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HOUSE BILL No. 1544

Proposed Changes to introduced printing by AM154402

DIGEST OF PROPOSED AMENDMENT

Wine wholesalers and mixed beverages. Amends the definition of "mixed beverage" to include that the can or container containing the beverage cannot be more than 24 ounces. Reduces the alcohol by volume in a mixed beverage to 15%. Allows the holder of a wine wholesaler's permit to take certain actions concerning mixed beverages and flavored malt beverages. Repeals a provision concerning a wine wholesaler that also holds a liquor wholesaler's permit. Provides that the holder of a wine wholesaler's permit may possess, transport, sell, and deliver mixed beverages only to a person who holds a particular permit. Removes language from the bill concerning beer wholesalers.

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 7.1-1-3-21 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 21. Liquor. The term
- 3 "liquor" means an alcoholic beverage containing alcohol obtained by
- 4 distillation and includes a mixed beverage. The term also means a
- 5 wine that contains twenty one per cent percent (21%), or more, of
- 6 alcohol reckoned by volume. However, the term does not include
- 7 industrial alcohol.
- 8 > SECTION <=>[1]. IC 7.1-1-3-26.2 IS ADDED TO THE
- 9 INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2023]: Sec. 26.2. "Mixed beverage" means a
- 11 prepared cordial, cocktail, or highball that is in a can or container [
- 12 that holds not more than twenty-four (24) ounces of the beverage]
- 13 and is a mixture of:
- 14 (1) whiskey, neutral spirits, brandy, gin, or another distilled
- 15 spirit; and

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1 (2) carbonated or plain water, pure juice from a flower or
 2 plant, or other flavoring materials;
 3 that is suitable for immediate consumption and contains not less
 4 than five-tenths percent (0.5%) of alcohol by volume and not more
 5 than ~~twenty-one~~ fifteen percent (~~21%~~ 15%) of alcohol by
 6 volume.

7 SECTION ~~3. IC 7.1-3-2-9 IS AMENDED TO READ AS~~
 8 ~~FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. An out-of-state~~
 9 ~~brewer holding either a primary source of supply permit or an~~
 10 ~~out-of-state brewer's permit may:~~

11 ~~— (1) appoint a beer wholesaler to perform the services described~~
 12 ~~in IC 7.1-3-3-5(f)(1) IC 7.1-3-3-5(j)(1) through~~
 13 ~~IC 7.1-3-3-5(f)(2); IC 7.1-3-3-5(j)(2); and~~

14 ~~— (2) provide a fee to a beer wholesaler who performs the services~~
 15 ~~described in IC 7.1-3-3-5(f)(1) IC 7.1-3-3-5(j)(1) through~~
 16 ~~IC 7.1-3-3-5(f)(2). IC 7.1-3-3-5(j)(2).~~

17 ~~SECTION 4. IC 7.1-3-3-5~~ [2. IC 7.1-3-13-3], AS AMENDED BY
 18 P.L.153-2015, SECTION ~~4~~ [10], IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. ~~5~~ [3]. (a) The holder
 20 of a ~~beer~~ wine wholesaler's permit may purchase ~~and~~ [import ,
 21 and transport wine, brandy, mixed beverages, or flavored malt
 22 beverage] from the primary source of supply ~~, possess, and sell at~~ [
 23 A wine] wholesale ~~, beer, mixed beverages,~~ [r may export] and [
 24 transport wine, brandy, or] flavored malt ~~beverages manufactured~~
 25 ~~within or without this state.~~

26 ~~— (b) A beer wholesaler permittee may possess, transport, sell, and~~
 27 ~~deliver beer to:~~

28 ~~— (1) another beer wholesaler authorized by the brewer to sell the~~
 29 ~~brand purchased;~~

30 ~~— (2) an employee;~~

31 ~~— (3) a holder of a beer retailer's permit, beer dealer's permit,~~
 32 ~~temporary beer permit, dining car permit, boat permit, airplane~~
 33 ~~permit, or supplemental caterer's permit; and~~

34 ~~— (4) a qualified organization for:~~

35 ~~— (A) an allowable event to which IC 7.1-3-6.1 applies; or~~

36 ~~— (B) a charity auction to which IC 7.1-3-6.2 applies;~~

37 ~~located within this state. The sale, donation to a qualified organization,~~
 38 ~~transportation, and delivery of beer shall be made only~~ [beverage by
 39 the bottle, barrel, cask, or other container, to points outside Indiana. A
 40 wine wholesaler is entitled to sell, furnish, and deliver wine or flavored
 41 malt beverage] from inventory that has been located on the wholesaler's
 42 premises before the time of invoicing and delivery ~~.~~

