

# SENATE BILL No. 238

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 7.1-3; IC 7.1-5; IC 35-52-7.

**Synopsis:** Designated outdoor refreshment areas. Allows a municipality to designate an area of the municipality as an outdoor refreshment area (refreshment area) with the approval of the alcohol and tobacco commission (commission). Provides that if a refreshment area is approved, the commission designates retailer permittees (designated permittees) located within the refreshment area. Allows a consumer to exit a designated permittee's premises with one open container of an alcoholic beverage at a time to consume within the refreshment area. Limits the volume of an open container (based upon the type of alcoholic beverage) that a designated permittee may sell or furnish to a consumer for a refreshment area. Requires a consumer to wear a wristband in order to exit a licensed premises into a refreshment area with an open container. Allows a minor to be present in a refreshment area. Allows a municipality to adopt an ordinance at any time to dissolve a refreshment area. Makes the following acts a Class C misdemeanor: (1) A person who exits a designated permittee's premises with an open container of an alcoholic beverage without wearing a wristband identification. (2) A designated permittee who allows a person with an open container of an alcoholic beverage to exit the premises without wearing a wristband identification. (3) A designated permittee who sells or furnishes a person with: (A) an open container of an alcoholic beverage that exceeds the container volume limitations; or (B) two or more open containers of alcoholic beverages at a time. (4) A person who consumes an open container of an alcoholic beverage purchased from a designated permittee outside the refreshment area. (5) A person who brings an alcoholic beverage into a refreshment area that was not purchased from a designated permittee.

**Effective:** July 1, 2021.

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January 7, 2021, read first time and referred to Committee on Public Policy.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 238

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 7.1-3-21-11, AS AMENDED BY P.L.285-2019,
- 2 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2021]: Sec. 11. (a) As used in this section, "wall" means a
- 4 wall of a building. The term does not include a boundary wall.
- 5 (b) Except as provided in subsections (c), (g), and (h), the
- 6 commission may not issue a permit for a premises if a wall of the
- 7 premises is situated within two hundred (200) feet from a wall of a
- 8 school or church, if no permit has been issued for the premises under
- 9 the provisions of Acts 1933, Chapter 80.
- 10 (c) This section does not apply to the premises of a:
- 11 (1) grocery store, drug store, restaurant, hotel, catering hall,
- 12 **designated outdoor refreshment area**, or location for which the
- 13 use of a supplemental catering permit has been approved if:
- 14 (A) a wall of the premises is situated within two hundred (200)
- 15 feet from a wall of a church or school;
- 16 (B) the commission receives a written statement from the
- 17 authorized representative of the church or school stating



- 1 expressly that the church or school does not object to the  
 2 issuance of the permit for the premises; and  
 3 (C) the commission determines that the church or school does  
 4 not object to the issuance of the permit for the premises; or  
 5 (2) church or school that applies for a temporary beer or wine  
 6 permit.
- 7 (d) The commission shall base its determination under subsection  
 8 (c)(1)(C) solely on the written statement of the authorized  
 9 representative of the church or school.
- 10 (e) If the commission does not receive the written statement of the  
 11 authorized representative of the church or school, the premises of the  
 12 grocery store, drug store, restaurant, hotel, catering hall, **designated**  
 13 **outdoor refreshment area**, or location for which the use of a  
 14 supplemental catering permit has been approved may not obtain the  
 15 waiver allowed under this section.
- 16 (f) If the commission determines that the church or school does not  
 17 object, this section and IC 7.1-3-21-10 do not apply to the permit  
 18 premises of the grocery store, drug store, restaurant, hotel, ~~or~~ catering  
 19 hall, **designated outdoor refreshment area**, on a subsequent renewal  
 20 or transfer of ownership.
- 21 (g) If the commission:  
 22 (1) receives a written statement from the authorized  
 23 representative of a church or school as described in subsection  
 24 (c)(1)(B); and  
 25 (2) determines the church or school does not object as described  
 26 in subsection (c)(1)(C);  
 27 the commission may not consider subsequent objections from the  
 28 church or school to the issuance of the same permit type at the same  
 29 premises location.
- 30 (h) The commission may issue a permit for a premises if the wall of  
 31 the premises and the wall of a church are separated by at least  
 32 eighty-five (85) feet, including a two (2) lane road of at least thirty (30)  
 33 feet in width.
- 34 SECTION 2. IC 7.1-3-30 IS ADDED TO THE INDIANA CODE  
 35 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2021]:
- 37 **Chapter 30. Designated Outdoor Refreshment Areas**  
 38 **Sec. 1. As used in this chapter, "designated permittee" means a**  
 39 **retailer permittee that:**  
 40 **(1) has licensed premises within a refreshment area; and**  
 41 **(2) is designated by the commission under section 6 of this**  
 42 **chapter.**



