



February 13, 2024

ENGROSSED SENATE BILL No. 58

DIGEST OF SB 58 (Updated February 13, 2024 11:17 am - DI 144)

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

Synopsis: Restaurant carryout sales. Exempts a specialty or gourmet market holding a retailer's permit with carryout privileges that was initially issued in September 2019 from the gross retail income requirements to sell alcoholic beverages for carryout.

Effective: July 1, 2024.

Holdman, Messmer, Alting, Randolph Lonnie M

(HOUSE SPONSORS — GIAQUINTA, MANNING, MILLER K)

January 8, 2024, read first time and referred to Committee on Public Policy.
January 18, 2024, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.
January 23, 2024, reported favorably — Do Pass.
January 25, 2024, read second time, ordered engrossed.
January 26, 2024, engrossed.
January 29, 2024, read third time, passed. Yeas 42, nays 7.
HOUSE ACTION
February 6, 2024, read first time and referred to Committee on Public Policy.
February 13, 2024, amended, reported — Do Pass.

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February 13, 2024

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.

ENGROSSED SENATE BILL No. 58

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

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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 (as defined in**
16 **IC 7.1-1-3-45.5). This exception applies only to a retailer's**
17 **permit with carryout privileges that was initially issued in**
18 **September 2019.**

19 (c) Except as provided in subsections (d) and (e), after May 14,
20 2017, a retailer permittee may not sell alcoholic beverages for carryout
21 unless at least sixty percent (60%) of the retailer permittee's gross retail
22 income from the sale of alcoholic beverages is derived from the sale of
23 alcoholic beverages for consumption on the licensed premises.

24 (d) This subsection applies only to a retailer's permit with carryout
25 privileges that was issued to the current permit holder before
26 November 1, 2016. Notwithstanding IC 7.1-3-1-1.5, a retailer permittee
27 may continue to sell carryout after May 14, 2017, and is not required
28 to comply with the gross retail income requirements.

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

31 (1) issued; or

32 (2) transferred to the premises location;

33 after October 31, 2016, and before May 15, 2017. Notwithstanding
34 IC 7.1-3-1-1.5, a retailer permittee may continue to sell carryout after
35 May 14, 2017, and is not required to comply with the gross retail
36 income requirements until the retailer's permit is renewed. A retailer
37 permittee may be issued a letter of extension, and subsequent renewals
38 of the extension under IC 7.1-3-1-3.1 but the permit term may not be
39 extended past April 1, 2018. A retailer permittee may continue to sell
40 carryout while the extension is in effect. If the permit is transferred as
41 to ownership or to a location that is not exempt under subsection (b),
42 the gross retail income requirements of this section apply upon transfer



1 of the permit.

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

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

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

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

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

26 (i) An applicant:

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

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

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

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



1 retail income from all alcoholic beverage sales was derived from sales
2 of alcoholic beverages for consumption on the premises.

3 (j) The commission may:

- 4 (1) require that a financial statement submitted by an applicant
5 under this chapter be audited by a certified public accountant; and
6 (2) with the cooperation of the department of state revenue, verify
7 the information provided by the applicant.

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

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

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

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



COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 58, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 13, begin a new paragraph and insert:

"SECTION 1. IC 7.1-1-3-45.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 45.5. "Specialty or gourmet market" means a market that:**

- (1) holds a beer retailer's permit under IC 7.1-3-4 and wine retailer's permit under IC 7.1-3-14;**
- (2) is engaged in the retail sale of miscellaneous specialty foods for consumption on and off the premises, including:**
 - (A) deli meat;**
 - (B) fruits and vegetables;**
 - (C) gourmet cheese;**
 - (D) pasta and noodles;**
 - (E) herbs, spices, and olive oil; and**
 - (F) specialty wines; and**
- (3) is not engaged in the retail sale of automotive fuel."**

Page 2, line 13, delete "market." and insert "**market (as defined in IC 7.1-1-3-45.5). This exception applies only to a retailer's permit with carryout privileges that was originally issued on or before January 1, 2024.**".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 58 as introduced.)

ALTING, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 58, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

ES 58—LS 6425/DI 87



(Reference is to SB 58 as printed January 19, 2024.)

HOLDMAN, Chairperson

Committee Vote: Yeas 13, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 58, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 17, delete "originally issued on" and insert "**initially issued in September 2019.**"

Page 2, delete line 18.

and when so amended that said bill do pass.

(Reference is to SB 58 as printed January 24, 2024.)

MANNING

Committee Vote: yeas 12, nays 0.