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1 ~~(e) A~~ [to a wine wholesaler, a wine retailer, a supplemental
 2 caterer, a temporary wine permittee, and a wine dealer, but not at retail.
 3 A wine wholesaler may sell, furnish, and deliver brandy or mixed
 4 beverages from inventory that has been located on the wholesaler's
 5 premises before the time of invoicing and delivery, but not at retail,
 6 only to a person who holds a liquor retailer's permit, a supplemental
 7 caterer's permit, or a liquor dealer's permit. A holder of a wine
 8 wholesaler's permit may sell wine, mixed beverages, or flavored malt
 9 beverages to the wine wholesaler's bona fide regular employees. A
 10 wine wholesaler may sell, donate, and deliver wine, mixed beverages,
 11 or flavored malt beverage from inventory that has been located on the
 12 wholesaler's premises before the time of invoicing and delivery to a
 13 qualified organization that is conducting an allowable event to which
 14 IC 7.1-3-6.1 applies or a charity auction to which IC 7.1-3-6.2 applies.

15 (b) As used in this section, "brandy" means:

16 (1) any alcoholic distillate described in 27 CFR 5.22(d) as in
 17 effect on January 1, 1983; or

18 (2) a beverage product that:

19 (A) is prepared from a liquid described in subdivision (1);

20 (B) is classified as a cordial or liqueur as defined in 27 CFR
 21 5.22(h) as in effect on January 1, 1997; and

22 (C) meets the following requirements:

23 (i) At least sixty-six and two-thirds percent (66 2/3%)
 24 of the product's alcohol content is composed of a
 25 substance described in subdivision (1).

26 (ii) The product's label makes no reference to any
 27 distilled spirit other than brandy.

28 (iii) The product's alcohol content is not less than
 29 sixteen percent (16%) by volume or thirty-two (32)
 30 degrees proof.

31 (iv) The product contains dairy cream.

32 (v) The product's sugar, dextrose, or levulose content
 33 is at least twenty percent (20%) of the product's
 34 weight.

35 (vi) The product contains caramel coloring.

36 (c) Nothing in this section allows a wine wholesaler to sell, give,
 37 purchase, transport, or export beer (as defined in IC 7.1-1-3-6) unless
 38 the wine wholesaler also holds a] beer <wholesaler
 39 permittee>[wholesaler's permit under IC 7.1-3-3-1.

40 (d) A wine wholesaler that also holds a liquor wholesaler's permit
 41 under IC 7.1-3-8 may not:

42 (1) hold a beer wholesaler's permit under IC 7.1-3-3;

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- 1 ~~— (1) A beer wholesaler or wine wholesaler permit, if the~~
 2 ~~wholesaler is authorized by the primary source of supply to~~
 3 ~~sell the brand of flavored malt beverage purchased.~~
 4 ~~— (2) A wine retailer's permit, wine dealer's permit, temporary~~
 5 ~~wine permit, dining car wine permit, boat permit, airplane~~
 6 ~~permit, or supplemental caterer's permit.~~
 7 ~~— (f) (j) A beer wholesaler may:~~
 8 ~~— (1) store beer for an out-of-state brewer described in~~
 9 ~~IC 7.1-3-2-9 and deliver the stored beer to another beer~~
 10 ~~wholesaler that the out-of-state brewer authorizes to sell the~~
 11 ~~beer;~~
 12 ~~— (2) perform all necessary accounting and auditing functions~~
 13 ~~associated with the services described in subdivision (1); and~~
 14 ~~— (3) receive a fee from an out-of-state brewer for the services~~
 15 ~~described in subdivisions (1) through (2):~~
 16 ~~— SECTION 5. IC 7.1-3-3-5.5 IS ADDED TO THE INDIANA~~
 17 ~~CODE AS A NEW SECTION TO READ AS FOLLOWS~~
 18 ~~[EFFECTIVE JULY 1, 2023]: Sec. 5.5. (a) A beer wholesaler that~~
 19 ~~wholesales mixed beverages under section 5 of this chapter may~~
 20 ~~not:~~
 21 ~~— (1) be required by the commission to:~~
 22 ~~— (A) apply for or maintain a liquor wholesaler's permit;~~
 23 ~~or~~
 24 ~~— (B) pay a fee;~~
 25 ~~— to wholesale mixed beverages > [issued] under this chapter <;~~
 26 ~~or~~
 27 ~~— (2) keep or store mixed beverages at a place other than the~~
 28 ~~premises described in the application and permit for the beer~~
 29 ~~wholesaler's permit >.~~
 30 ~~< (b) A beer wholesaler that wholesales mixed beverages under~~
 31 ~~section 5 of this chapter is subject to IC 7.1-3-8-3 and any other law~~
 32 ~~or rule of the commission applicable to the holder of a liquor~~
 33 ~~wholesaler's permit as to the beer wholesaler's sale of mixed~~
 34 ~~beverages to the extent the law or rule does not conflict with this~~
 35 ~~section.><~~
 36 ~~— SECTION 6. IC 7.1-5-5-11, AS AMENDED BY P.L.270-2017,~~
 37 ~~SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE~~
 38 ~~JULY 1, 2023]: Sec. 11. (a) Except as provided in subsections (c), (d),~~
 39 ~~and (e), it is unlawful for a manufacturer of alcoholic beverages or a~~
 40 ~~permittee authorized to sell and deliver alcoholic beverages to:~~
 41 ~~— (1) give to another permittee who purchases alcoholic beverages~~
 42 ~~from the manufacturer or permittee a gift; or~~