1           **Sec. 2. As used in this chapter "refreshment area" means an**  
 2 **outdoor area that is designated a refreshment area by a**  
 3 **municipality as provided in this chapter.**

4           **Sec. 3. If a municipality designates a refreshment area under**  
 5 **this chapter, a consumer may:**

6           (1) **exit the licensed premises of a designated permittee with**  
 7 **not more than one (1) open container of an alcoholic beverage**  
 8 **at a time; and**

9           (2) **consume the alcoholic beverage within the refreshment**  
 10 **area.**

11           **Sec. 4. A municipality may create a refreshment area subject to**  
 12 **the following:**

13           (1) **A refreshment area must include at least four (4) licensed**  
 14 **premises that are designated permittees.**

15           (2) **The following limitations:**

16           (A) **A municipality that has a population of more than fifty**  
 17 **thousand (50,000) may create not more than four (4)**  
 18 **outdoor refreshment areas. Each refreshment area may**  
 19 **not exceed three hundred twenty (320) contiguous acres.**

20           (B) **A municipality that has a population of more than**  
 21 **thirty-five thousand (35,000) but not more than fifty**  
 22 **thousand (50,000), may create not more than two (2)**  
 23 **outdoor refreshment areas. Each refreshment area may**  
 24 **not exceed three hundred twenty (320) contiguous acres.**

25           (C) **A municipality that has a population of not more than**  
 26 **thirty-five thousand (35,000) may create one (1) outdoor**  
 27 **refreshment area that is not more than one hundred fifty**  
 28 **(150) contiguous acres.**

29           (3) **A refreshment area is subject to IC 7.1-3-21-11.**

30           **Sec. 5. (a) The legislative body of a municipality that wants to**  
 31 **designate a refreshment area must adopt an ordinance that**  
 32 **includes at least the following:**

33           (1) **A map of the refreshment area in sufficient detail to**  
 34 **identify the area's boundaries.**

35           (2) **The boundaries of the refreshment area, by street**  
 36 **addresses.**

37           (3) **The licensed premises located within the refreshment area.**

38           (4) **A statement that the refreshment area is consistent with**  
 39 **the municipality's zoning ordinance.**

40           (5) **The number, spacing, and type of signage designating the**  
 41 **refreshment area.**

42           (6) **The hours of operation for the refreshment area, which**



1           may not violate IC 7.1-3-1-14.

2           **(b) The ordinance of the municipality may include any other**  
3 **provisions regarding the operation of the district, including:**

4           **(1) requiring designated permittees to use only nonbreakable**  
5 **plastic bottles or plastic or paper cups for alcoholic beverages**  
6 **consumed in the refreshment area;**

7           **(2) requiring bottles or cups to be affixed with a logo that**  
8 **identifies the container for use only in the refreshment area;**

9           **(3) providing wristband identifications to designated**  
10 **permittees;**

11           **(4) a public safety plan for the area; or**

12           **(5) a sanitation plan for the area.**

13           **Sec. 6. (a) The municipality shall submit the adopted ordinance**  
14 **to the commission with an application for approval of a**  
15 **refreshment area. The commission shall review the ordinance for**  
16 **compliance with this chapter. If approved, the commission shall**  
17 **issue a refreshment area designation to each retailer permittee**  
18 **located within the refreshment area. The commission may approve**  
19 **a refreshment area and issue refreshment area designations to**  
20 **retailer permittees without publication of notice or investigation**  
21 **before a local board. The commission may not charge a fee for**  
22 **designating a retailer permittee.**

