

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 175

AN ACT to amend the Indiana Code concerning alcohol and tobacco.

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

SECTION 1. IC 7.1-3-25-15, AS ADDED BY P.L.224-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 15. Nothing in this chapter shall be construed to give the existing wholesaler or a successor wholesaler any right to compensation if the existing wholesaler or successor wholesaler is terminated by the primary source of supply or predecessor source supplier: ~~either:~~

- (1) for failure to comply with any provision in the agreement to distribute the product;
- (2) **for good cause as provided in IC 7.1-3-25.5;** or
- (3) in accordance with IC 7.1-5-5-9.

SECTION 2. IC 7.1-3-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 25.5. Distribution Agreements Between a Beer Wholesaler and a Primary Source of Supply

Sec. 1. A primary source of supply's amendment of, cancellation of, termination of, or refusal to renew a distribution agreement with a beer wholesaler is not effective unless the requirements of this chapter are satisfied.

Sec. 2. (a) As used in this section, "good cause" means any of the following:

SEA 175 — CC 1



(1) A beer wholesaler's failure to pay a primary source of supply for products in accordance with the approved terms of the distribution agreement.

(2) A failure by a beer wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material provision of the distribution agreement.

(3) A failure by an owner of the beer wholesaler to sell the person's ownership interest not later than one hundred twenty (120) days after the later of the following dates:

(A) The date judgment is entered against the owner of the beer wholesaler for a felony conviction that, in the reasonable judgment of the primary source of supply, may adversely affect the goodwill or interests of the beer wholesaler or primary source of supply.

(B) The date the primary source of supply learns of the felony conviction described in clause (A).

(b) A primary source of supply that intends to amend, cancel, terminate, or refuse to renew a distribution agreement may do so only if the primary source of supply:

(1) acts:

(A) with good cause;

(B) in good faith; and

(C) with due regard of the equities of the beer wholesaler;

(2) gives the beer wholesaler written notice:

(A) in accordance with section 5 of this chapter; and

(B) at least one hundred twenty (120) days before the date the primary source of supply intends to amend, cancel, terminate, or refuse to renew the distribution agreement; and

(3) gives the beer wholesaler the opportunity to substantially cure any deficiency in the beer wholesaler's performance that constitutes good cause not later than one hundred twenty (120) days after the date that notice is given under subdivision (2).

Sec. 3. (a) For purposes of this section, "good cause" means any of the following:

(1) A revocation or suspension of a beer wholesaler's:

(A) federal basic permit; or

(B) permit issued under this title;

for more than fourteen (14) days.

(2) The assignment or attempted assignment by a beer



wholesaler for the benefit of creditors.

(3) Any:

(A) attempted transfer of:

- (i) business assets;**
- (ii) voting stock; or**
- (iii) voting stock of any parent corporation;**

of the wholesaler; or

(B) change in the beneficial ownership or control of any wholesaler entity;

without obtaining the prior approval of the primary source of supply.

(4) The institution of bankruptcy proceedings by or against a beer wholesaler.

(5) The dissolution or liquidation of a beer wholesaler.

(6) The insolvency of a beer wholesaler.

(7) Fraudulent conduct by a beer wholesaler in any dealings with a primary source of supply or the primary source of supply's products, including an intentional sale of beer that an owner or senior manager of the wholesaler knows or should know is outside the primary source of supply's established standards.

(b) A primary source of supply may cancel, terminate, or refuse to renew a distribution agreement with a beer wholesaler without providing prior notice of the cancellation, termination, or refusal, if the primary source of supply:

(1) acts:

(A) with good cause;

(B) in good faith; and

(C) with due regard of the equities of the beer wholesaler; and

(2) provides the beer wholesaler with written notice in accordance with section 5 of this chapter, not later than five (5) days after the date of the cancellation of, termination of, or refusal to renew the distribution agreement.

Sec. 4. (a) This section applies to a primary source of supply that intends to amend, cancel, terminate, or refuse to renew distribution agreements with all beer wholesalers who:

(1) have entered into the same distribution agreement with the primary source of supply; and

(2) are located in the United States.

(b) A primary source of supply has the right to amend, cancel, terminate, or refuse to renew the distribution agreements, if the



primary source of supply provides written notice to each beer wholesaler:

- (1) in accordance with section 5 of this chapter; and
- (2) at least ninety (90) days before the intended effective date of the amendment of, cancellation of, termination of, or refusal to renew each beer wholesaler's distribution agreement.

Sec. 5. A written notice under this chapter must comply with the following:

- (1) The notice must be sent by certified mail.
- (2) The notice must state the following:
 - (A) The effective date of the amendment of, cancellation of, termination of, or refusal to renew the distribution agreement.
 - (B) The:
 - (i) nature of; and
 - (ii) reason for;
 the amendment of, cancellation of, termination of, or refusal to renew the distribution agreement. In the case of a notice provided by a primary source of supply under section 2 or 3 of this chapter, the notice must state the reason that constitutes good cause for purposes of those sections.

Sec. 6. (a) A primary source of supply or a beer wholesaler may not waive any provision of this chapter in a distribution agreement or other agreement.

(b) If a beer wholesaler enters into a distribution agreement, supplemental agreement, amendment, or any other agreement with a primary source of supply that waives a law, the beer wholesaler does not waive the rights provided to a beer wholesaler under this chapter.

SECTION 3. IC 7.1-5-5-9, AS AMENDED BY P.L.159-2014, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 9. (a) This section does not apply to product management (as described in 905 IAC 1-5.2-15) by a permittee.

(b) It is unlawful for a permittee to coerce, or attempt to coerce, or persuade another permittee to enter into an agreement, or to take an action, which would violate a provision of this title or of the rules and regulations of the commission.

(c) **This subsection does not apply to the cancellation or termination of an agreement under IC 7.1-3-25.5-4.** It is unlawful for a beer wholesaler or a primary source of supply to cancel or



terminate an agreement or contract between a beer wholesaler and a primary source of supply for the sale of beer, unfairly and without due regard for the equities of the other party.

(d) A person who knowingly or intentionally violates subsection (b) or (c) commits a Class B misdemeanor.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 175 — CC 1

