileges
 23 will meet the requirements of subsection (c). Not more than one
 24 hundred eighty (180) days after the date the applicant begins or
 25 resumes alcoholic beverage sales with carryout privileges, the applicant
 26 shall provide a financial statement with sufficient information to show
 27 that during the first one hundred twenty (120) days of business
 28 operations with carryout privileges, sixty percent (60%) of the gross
 29 retail income from all alcoholic beverage sales was derived from sales
 30 of alcoholic beverages for consumption on the premises.

31 (j) The commission may:

32 (1) require that a financial statement submitted by an applicant
 33 under this chapter be audited by a certified public accountant; and

34 (2) with the cooperation of the department of state revenue, verify
 35 the information provided by the applicant.

36 (k) The information provided to the commission under this chapter
 37 regarding gross retail income is confidential information and may not
 38 be disclosed to the public under IC 5-14-3. However, the commission
 39 may disclose the information:

40 (1) to the department of state revenue to verify the accuracy of the
 41 amount of gross retail income from sales of alcoholic beverages;
 42 and



1 (2) in any administrative or judicial proceeding to revoke or
2 suspend the holder's permit as a result of a discrepancy in the
3 amount of gross retail income from sales of alcoholic beverages
4 discovered by the department of state revenue.
5 (l) Notwithstanding IC 6-8.1-7-1 or any other law, in fulfilling its
6 obligations under this section, the department of state revenue may
7 provide confidential information to the commission. The commission
8 shall maintain the confidentiality of information provided by the
9 department of state revenue under this chapter. However, the
10 commission may disclose the information in any administrative or
11 judicial proceeding to revoke or suspend the holder's permit as a result
12 of any information provided by the department of state revenue.
13 (m) If the commission does not grant or renew a retailer permittee's
14 carryout privileges, the denial shall not affect the other rights,
15 privileges, and restrictions of the retailer's permit, including the retailer
16 permittee's ability to sell alcoholic beverages for on-premises
17 consumption.