23           **(b) A designated permittee shall comply with the applicable**  
24 **public health and safety requirements established by ordinance for**  
25 **the refreshment area.**

26           **Sec. 7. An organizer of an event or festival within the**  
27 **refreshment area that holds a temporary beer or wine permit for**  
28 **an event may apply to the commission for a temporary**  
29 **refreshment area designation for the event.**

30           **Sec. 8. A municipal legislative body may adopt an ordinance**  
31 **dissolving the refreshment area at any time. The municipal**  
32 **legislative body shall notify the chairman of the commission that a**  
33 **refreshment area is dissolved. Upon receipt of the notice, the**  
34 **commission shall revoke all refreshment area designations issued**  
35 **within the dissolved refreshment area.**

36           **Sec. 9. A designated permittee within the refreshment area may**  
37 **allow a customer to exit the designated permittee's licensed**  
38 **premises with not more than one (1) open container of an alcoholic**  
39 **beverage at a time. The open container may not exceed the**  
40 **following:**

41           **(1) An open container of beer or flavored malt beverage may**  
42 **not exceed sixteen (16) fluid ounces.**



- 1           **(2) An open container of wine, including cider or hard seltzer,**
- 2           **may not exceed twelve (12) fluid ounces.**
- 3           **(3) An open container of a mixed drink containing at least one**
- 4           **(1) liquor and at least one (1) nonalcoholic mixer other than**
- 5           **water or ice may not exceed ten (10) fluid ounces.**
- 6           **(4) An open container of only liquor, liquor and water, or**
- 7           **liquor and ice may not exceed two (2) ounces.**
- 8           **Sec. 10. (a) A person may consume an alcoholic beverage**
- 9           **purchased from the designated permittee anywhere within the**
- 10           **outdoor refreshment area boundaries.**
- 11           **(b) A person may not enter any licensed premises with an**
- 12           **alcoholic beverage as provided in IC 7.1-5-8-5.**
- 13           **Sec. 11. (a) A person may not:**
- 14           **(1) exit a designated permittee's premises; or**
- 15           **(2) enter the refreshment area;**
- 16           **with an open container of an alcoholic beverage, unless the person**
- 17           **is wearing a nontransferable wristband identification imprinted**
- 18           **with the name or logo of the refreshment area.**
- 19           **(b) A designated permittee may not allow a consumer to exit the**
- 20           **permittee's premises with an open container of an alcoholic**
- 21           **beverage for consumption in the refreshment area, unless the**
- 22           **consumer is wearing a nontransferable wristband identification**
- 23           **imprinted with the name or logo of the refreshment area.**
- 24           **Sec. 12. A person may not consume an alcoholic beverage within**
- 25           **the refreshment area that was purchased outside of the**
- 26           **refreshment area.**
- 27           **Sec. 13. If a designated permittee in the refreshment area**
- 28           **includes outdoor dining:**
- 29           **(1) the designated permittee may serve alcoholic beverages in**
- 30           **open containers during the hours of operation and in the**
- 31           **areas authorized by the retailer permit;**
- 32           **(2) glass containers may be allowed in the outdoor dining**
- 33           **areas but may not be removed from those areas; and**
- 34           **(3) no fencing or other enclosure of the outdoor dining area is**
- 35           **required other than the fencing or enclosure required for the**
- 36           **retailer permit.**
- 37           **SECTION 3. IC 7.1-5-7-11, AS AMENDED BY P.L.285-2019,**
- 38           **SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
- 39           **JULY 1, 2021]: Sec. 11. (a) The provisions of sections 9 and 10 of this**
- 40           **chapter shall not apply if the public place involved is one (1) of the**
- 41           **following:**
- 42           **(1) Civic center.**



