



April 3, 2017

ENGROSSED SENATE BILL No. 199

DIGEST OF SB 199 (Updated April 3, 2017 9:51 am - DI 84)

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. Defines "advertising specialty" and "consumer advertising specialty", and voids certain rules of the alcohol and tobacco commission that relate to advertising specialties and consumer 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: Upon passage.

Alting, Tallian, Merritt

(HOUSE SPONSOR — SMALTZ)

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.

February 27, 2017, read second time, amended, ordered engrossed.

February 28, 2017, engrossed. Read third time, passed. Yeas 43, nays 6.

HOUSE ACTION

March 6, 2017, read first time and referred to Committee on Public Policy.

April 3, 2017, reported — Do Pass.

ES 199—LS 6029/DI 13



April 3, 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.

ENGROSSED SENATE BILL No. 199

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 7.1-1-3-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 3.5. "Advertising specialty" means an item**
4 **having a fair market value of:**
5 **(1) not more than one hundred dollars (\$100); or**
6 **(2) more than one hundred dollars (\$100) with the prior**
7 **written approval of the commission;**
8 **that is designed to be used within a retail establishment to attract**
9 **consumer attention to the products of a manufacturer. The term**
10 **includes items such as posters, placards, designs, inside signs**
11 **(electric, mechanical, or otherwise), window decorations, trays,**
12 **coasters, mats, menu cards, meal checks, paper napkins, foam**
13 **scrapers, back bar mats, thermometers, clocks, calendars, and**
14 **alcoholic beverage lists or menus. An advertising specialty must**
15 **bear conspicuous and substantial advertising matter about the**
16 **product or the manufacturer or wholesaler that is permanently**
17 **inscribed or securely affixed.**

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1 SECTION 2. IC 7.1-1-3-12.5 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE UPON PASSAGE]: **Sec. 12.5. "Consumer advertising**
 4 **specialty" means an item having a fair market value of:**

- 5 (1) not more than one hundred dollars (\$100); or
 6 (2) more than one hundred dollars (\$100) with the prior
 7 written approval of the commission;

8 that is designed to be carried away by the consumer. The term
 9 includes items such as trading stamps, nonalcoholic mixers,
 10 pouring racks, ash trays, bottle or can openers, cork screws,
 11 shopping bags, matches, printed recipes, pamphlets, cards, leaflets,
 12 blotters, post cards, pencils, shirts, caps, and visors. A consumer
 13 advertising specialty must bear conspicuous and substantial
 14 advertising matter about the product or the manufacturer or
 15 wholesaler that is permanently inscribed or securely affixed.

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

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

24 SECTION 4. IC 7.1-1-3-18.3 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE UPON PASSAGE]: **Sec. 18.3. "Gift", for purposes of**
 27 **IC 7.1-5-5, means anything of value, including a rebate, sum of**
 28 **money, accessory, furniture, fixture, loan of money, concession,**
 29 **privilege, use, title, interest, or lease, rehabilitation, decoration,**
 30 **improvement, or repair of premises.**

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

- 36 (1) Expenses, including the payment of dues, incurred in
 37 connection with participation in a trade association.
 38 (2) Expenses related to visiting a primary source of supply for
 39 educational purposes.
 40 (3) Providing meals or other entertainment to groups
 41 composed of alcoholic beverage industry members.
 42 (4) Services provided by one (1) alcoholic beverage industry



1 member to another in exchange for the payment of the fair
 2 market value of the services, if the services are not provided
 3 under an agreement tying the provision of services to the
 4 purchase or sale of any alcoholic beverages.

5 (5) Advertising specialties and consumer advertising
 6 specialties, even if not otherwise permitted by a rule of the
 7 commission, if a wholesaler or primary source of supply does
 8 not:

9 (A) add the name or address of the retailer or dealer to the
 10 advertising specialty or consumer advertising specialty; or

11 (B) pay or credit the retailer or dealer, directly or
 12 indirectly, for distribution services.

