



February 24, 2017

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## SENATE BILL No. 199

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DIGEST OF SB 199 (Updated February 22, 2017 5:09 pm - DI 106)

**Citations Affected:** IC 7.1-1; IC 7.1-3; IC 7.1-5; IC 35-52; noncode.

**Synopsis:** Permits and certain expenses related to alcoholic beverages. Defines "entertainment", "gift", and "professional and educational expenses", and specifies that certain prohibitions that apply to alcoholic beverage permittees concerning gifts do not apply to entertainment or professional and educational expenses, if the provision of entertainment or professional and educational expenses is not exclusionary. Voids certain rules of the alcohol and tobacco commission that relate to advertising specialties. Increases, from four days to seven days, the number of days in a calendar month that may be designated as guest days by the holder of a club permit for alcoholic beverages.

**Effective:** July 1, 2017.

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### Alting, Tallian

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January 4, 2017, read first time and referred to Committee on Rules and Legislative Procedure.

February 6, 2017, amended; reassigned to Committee on Public Policy.

February 23, 2017, amended, reported favorably — Do Pass.

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SB 199—LS 6029/DI 13





February 24, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE BILL No. 199

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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 7.1-1-3-16.4 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2017]: **Sec. 16.4. "Entertainment", for**  
4 **purposes of IC 7.1-5-5, means the following:**

5 (1) **Participation in a sporting event.**  
6 (2) **Attendance at a sporting event or an event featuring live**  
7 **entertainment.**

8 (3) **The provision of food or beverages.**

9 SECTION 2. IC 7.1-1-3-18.3 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2017]: **Sec. 18.3. "Gift", for purposes of**  
12 **IC 7.1-5-5, means anything of value, including a rebate, sum of**  
13 **money, accessory, furniture, fixture, loan of money, concession,**  
14 **privilege, use, title, interest, or lease, rehabilitation, decoration,**  
15 **improvement, or repair of premises.**

16 SECTION 3. IC 7.1-1-3-32.7 IS ADDED TO THE INDIANA  
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2017]: **Sec. 32.7. "Professional and**  
 2 **educational expenses"**, for purposes of IC 7.1-5-5, means one (1) or  
 3 **more of the following:**

4 **(1) Expenses, including the payment of dues, incurred in**  
 5 **connection with participation in a trade association.**

6 **(2) Expenses related to visiting a primary source of supply for**  
 7 **educational purposes.**

8 **(3) Providing meals or other entertainment to groups**  
 9 **composed of alcoholic beverage industry members.**

10 **(4) Services provided by one (1) alcoholic beverage industry**  
 11 **member to another in exchange for the payment of the fair**  
 12 **market value of the services, if the services are not provided**  
 13 **under an agreement tying the provision of services to the**  
 14 **purchase or sale of any alcoholic beverages.**

15 **(5) Advertising specialties and consumer advertising**  
 16 **specialties, even if not otherwise permitted by a rule of the**  
 17 **commission, if a wholesaler or primary source of supply does**  
 18 **not:**

19 **(A) add the name or address of the retailer or dealer to the**  
 20 **advertising specialty; or**

21 **(B) pay or credit the retailer or dealer, directly or**  
 22 **indirectly, for distribution services.**

23 SECTION 4. IC 7.1-3-20-8.6, AS AMENDED BY P.L.214-2016,  
 24 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2017]: Sec. 8.6. The holder of a club permit may do the  
 26 following:

27 (1) Designate one (1) or more days each calendar month as guest  
 28 days, not to exceed a total of ~~four (4)~~ **seven (7)** guest days in any  
 29 calendar month.

30 (2) Keep a record of all designated guest days.

31 (3) Invite guests who are not members of the club to attend the  
 32 club on a guest day.

33 (4) Sell or give alcoholic beverages to guests for consumption on  
 34 the permit premises on a guest day.

35 (5) Keep a guest book listing members and their nonmember  
 36 guests, except on a designated guest day.

37 SECTION 5. IC 7.1-5-5-10, AS AMENDED BY P.L.196-2015,  
 38 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2017]: Sec. 10. (a) **Except as provided in subsection (b)**, it  
 40 is unlawful for a person who holds a retailer's or dealer's permit of any  
 41 type to receive or accept **a gift** from a manufacturer of alcoholic  
 42 beverages or from a permittee authorized to sell and deliver alcoholic



1 beverages. a rebate, sum of money, accessory, furniture, fixture, loan  
 2 of money, concession, privilege, use, title, interest, or lease;  
 3 rehabilitation, decoration, improvement or repair of premises.