- 1 (2) Convention center.  
 2 (3) Sports arena.  
 3 (4) Bowling center.  
 4 (5) Bona fide club.  
 5 (6) Drug store.  
 6 (7) Grocery store.  
 7 (8) Boat.  
 8 (9) Dining car.  
 9 (10) Pullman car.  
 10 (11) Club car.  
 11 (12) Passenger airplane.  
 12 (13) Horse racetrack facility holding a recognized meeting permit  
 13 under IC 4-31-5.  
 14 (14) Satellite facility (as defined in IC 4-31-2-20.5).  
 15 (15) Catering hall under IC 7.1-3-20-24 that is not open to the  
 16 public.  
 17 (16) That part of a restaurant which is separate from a room in  
 18 which is located a bar over which alcoholic beverages are sold or  
 19 dispensed by the drink.  
 20 (17) Entertainment complex.  
 21 (18) Indoor golf facility.  
 22 (19) A recreational facility such as a golf course, bowling center,  
 23 or similar facility that has the recreational activity and not the sale  
 24 of food and beverages as the principal purpose or function of the  
 25 person's business.  
 26 (20) A licensed premises owned or operated by a postsecondary  
 27 educational institution described in IC 21-17-6-1.  
 28 (21) An automobile racetrack.  
 29 (22) An indoor theater under IC 7.1-3-20-26.  
 30 (23) A senior residence facility campus (as defined in  
 31 IC 7.1-3-1-29(c)) at which alcoholic beverages are given or  
 32 furnished as provided under IC 7.1-3-1-29.  
 33 (24) A hotel other than a part of a hotel that is a room in a  
 34 restaurant in which a bar is located over which alcoholic  
 35 beverages are sold or dispensed by the drink.  
 36 (25) The location of an allowable event to which IC 7.1-3-6.1  
 37 applies.  
 38 (26) The location of a charity auction to which IC 7.1-3-6.2  
 39 applies.  
 40 (27) A farm winery and any additional locations of the farm  
 41 winery under IC 7.1-3-12, if the minor is in the company of a  
 42 parent, legal guardian or custodian, or family member who is at



1 least twenty-one (21) years of age and the minor is accompanied  
 2 by the adult in any area that the adult may be present whether or  
 3 not the area:

4 (A) is separated in any manner from where the wine is  
 5 manufactured, sold, or consumed within the farm winery  
 6 premises; or

7 (B) operates under a retailer's permit.

8 (28) An artisan distillery under IC 7.1-3-27, if:

9 (A) the person who holds the artisan distiller's permit also  
 10 holds a farm winery permit under IC 7.1-3-12; and

11 (B) the minor is in the company of a parent, legal guardian or  
 12 custodian, or family member who is at least twenty-one (21)  
 13 years of age.

14 (29) An art instruction studio under IC 7.1-5-8-4.6.

15 (30) The licensed premises of a food hall under IC 7.1-3-20-29  
 16 and the food and beverage vending space of a food hall vendor  
 17 permittee under IC 7.1-3-20-30. However, sections 9 and 10 of  
 18 this chapter apply to a bar within the food and beverage vending  
 19 space of a food hall vendor permittee under IC 7.1-3-20-30 that  
 20 serves alcoholic beverages intended to be consumed while sitting  
 21 or standing at the bar.

22 **(31) A designated outdoor refreshment area under**  
 23 **IC 7.1-3-30.**

24 (b) For the purpose of this subsection, "food" means meals prepared  
 25 on the licensed premises. It is lawful for a minor to be on licensed  
 26 premises in a room in which is located a bar over which alcoholic  
 27 beverages are sold or dispensed by the drink if all the following  
 28 conditions are met:

29 (1) The minor is eighteen (18) years of age or older.

30 (2) The minor is in the company of a parent, guardian, or family  
 31 member who is twenty-one (21) years of age or older.

32 (3) The purpose for being on the licensed premises is the  
 33 consumption of food and not the consumption of alcoholic  
 34 beverages.

