

HOUSE BILL No. 1405

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-3-45.5; IC 7.1-3-20-9.5.

Synopsis: Restaurant carryout sales. Exempts a specialty or gourmet market issued a beer and wine retailer's permit in September 2019 from the gross retail income requirements to sell alcoholic beverages for carryout.

Effective: July 1, 2024.

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January 11, 2024, read first time and referred to Committee on Public Policy.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1405

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 7.1-1-3-45.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2024]: **Sec. 45.5. "Specialty or gourmet**
4 **market" means a market that:**
5 **(1) holds a beer retailer's permit under IC 7.1-3-4 and wine**
6 **retailer's permit under IC 7.1-3-14;**
7 **(2) is engaged in the retail sale of miscellaneous specialty**
8 **foods for consumption on and off the premises, including:**
9 **(A) deli meat;**
10 **(B) fruits and vegetables;**
11 **(C) gourmet cheese;**
12 **(D) pasta and noodles;**
13 **(E) herbs, spices, and olive oil; and**
14 **(F) specialty wines; and**
15 **(3) is not engaged in the retail sale of automotive fuel.**
16 SECTION 2. IC 7.1-3-20-9.5, AS AMENDED BY P.L.285-2019,
17 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2024]: Sec. 9.5. (a) This section applies only to a retailer's
 2 permit for a restaurant.
- 3 (b) This section does not apply to a retailer's permit that is issued or
 4 transferred to the following:
- 5 (1) A city market under IC 7.1-3-20-25.
 6 (2) A marina under IC 7.1-3-1-25.
 7 (3) A state park under IC 7.1-3-17.8.
 8 (4) A golf course.
 9 (5) A hotel or resort hotel.
 10 (6) A social or fraternal club.
 11 (7) A restaurant, the proprietor of which is the holder of:
 12 (A) a brewer's permit under IC 7.1-3-2-7(5);
 13 (B) a farm winery permit under IC 7.1-3-12-5; or
 14 (C) an artisan distiller's permit under IC 7.1-3-27-8.
 15 **(8) A specialty or gourmet market, the proprietor of which is**
 16 **the holder of a beer and wine retailer's permit with carryout**
 17 **privileges that was initially issued in September 2019.**
- 18 (c) Except as provided in subsections (d) and (e), after May 14,
 19 2017, a retailer permittee may not sell alcoholic beverages for carryout
 20 unless at least sixty percent (60%) of the retailer permittee's gross retail
 21 income from the sale of alcoholic beverages is derived from the sale of
 22 alcoholic beverages for consumption on the licensed premises.
- 23 (d) This subsection applies only to a retailer's permit with carryout
 24 privileges that was issued to the current permit holder before
 25 November 1, 2016. Notwithstanding IC 7.1-3-1-1.5, a retailer permittee
 26 may continue to sell carryout after May 14, 2017, and is not required
 27 to comply with the gross retail income requirements.
- 28 (e) This subsection applies to a retailer's permit with carryout
 29 privileges that was initially:
 30 (1) issued; or
 31 (2) transferred to the premises location;
 32 after October 31, 2016, and before May 15, 2017. Notwithstanding
 33 IC 7.1-3-1-1.5, a retailer permittee may continue to sell carryout after
 34 May 14, 2017, and is not required to comply with the gross retail
 35 income requirements until the retailer's permit is renewed. A retailer
 36 permittee may be issued a letter of extension, and subsequent renewals
 37 of the extension under IC 7.1-3-1-3.1 but the permit term may not be
 38 extended past April 1, 2018. A retailer permittee may continue to sell
 39 carryout while the extension is in effect. If the permit is transferred as
 40 to ownership or to a location that is not exempt under subsection (b),
 41 the gross retail income requirements of this section apply upon transfer
 42 of the permit.



1 (f) Except for a retailer permittee described in subsection (d), a
2 retailer permittee that has carryout privileges must apply for renewal
3 of the carryout privileges when applying for renewal of the retailer's
4 permit. The retailer permittee must provide the commission with a
5 financial statement with information that shows the dollar amounts and
6 percentages of the retailer permittee's gross retail income that is
7 derived from sales of alcoholic beverages:

- 8 (1) for consumption on the licensed premises; and
9 (2) for carryout;

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

12 (g) For subsequent applications for renewal, the commission may
13 allow a retailer permittee to submit to the commission an affidavit of
14 compliance that is signed by the permittee, or by a responsible officer
15 or partner, under the penalties of perjury, that states that the
16 requirements of subsection (c) continue to be met. If the commission
17 has reasonable grounds to doubt the truthfulness of an affidavit of
18 compliance, the commission may require the retailer permittee to
19 provide audited financial statements.

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

25 (i) An applicant:

- 26 (1) for a retailer's permit and carryout privileges that has not
27 opened for business; or
28 (2) for carryout privileges that:

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

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

33 must provide the commission with a verified certification stating that
34 the projected gross retail income from alcoholic beverage sales during
35 the business's first two (2) years of operations with carryout privileges
36 will meet the requirements of subsection (c). Not more than one
37 hundred eighty (180) days after the date the applicant begins or
38 resumes alcoholic beverage sales with carryout privileges, the applicant
39 shall provide a financial statement with sufficient information to show
40 that during the first one hundred twenty (120) days of business
41 operations with carryout privileges, sixty percent (60%) of the gross
42 retail income from all alcoholic beverage sales was derived from sales



1 of alcoholic beverages for consumption on the premises.

2 (j) The commission may:

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

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

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

11 (1) to the department of state revenue to verify the accuracy of the
12 amount of gross retail income from sales of alcoholic beverages;
13 and

14 (2) in any administrative or judicial proceeding to revoke or
15 suspend the holder's permit as a result of a discrepancy in the
16 amount of gross retail income from sales of alcoholic beverages
17 discovered by the department of state revenue.

18 (l) Notwithstanding IC 6-8.1-7-1 or any other law, in fulfilling its
19 obligations under this section, the department of state revenue may
20 provide confidential information to the commission. The commission
21 shall maintain the confidentiality of information provided by the
22 department of state revenue under this chapter. However, the
23 commission may disclose the information in any administrative or
24 judicial proceeding to revoke or suspend the holder's permit as a result
25 of any information provided by the department of state revenue.

26 (m) If the commission does not grant or renew a retailer permittee's
27 carryout privileges, the denial shall not affect the other rights,
28 privileges, and restrictions of the retailer's permit, including the retailer
29 permittee's ability to sell alcoholic beverages for on-premises
30 consumption.