4 **(b) A person who holds a retailer's or dealer's permit may**  
 5 **receive or accept entertainment and professional and educational**  
 6 **expenses from a manufacturer of alcoholic beverages or from a**  
 7 **permittee authorized to sell and deliver alcoholic beverages, unless**  
 8 **the entertainment or professional and educational expenses are**  
 9 **provided in exchange for an agreement by the holder of the**  
 10 **retailer's or dealer's permit to directly or indirectly purchase**  
 11 **alcoholic beverages from a:**

12 **(1) manufacturer; or**

13 **(2) permittee authorized to sell and deliver alcoholic**  
 14 **beverages;**

15 **to the exclusion, in whole or in part, of alcoholic beverages sold or**  
 16 **delivered by another manufacturer or a permittee authorized to**  
 17 **sell and deliver alcoholic beverages.**

18 ~~(b)~~ **(c)** A person who knowingly or intentionally violates this section  
 19 commits a Class A misdemeanor.

20 SECTION 6. IC 7.1-5-5-11, AS AMENDED BY P.L.159-2014,  
 21 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2017]: Sec. 11. (a) Except as provided in subsections (c), ~~and~~  
 23 (d), ~~and~~ **(e)**, it is unlawful for a manufacturer of alcoholic beverages or  
 24 a permittee authorized to sell and deliver alcoholic beverages to:

25 (1) give ~~supply, furnish, or grant~~ to another permittee who  
 26 purchases alcoholic beverages from the manufacturer or permittee  
 27 a ~~rebate, sum of money, accessory, furniture, fixture, loan of~~  
 28 ~~money, concession, privilege, use, title, interest, lease, or rental~~  
 29 ~~of premises; a gift; or~~

30 (2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f), have  
 31 a business dealing with the other permittee.

32 (b) This section ~~shall~~ **does** not apply to the sale and delivery and  
 33 collection of the sale price of an alcoholic beverage in the ordinary  
 34 course of business.

35 (c) If the promotional program is approved under the rules adopted  
 36 by the commission and is conducted in all wholesaler establishments  
 37 through which the manufacturer distributes alcoholic beverages in  
 38 Indiana, a manufacturer of alcoholic beverages may award bona fide  
 39 promotional prizes and awards to any of the following:

40 (1) A person with a wholesaler's permit issued under IC 7.1-3.

41 (2) An employee of a person with a wholesaler's permit issued  
 42 under IC 7.1-3.



1 (d) A manufacturer may offer on a nondiscriminatory basis bona  
 2 fide incentives to wholesalers when the incentives are determined  
 3 based on sales to retailers or dealers occurring during specified times  
 4 for specified products. The incentive may be conditioned on the  
 5 wholesaler selling a:

6 (1) specified product at a specified price or less than a specified  
 7 price; or

8 (2) minimum quantity of a specified product to a single customer  
 9 in a single transaction.

10 The incentive may not be conditioned on a wholesaler having total  
 11 sales of a minimum quantity of a specified product during the  
 12 applicable period.

13 **(e) A manufacturer or a permittee authorized to sell and deliver  
 14 alcoholic beverages may provide entertainment and professional  
 15 and educational expenses to another permittee, unless the  
 16 entertainment or professional and educational expenses are  
 17 provided in exchange for an agreement to directly or indirectly  
 18 purchase alcoholic beverages from a:**

19 **(1) manufacturer; or**

20 **(2) permittee authorized to sell and deliver alcoholic  
 21 beverages;**

22 **to the exclusion, in whole or in part, of alcoholic beverages sold or  
 23 delivered by another manufacturer or a permittee authorized to  
 24 sell and deliver alcoholic beverages.**

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

27 SECTION 7. IC 35-52-7-32, AS ADDED BY P.L.169-2014,  
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2017]: Sec. 32. IC 7.1-5-5-11 defines a crime concerning  
 30 rebates: **gifts.**

31 SECTION 8. [EFFECTIVE JULY 1, 2017] **(a) 905 IAC 1-5.2-5  
 32 (advertising specialties) is void. The publisher of the Indiana  
 33 Administrative Code and Indiana Register shall remove this  
 34 provision from the Indiana Administrative Code.**

35 **(b) This SECTION expires July 1, 2018.**

36 SECTION 9. [EFFECTIVE JULY 1, 2017] **(a) 905 IAC 1-5.2-7  
 37 (consumer advertising specialties) is void. The publisher of the  
 38 Indiana Administrative Code and Indiana Register shall remove  
 39 this provision from the Indiana Administrative Code.**

40 **(b) This SECTION expires July 1, 2018.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 199, 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:

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Public Policy.

(Reference is to SB 199 as introduced.)

LONG, Chairperson

## COMMITTEE REPORT

Madam President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 199, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 7.1-1-3-16.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 16.4. "Entertainment", for purposes of IC 7.1-5-5, means the following:**

- (1) Participation in a sporting event.
- (2) Attendance at a sporting event or an event featuring live entertainment.
- (3) The provision of food or beverages.