35 SECTION 4. IC 7.1-5-8-12 IS ADDED TO THE INDIANA CODE  
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 37 1, 2021]: **Sec. 12. (a) As used in this section "designated permittee"**  
 38 **has the meaning set forth in IC 7.1-3-30-1.**

39 **(b) A designated permittee who allows a person who is not**  
 40 **wearing a wristband as required under IC 7.1-3-30-11 to exit the**  
 41 **licensed premises of the designated permittee with an open**  
 42 **container of an alcoholic beverage purchased on the premises**





1 **commits a Class C misdemeanor.**

2 SECTION 5. IC 7.1-5-8-13 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2021]: **Sec. 13. (a) As used in this section "designated permittee"**  
5 **has the meaning set forth in IC 7.1-3-30-1.**

6 **(b) A person who exits the premises of a designated permittee**  
7 **with an open container of an alcoholic beverage purchased on the**  
8 **premises without wearing a wristband as required under**  
9 **IC 7.1-3-30-11 commits a Class C misdemeanor.**

10 SECTION 6. IC 7.1-5-8-14 IS ADDED TO THE INDIANA CODE  
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
12 1, 2021]: **Sec. 14. (a) As used in this section "designated permittee"**  
13 **has the meaning set forth in IC 7.1-3-30-1.**

14 **(b) A person who possesses or consumes an alcoholic beverage**  
15 **purchased from a designated permittee outside the boundaries of**  
16 **an outdoor refreshment area designated under IC 7.1-3-30**  
17 **commits a Class C misdemeanor.**

18 SECTION 7. IC 7.1-5-8-15 IS ADDED TO THE INDIANA CODE  
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
20 1, 2021]: **Sec. 15. (a) As used in this section "designated permittee"**  
21 **has the meaning set forth in IC 7.1-3-30-1.**

22 **(b) A person who brings an alcoholic beverage into an outdoor**  
23 **refreshment area designated under IC 7.1-3-30 that was not**  
24 **purchased from a designated permittee commits a Class C**  
25 **misdemeanor.**

26 SECTION 8. IC 7.1-5-8-16 IS ADDED TO THE INDIANA CODE  
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28 1, 2021]: **Sec. 16. (a) As used in this section "designated permittee"**  
29 **has the meaning set forth in IC 7.1-3-30-1.**

30 **(b) A designated permittee who sells, furnishes, or gives a**  
31 **person for consumption in a refreshment area designated under**  
32 **IC 7.1-3-30:**

33 **(1) an open container of an alcoholic beverage that exceeds**  
34 **the container limitations in IC 7.1-3-30-9; or**

35 **(2) two (2) or more open containers of alcoholic beverages at**  
36 **a time;**

37 **commits a Class C misdemeanor.**

38 SECTION 9. IC 35-52-7-49.1 IS ADDED TO THE INDIANA  
39 CODE AS A NEW SECTION TO READ AS FOLLOWS  
40 [EFFECTIVE JULY 1, 2021]: **Sec. 49.1. IC 7.1-5-8-12 defines a**  
41 **crime concerning alcohol.**

42 SECTION 10. IC 35-52-7-49.2 IS ADDED TO THE INDIANA



1 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2021]: **Sec. 49.2. IC 7.1-5-8-13 defines a**  
3 **crime concerning alcohol.**

4 SECTION 11. IC 35-52-7-49.3 IS ADDED TO THE INDIANA  
5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
6 [EFFECTIVE JULY 1, 2021]: **Sec. 49.3. IC 7.1-5-8-14 defines a**  
7 **crime concerning alcohol.**

8 SECTION 12. IC 35-52-7-49.4 IS ADDED TO THE INDIANA  
9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 2021]: **Sec. 49.4. IC 7.1-5-8-15 defines a**  
11 **crime concerning alcohol.**

12 SECTION 13. IC 35-52-7-49.5 IS ADDED TO THE INDIANA  
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2021]: **Sec. 49.5. IC 7.1-5-8-16 defines a**  
15 **crime concerning alcohol.**