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- 1 ~~— (2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f);~~
 2 ~~IC 7.1-3-3-5(j), have a business dealing with the other~~
 3 ~~permittee.~~
 4 ~~— (b) This section does not apply to the sale and delivery and~~
 5 ~~collection of the sale price of an alcoholic beverage in the ordinary~~
 6 ~~course of business.~~
 7 ~~— (c) If the promotional program is approved under the rules adopted~~
 8 ~~by the commission and is conducted in all wholesaler establishments~~
 9 ~~through which the manufacturer distributes alcoholic beverages in~~
 10 ~~Indiana, a manufacturer of alcoholic beverages may award bona fide~~
 11 ~~promotional prizes and awards to any of the following:~~
 12 ~~— (1) A person with a wholesaler's permit issued under IC 7.1-3.~~
 13 ~~— (2) An employee of a person with a wholesaler's permit issued~~
 14 ~~under IC 7.1-3.~~
 15 ~~— (d) A manufacturer may offer on a nondiscriminatory basis bona~~
 16 ~~fide incentives to wholesalers when the incentives are determined~~
 17 ~~based on sales to retailers or dealers occurring during specified times~~
 18 ~~for specified products. The incentive may be conditioned on the~~
 19 ~~wholesaler selling a:~~
 20 ~~— (1) specified product at a specified price or less than a specified~~
 21 ~~price; or~~
 22 ~~— (2) minimum quantity of a specified product to a single customer~~
 23 ~~in a single transaction.~~
 24 ~~The incentive may not be conditioned on a wholesaler having total~~
 25 ~~sales of a minimum quantity of a specified product during the~~
 26 ~~applicable period.~~
 27 ~~— (e) A manufacturer or a permittee authorized to sell and deliver~~
 28 ~~alcoholic beverages may provide entertainment and professional and~~
 29 ~~educational expenses to another permittee, unless the entertainment or~~
 30 ~~professional and educational expenses are provided in exchange for an~~
 31 ~~agreement to directly or indirectly purchase alcoholic beverages from~~
 32 ~~a:~~
 33 ~~— (1) manufacturer; or~~
 34 ~~— (2) permittee authorized to sell and deliver alcoholic beverages;~~
 35 ~~to the exclusion, in whole or in part, of alcoholic beverages sold or~~
 36 ~~delivered by another manufacturer or a permittee authorized to sell and~~
 37 ~~deliver alcoholic beverages.~~
 38 ~~— (f) A person who knowingly or intentionally violates this section~~
 39 ~~commits a Class A misdemeanor.~~
 40 ~~— SECTION 7. IC 7.1-5-9-3, AS AMENDED BY P.L.79-2015,~~
 41 ~~SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE~~
 42 ~~JULY 1, 2023]: Sec. 3. (a) This section applies to a brewer that~~

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1 manufactures, in aggregate, more than ninety thousand (90,000) barrels
2 of beer in a calendar year for sale or distribution within Indiana.

3 — (b) It is unlawful for the holder of a brewer's or beer wholesaler's
4 permit to have an interest in a liquor permit of any type under this title.
5 ~~However, this section does not prohibit the holder of a beer~~
6 ~~wholesaler's permit from wholesaling mixed beverages under~~
7 ~~IC 7.1-3-3-5.5.~~

8 — (c) A person who knowingly or intentionally violates this section
9 commits a Class B misdemeanor.