13 SECTION 6. IC 7.1-3-20-8.6, AS AMENDED BY P.L.214-2016,
 14 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 8.6. The holder of a club permit may do the
 16 following:

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

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

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

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

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

27 SECTION 7. IC 7.1-5-5-10, AS AMENDED BY P.L.196-2015,
 28 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 UPON PASSAGE]: Sec. 10. (a) **Except as provided in subsection (b),**
 30 it is unlawful for a person who holds a retailer's or dealer's permit of
 31 any type to receive or accept **a gift** from a manufacturer of alcoholic
 32 beverages or from a permittee authorized to sell and deliver alcoholic
 33 beverages. ~~a rebate; sum of money; accessory; furniture; fixture; loan~~
 34 ~~of money; concession; privilege; use; title; interest; or lease;~~
 35 ~~rehabilitation; decoration; improvement or repair of premises.~~

36 (b) **A person who holds a retailer's or dealer's permit may**
 37 **receive or accept entertainment and professional and educational**
 38 **expenses from a manufacturer of alcoholic beverages or from a**
 39 **permittee authorized to sell and deliver alcoholic beverages, unless**
 40 **the entertainment or professional and educational expenses are**
 41 **provided in exchange for an agreement by the holder of the**
 42 **retailer's or dealer's permit to directly or indirectly purchase**



1 **alcoholic beverages from a:**

2 **(1) manufacturer; or**

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

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

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

10 SECTION 8. IC 7.1-5-5-11, AS AMENDED BY P.L.159-2014,
11 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 UPON PASSAGE]: Sec. 11. (a) Except as provided in subsections (c),
13 ~~and~~ (d), ~~and~~ **(e)**, it is unlawful for a manufacturer of alcoholic
14 beverages or a permittee authorized to sell and deliver alcoholic
15 beverages to:

16 (1) give ~~supply, furnish, or grant~~ to another permittee who
17 purchases alcoholic beverages from the manufacturer or permittee
18 a ~~rebate, sum of money, accessory, furniture, fixture, loan of~~
19 ~~money, concession, privilege, use, title, interest, lease, or rental~~
20 ~~of premises; a gift; or~~

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

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

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

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

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

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

39 (1) specified product at a specified price or less than a specified
40 price; or

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



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

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

10 **(1) manufacturer; or**

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

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

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

18 SECTION 9. IC 35-52-7-32, AS ADDED BY P.L.169-2014,
 19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 32. IC 7.1-5-5-11 defines a crime concerning
 21 ~~rebates.~~ **gifts.**

22 SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) 905**
 23 **IAC 1-5.2-5 (advertising specialties) is void. The publisher of the**
 24 **Indiana Administrative Code and Indiana Register shall remove**
 25 **this provision from the Indiana Administrative Code.**

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

27 SECTION 11. [EFFECTIVE UPON PASSAGE] **(a) 905**
 28 **IAC 1-5.2-7 (consumer advertising specialties) is void. The**
 29 **publisher of the Indiana Administrative Code and Indiana Register**
 30 **shall remove this provision from the Indiana Administrative Code.**

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

32 SECTION 12. **An emergency is declared for this act.**



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.

ES 199—LS 6029/DI 13



SENATE MOTION

Madam President: I move that Senate Bill 199 be amended to read as follows:

Replace the effective dates in SECTIONS 1 through 9 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 7.1-1-3-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 3.5. "Advertising specialty" means an item having a fair market value of:**

- (1) not more than one hundred dollars (\$100); or**
- (2) more than one hundred dollars (\$100) with the prior written approval of the commission;**

that is designed to be used within a retail establishment to attract consumer attention to the products of a manufacturer. The term includes items such as posters, placards, designs, inside signs (electric, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus. An advertising specialty must bear conspicuous and substantial advertising matter about the product or the manufacturer or wholesaler that is permanently inscribed or securely affixed.

SECTION 2. IC 7.1-1-3-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 12.5. "Consumer advertising specialty" means an item having a fair market value of:**

- (1) not more than one hundred dollars (\$100); or**
- (2) more than one hundred dollars (\$100) with the prior written approval of the commission;**

that is designed to be carried away by the consumer. The term includes items such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors. A consumer advertising specialty must bear conspicuous and substantial advertising matter about the product or the manufacturer or wholesaler that is permanently inscribed or securely affixed."



Page 2, line 20, delete ";" and insert "**or consumer advertising specialty**";.

Page 4, after line 40, begin a new paragraph and insert:
"SECTION 12. **An emergency is declared for this act.**".
Renumber all SECTIONS consecutively.

(Reference is to SB 199 as printed February 24, 2017.)

ALTING

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 199, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 199 as reprinted February 28, 2017.)

SMALTZ

Committee Vote: Yeas 7, Nays 6