SECTION 2. IC 7.1-1-3-18.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2017]: **Sec. 18.3. "Gift", for purposes of IC 7.1-5-5, means anything of value, including a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, or lease, rehabilitation, decoration, improvement, or repair of premises.**

SECTION 3. IC 7.1-1-3-32.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 32.7. "Professional and educational expenses", for purposes of IC 7.1-5-5, means one (1) or more of the following:**

- (1) Expenses, including the payment of dues, incurred in connection with participation in a trade association.**
- (2) Expenses related to visiting a primary source of supply for educational purposes.**
- (3) Providing meals or other entertainment to groups composed of alcoholic beverage industry members.**
- (4) Services provided by one (1) alcoholic beverage industry member to another in exchange for the payment of the fair market value of the services, if the services are not provided under an agreement tying the provision of services to the purchase or sale of any alcoholic beverages.**
- (5) Advertising specialties and consumer advertising specialties, even if not otherwise permitted by a rule of the commission, if a wholesaler or primary source of supply does not:**
  - (A) add the name or address of the retailer or dealer to the advertising specialty; or**
  - (B) pay or credit the retailer or dealer, directly or indirectly, for distribution services."**

Page 1, after line 14, begin a new paragraph and insert:

"SECTION 5. IC 7.1-5-5-10, AS AMENDED BY P.L.196-2015, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 10. (a) Except as provided in subsection (b), it is unlawful for a person who holds a retailer's or dealer's permit of any type to receive or accept a gift from a manufacturer of alcoholic beverages or from a permittee authorized to sell and deliver alcoholic beverages. a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, or lease, rehabilitation, decoration, improvement or repair of premises.**

**(b) A person who holds a retailer's or dealer's permit may receive or accept entertainment and professional and educational expenses from a manufacturer of alcoholic beverages or from a**





**permittee authorized to sell and deliver alcoholic beverages, unless the entertainment or professional and educational expenses are provided in exchange for an agreement by the holder of the retailer's or dealer's permit to directly or indirectly purchase alcoholic beverages from a:**

- (1) manufacturer; or**
- (2) permittee authorized to sell and deliver alcoholic beverages;**

**to the exclusion, in whole or in part, of alcoholic beverages sold or delivered by another manufacturer or a permittee authorized to sell and deliver alcoholic beverages.**

~~(b)~~ **(c)** A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

SECTION 6. IC 7.1-5-5-11, AS AMENDED BY P.L.159-2014, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. (a) Except as provided in subsections (c), ~~and~~ (d), **and (e)**, it is unlawful for a manufacturer of alcoholic beverages or a permittee authorized to sell and deliver alcoholic beverages to:

- (1) give ~~supply, furnish, or grant~~ to another permittee who purchases alcoholic beverages from the manufacturer or permittee ~~a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, lease, or rental of premises; a gift;~~ or
- (2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f), have a business dealing with the other permittee.

(b) This section ~~shall~~ **does** not apply to the sale and delivery and collection of the sale price of an alcoholic beverage in the ordinary course of business.

(c) If the promotional program is approved under the rules adopted by the commission and is conducted in all wholesaler establishments through which the manufacturer distributes alcoholic beverages in Indiana, a manufacturer of alcoholic beverages may award bona fide promotional prizes and awards to any of the following:

- (1) A person with a wholesaler's permit issued under IC 7.1-3.
- (2) An employee of a person with a wholesaler's permit issued under IC 7.1-3.

(d) A manufacturer may offer on a nondiscriminatory basis bona fide incentives to wholesalers when the incentives are determined based on sales to retailers or dealers occurring during specified times for specified products. The incentive may be conditioned on the wholesaler selling a:

- (1) specified product at a specified price or less than a specified



price; or

(2) minimum quantity of a specified product to a single customer in a single transaction.

The incentive may not be conditioned on a wholesaler having total sales of a minimum quantity of a specified product during the applicable period.

**(e) A manufacturer or a permittee authorized to sell and deliver alcoholic beverages may provide entertainment and professional and educational expenses to another permittee, unless the entertainment or professional and educational expenses are provided in exchange for an agreement to directly or indirectly purchase alcoholic beverages from a:**

**(1) manufacturer; or**

**(2) permittee authorized to sell and deliver alcoholic beverages;**

**to the exclusion, in whole or in part, of alcoholic beverages sold or delivered by another manufacturer or a permittee authorized to sell and deliver alcoholic beverages.**

**(f)** A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

SECTION 7. IC 35-52-7-32, AS ADDED BY P.L.169-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 32. IC 7.1-5-5-11 defines a crime concerning rebates: **gifts.**

SECTION 8. [EFFECTIVE JULY 1, 2017] **(a) 905 IAC 1-5.2-5 (advertising specialties) is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this provision from the Indiana Administrative Code.**

**(b) This SECTION expires July 1, 2018.**

SECTION 9. [EFFECTIVE JULY 1, 2017] **(a) 905 IAC 1-5.2-7 (consumer advertising specialties) is void. The publisher of the Indiana Administrative Code and Indiana Register shall remove this provision from the Indiana Administrative Code.**

**(b) This SECTION expires July 1, 2018."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 199 as printed February 7, 2017.)

ALTING, Chairperson

Committee Vote: Yeas 9, Nays 0.

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