

SENATE BILL No. 415

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-2-7; IC 7.1-3.

Synopsis: Alcoholic beverage matters. Regulates transactions and agreements between beer wholesalers and suppliers. Requires a beer wholesaler to have a bona fide distribution agreement with each of the beer wholesaler's suppliers. Increases the civil penalty amounts that the alcohol and tobacco commission may impose upon: (1) certain permittees who are brewers, distillers, and vintners; and (2) wholesaler permittees; for violations. Decreases the civil penalty amount that the alcohol and tobacco commission may impose on the holders of artisan distiller permits and microbrewery permits. Requires that, if any provision of the alcoholic beverage law is held invalid, the remaining provisions of the law must be construed in accordance with the intent of the legislature to further limit rather than to expand commerce in alcoholic beverages and to enhance strict regulatory control through the alcohol and tobacco commission and the three tier system of alcoholic beverage distribution.

Effective: July 1, 2014.

Alting, Young R Michael, Arnold J

January 14, 2014, read first time and referred to Committee on Rules and Legislative Procedure.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 415



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 7.1-1-2-7 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2014]: **Sec. 7. If any provision of this title or its application to**
- 4 **any person or circumstance is held invalid, the remaining**
- 5 **provisions of this title must be construed in accordance with the**
- 6 **intent of the legislature to further limit rather than to expand**
- 7 **commerce in alcoholic beverages and to enhance strict regulatory**
- 8 **control through the commission and the three (3) tier system of**
- 9 **alcoholic beverage distribution.**
- 10 SECTION 2. IC 7.1-3-3-4.5 IS ADDED TO THE INDIANA CODE
- 11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 12 1, 2014]: **Sec. 4.5. A beer wholesaler shall:**
- 13 **(1) hold a beer wholesaler's permit under this chapter; and**
- 14 **(2) have a bona fide distribution agreement with each of the**
- 15 **beer wholesaler's primary sources of supply.**
- 16 SECTION 3. IC 7.1-3-23-3, AS AMENDED BY P.L.109-2013,



1 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2014]: Sec. 3. The commission, pursuant to section 2 of this
3 chapter, may impose upon a permittee the following civil penalties:

4 (1) An amount of not more than ~~four ten~~ thousand dollars
5 (~~\$4,000~~) **(\$10,000)** for each violation if the permittee is a:

6 (A) brewer ~~an artisan distiller~~, **that manufactures more than**
7 **thirty thousand (30,000) barrels of beer in a calendar year**
8 **for sale or distribution within Indiana; or a**

9 (B) distiller; or

10 (C) vintner.

11 (2) An amount of not more than ~~two five~~ thousand dollars
12 (~~\$2,000~~) **(\$5,000)** for each violation if the permittee is a
13 wholesaler of any type.

14 (3) An amount of not more than one thousand dollars (\$1,000) for
15 each violation if the permittee is the holder of a permit ~~of a type~~
16 not listed in subdivision (1) or (2).

17 SECTION 4. IC 7.1-3-25.5 IS ADDED TO THE INDIANA CODE
18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2014]:

20 **Chapter 25.5. Regulating Transactions Between Beer**
21 **Wholesalers and Suppliers**

22 **Sec. 1. As used in this chapter, "product" means:**

23 (1) beer; or

24 (2) flavored malt beverage.

25 **Sec. 2. As used in this chapter, "supplier" means a primary**
26 **source of supply.**

27 **Sec. 3. A supplier who sells a product to a beer wholesaler shall**
28 **comply with this chapter.**

29 **Sec. 4. If a supplier intends to increase the price of a product**
30 **that the supplier sells to a beer wholesaler, the supplier shall**
31 **provide the beer wholesaler notice at least thirty (30) days before**
32 **the date the supplier intends to increase the price of the product.**
33 **The supplier may not raise the price at which the supplier sells a**
34 **product to a beer wholesaler earlier than one hundred eighty (180)**
35 **days after the date the supplier previously raised or lowered the**
36 **price for the product for that beer wholesaler.**

37 **Sec. 5. (a) A supplier sponsored price discount may not be**
38 **communicated or offered to a beer wholesaler's retail customers by**
39 **a supplier or the supplier's agents unless the beer wholesaler is**
40 **notified by the supplier before the price discount is communicated**
41 **or offered.**

42 (b) If a supplier and a beer wholesaler offer to sell a product at



1 a discounted price, the supplier shall bear, at a minimum, the same
 2 ratio of the cost of the discount to the total cost of the discount that
 3 the supplier retains or receives on the most recent price increase to
 4 the total amount of the most recent price increase.

5 Sec. 6. A supplier that sells a product to a beer wholesaler may
 6 not do any of the following:

7 (1) Fix, maintain, or establish the price at which the beer
 8 wholesaler may resell the product or coerce the beer
 9 wholesaler to resell the product at a specific price.