10 — SECTION 8. IC 7.1-5-9-4, AS AMENDED BY P.L.159-2014,
11 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2023]: Sec. 4. (a) Except as provided in IC 7.1-3-3-4 ~~and~~
13 ~~subsection (c)~~, an applicant for a beer wholesaler's permit shall have
14 no interest in the following:

15 — (1) ~~A permit to manufacture or to sell at retail alcoholic~~
16 ~~beverages of any kind.~~

17 — (2) ~~Any other permit to wholesale alcoholic beverages.~~

18 — (3) ~~Through stock ownership or otherwise, a partnership, limited~~
19 ~~liability company, or corporation that holds:~~

20 — (A) ~~a permit to manufacture or to sell at retail alcoholic~~
21 ~~beverages of any kind; or~~

22 — (B) ~~any other permit to wholesale alcoholic beverages of~~
23 ~~any kind.~~

24 — (b) ~~A person who knowingly or intentionally violates this section~~
25 ~~commits a Class B misdemeanor.~~

26 — ~~(c) This section does not prohibit the holder of a beer~~
27 ~~wholesaler's permit from wholesaling mixed beverages under~~
28 ~~IC 7.1-3-3-5.5.~~

29 — SECTION 9. IC 7.1-5-9-6, AS AMENDED BY P.L.279-2019,
30 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2023]: Sec. 6. (a) ~~This section does not apply to the holder~~
32 ~~of a beer wholesaler's permit that wholesales mixed beverages~~
33 ~~under IC 7.1-3-3-5.5.~~

34 — (a) ~~(b) It is unlawful for the holder of a liquor wholesaler's permit~~
35 ~~to have an interest in a beer permit of any type under this title.~~

36 — (b) ~~(c) A person who knowingly or intentionally violates this~~
37 ~~section commits a Class B misdemeanor.~~

38 — SECTION 10. IC 7.1-5-10-12, AS AMENDED BY P.L.194-2021,
39 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2023]: Sec. 12. (a) Except as provided in subsections (b) ~~(c)~~
41 ~~through (d) (e)~~ and subsection (g), ~~(h)~~, it is unlawful for a permittee to
42 sell, offer to sell, purchase or receive, an alcoholic beverage for

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1 anything other than cash. A permittee who extends credit in violation
2 of this section shall have no right of action on the claim:

3 ~~— (b) A beer wholesaler permittee may not extend credit for the~~
4 ~~sale of mixed beverages.~~

5 ~~— (b) (c) A permittee may credit to a purchaser the actual price~~
6 ~~charged for a package or an original container returned by the original~~
7 ~~purchaser as a credit on a sale and refund to a purchaser the amount~~
8 ~~paid by the purchaser for a container, or as a deposit on a container, if~~
9 ~~it is returned to the permittee.~~

10 ~~— (c) (d) A manufacturer may extend usual and customary credit for~~
11 ~~alcoholic beverages sold to a customer who maintains a place of~~
12 ~~business outside this state when the alcoholic beverages are actually~~
13 ~~shipped to a point outside this state.~~

14 ~~— (d) (e) An artisan distiller, a distiller, a farm winery, or a liquor or~~
15 ~~wine wholesaler may extend credit on liquor, flavored malt beverages,~~
16 ~~and wine sold to a permittee for a period of fifteen (15) days from the~~
17 ~~date of invoice, date of invoice included. However, if the fifteen (15)~~
18 ~~day period passes without payment in full, the:~~

19 ~~— (1) wholesaler;~~

20 ~~— (2) farm winery that sells and delivers under~~
21 ~~IC 7.1-3-12-5(a)(14); or~~

22 ~~— (3) artisan distillery that sells and delivers under~~
23 ~~IC 7.1-3-27-8(a)(11);~~

24 shall sell to that permittee on a cash on delivery basis only.

25 ~~— (e) (f) A person who knowingly or intentionally violates this~~
26 ~~section commits a Class B misdemeanor.~~

27 ~~— (f) (g) Nothing in this section may be construed to prohibit a hotel,~~
28 ~~restaurant, caterer, or a club that is not open to the general public from~~
29 ~~extending credit to a consumer purchasing alcohol for personal use at~~
30 ~~any time.~~

31 ~~— (g) (h) Nothing in this section may be construed to prohibit a~~
32 ~~retailer or dealer from accepting a:~~

33 ~~— (1) credit card;~~

34 ~~— (2) debit card;~~

35 ~~— (3) charge card; or~~

36 ~~— (4) stored value card;~~

37 from a consumer purchasing alcohol for personal use.>

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