10 (2) Ship to or require the beer wholesaler to accept delivery
 11 of any:

12 (A) product; or

13 (B) other item or commodity;

14 that the beer wholesaler did not order or approve.

15 (3) Charge a beer wholesaler for a product the beer
 16 wholesaler:

17 (A) did not order or approve; or

18 (B) canceled shipment before the scheduled shipment of the
 19 product.

20 (4) Withdraw money or otherwise access a beer wholesaler's
 21 bank account before:

22 (A) the beer is received and accepted by the beer
 23 wholesaler; and

24 (B) the beer wholesaler consents to the withdrawal.

25 (5) Penalize, in any way, a beer wholesaler for canceling an
 26 order of product before the supplier ships the product to the
 27 beer wholesaler.

28 (6) Retaliate against or penalize a beer wholesaler, in any way,
 29 for distributing competing products.

30 Sec. 7. (a) This section applies only to new brands or existing
 31 brands of a product acquired by a supplier that:

32 (1) incorporate all or a substantial part of the unique features
 33 of a preexisting brand of the supplier; and

34 (2) rely to a significant extent on the goodwill associated with
 35 the preexisting brand described in subdivision (1).

36 (b) A supplier that sells product to a beer wholesaler shall offer
 37 the beer wholesaler:

38 (1) the supplier's new brands of product; or

39 (2) existing brands of product acquired by the supplier;

40 for distribution by the beer wholesaler in the territory described in
 41 the existing distribution agreement between the supplier and beer
 42 wholesaler.



1 **Sec. 8. If a supplier has a distribution agreement with a beer**
 2 **wholesaler, the supplier may not require a new, amended, or**
 3 **supplemental distribution agreement as a requirement for**
 4 **approval by the supplier for any of the following:**

5 **(1) The transfer of a brand of product from the beer**
 6 **wholesaler to another beer wholesaler who has a distribution**
 7 **agreement with the supplier.**

8 **(2) The:**

9 **(A) sale of the beer wholesaler's business to another beer**
 10 **wholesaler who has a distribution agreement with the**
 11 **supplier;**

12 **(B) merger of the beer wholesaler with another beer**
 13 **wholesaler who has a distribution agreement with the**
 14 **supplier; or**

15 **(C) purchase, by the beer wholesaler, of another beer**
 16 **wholesaler's business that has a distribution agreement**
 17 **with the supplier.**

18 **Sec. 9. If a supplier has a distribution agreement with a beer**
 19 **wholesaler, the supplier shall approve:**

20 **(1) an assignment of the assets of the beer wholesaler to**
 21 **another beer wholesaler who has a distribution agreement**
 22 **with the supplier;**

23 **(2) the transfer of a brand of product from the beer**
 24 **wholesaler to another beer wholesaler who has a distribution**
 25 **agreement with the supplier; or**

26 **(3) the:**

27 **(A) sale of the beer wholesaler's business to another beer**
 28 **wholesaler who has a distribution agreement with the**
 29 **supplier;**

30 **(B) merger of the beer wholesaler with another beer**
 31 **wholesaler who has a distribution agreement with the**
 32 **supplier; or**

33 **(C) purchase of another beer wholesaler's business by the**
 34 **beer wholesaler who has a distribution agreement with the**
 35 **supplier;**

36 **if the other beer wholesaler meets the material and reasonable**
 37 **qualifications required by that supplier of all beer wholesalers.**

38 **Sec. 10. If a supplier has a distribution agreement with a beer**
 39 **wholesaler, the supplier shall approve any changes in the**
 40 **succession or management of the beer wholesaler's business if the**
 41 **successor or the manager meets the material and reasonable**
 42 **qualifications required by that supplier of all successors or**



- 1 managers.
- 2 **Sec. 11. (a) As used in this section, "good cause" includes:**
- 3 (1) a permanent revocation of a beer wholesaler's permit
- 4 under this title;
- 5 (2) the bankruptcy or insolvency of a beer wholesaler;
- 6 (3) an assignment of the assets of a beer wholesaler for the
- 7 benefit of creditors or a similar disposition of a beer
- 8 wholesaler's assets; or
- 9 (4) a failure by a beer wholesaler to substantially comply,
- 10 without reasonable excuse or justification, with any
- 11 reasonable and material requirement imposed on the beer
- 12 wholesaler by the supplier in which the failure was discovered
- 13 by the supplier not more than one (1) year before the date the
- 14 supplier provides notice under subsection (d) or (f).
- 15 (b) A supplier may not amend, cancel, terminate, or refuse to
- 16 renew a distribution agreement with a beer wholesaler without
- 17 good cause and due regard for the equities of the beer wholesaler.
- 18 (c) A supplier may not amend, cancel, terminate, or refuse to
- 19 renew a distribution agreement with a beer wholesaler unless the
- 20 supplier:
- 21 (1) has satisfied the notice and opportunity to cure
- 22 requirements under subsection (d) or (f), whichever is
- 23 applicable;
- 24 (2) has acted in good faith;
- 25 (3) has good cause to amend, cancel, terminate, or refuse to
- 26 renew the distribution agreement; and
- 27 (4) has amended, cancelled, terminated, or refused to renew
- 28 a distribution agreement with due regard for the equities of
- 29 the beer wholesaler.
- 30 (d) Except as provided in subsection (f), a supplier who intends
- 31 to amend, cancel, terminate, or refuse to renew a distribution
- 32 agreement with a beer wholesaler shall:
- 33 (1) provide written notice to the beer wholesaler at least one
- 34 hundred twenty (120) days before the date the supplier
- 35 intends to amend, cancel, terminate, or refuse to renew the
- 36 distribution agreement; and
- 37 (2) provide the beer wholesaler with a bona fide opportunity
- 38 to substantially cure any deficiency within the one hundred
- 39 twenty (120) day period described in subdivision (1).
- 40 (e) If the beer wholesaler intends to cure any deficiency as
- 41 described in subsection (d)(2), the supplier and beer wholesaler
- 42 shall enter into a written agreement for a plan of execution to cure



1 the deficiency.

2 (f) A supplier who intends to amend, cancel, terminate, or refuse
3 to renew a distribution agreement with a beer wholesaler shall
4 provide written notice to the beer wholesaler not less than fifteen
5 (15) days before the date the supplier intends to amend, cancel,
6 terminate, or refuse to renew the distribution agreement if:

7 (1) the beer wholesaler is bankrupt or insolvent;

8 (2) the beer wholesaler's assets have been assigned for the
9 benefit of creditors or a similar disposition of the beer
10 wholesaler's assets; or

11 (3) the beer wholesaler's permit has been permanently
12 revoked.

13 (g) A notice described in subsection (d) or (f) must:

14 (1) be sent by certified mail; and

15 (2) contain all the following:

16 (A) The effective date of the intended amendment,
17 cancellation, or termination of the distribution agreement.

18 (B) A statement of the:

19 (i) nature of; and

20 (ii) reason for;

21 the intended amendment, cancellation, or termination.

22 (h) An amendment, cancellation, or termination of a
23 distribution agreement with a beer wholesaler is not effective
24 unless the supplier meets the requirements of this section.

25 Sec. 12. (a) A provision of this chapter may not be waived.

26 (b) If a beer wholesaler enters or has entered into a distribution
27 agreement, supplemental agreement, amendment, or any other
28 agreement with a supplier that waives a law, the beer wholesaler
29 does not waive the beer wholesaler's rights protected under this
30 chapter.

31 SECTION 5. IC 7.1-3-25.7 IS ADDED TO THE INDIANA CODE
32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2014]:

34 **Chapter 25.7. Small Brewers Terminating Agreements with**
35 **Beer Wholesalers**

36 **Sec. 1. As used in this chapter, "small brewer" means a brewer**
37 **that manufactures not more than thirty thousand (30,000) barrels**
38 **of beer in a calendar year for sale or distribution within Indiana.**

39 **Sec. 2. Notwithstanding IC 7.1-3-25.5 and unless agreed to in a**
40 **distribution agreement between a small brewer and the beer**
41 **wholesaler, the small brewer may terminate the small brewer's**
42 **distribution agreement with a beer wholesaler if the small brewer:**



- 1 (1) provides the beer wholesaler notice at least sixty (60) days
2 before the date the small brewer intends to terminate the
3 distribution agreement;
- 4 (2) purchases from the beer wholesaler all of the unsold
5 product inventory and other materials that the beer
6 wholesaler had purchased from the small brewer at the laid
7 in price by the beer wholesaler; and
- 8 (3) does, if applicable, one (1) of the following:
- 9 (A) If the small brewer terminates the distribution
10 agreement earlier than one (1) year after entering into the
11 distribution agreement, the small brewer pays to the beer
12 wholesaler an amount equal to the beer wholesaler's gross
13 profit from the sale of the small brewer's products.
- 14 (B) If the small brewer terminates the distribution on or
15 later than one (1) year but earlier than two (2) years after
16 entering into the distribution agreement, the small brewer
17 pays to the beer wholesaler an amount equal to two (2)
18 times the amount of the beer wholesaler's gross profit for
19 the most recent previous full calendar year.
- 20 (C) If the small brewer terminates the distribution on or
21 later than two (2) years after entering into the distribution
22 agreement, the small brewer pays to the beer wholesaler
23 an amount equal to three (3) times the amount of the beer
24 wholesaler's gross profit for the most recent previous full
25 calendar year.
- 26 **Sec. 3. Notwithstanding IC 1-1-1-8, if any part of this chapter is**
27 **held invalid, the entire chapter is void.**

