



STATE OF INDIANA  
ALCOHOL AND TOBACCO COMMISSION

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## TRADE PRACTICE MANUAL

The following manual is provided by the Indiana Alcohol and Tobacco Commission as a high-level overview of Indiana alcohol statutes and rules. This manual is intended to assist new permittees and those interested in potentially entering the alcohol and tobacco marketplace in Indiana. None of the information presented herein is provided for legal guidance. This manual is for information purposes only. For specific legal guidance, please consult an attorney.

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### **1. Overview of the Indiana Alcohol and Tobacco Commission** (IC 7.1-2-1-1 through 7.1-2-3-34)

The Purpose of the Indiana Alcohol and Tobacco Commission is (1) to protect the economic welfare, health, peace, and morals of the people of Indiana, (2) to regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages, (3) to regulate the sale, possession, and distribution of tobacco products, and (4) to provide for the raising of revenue.

- **Commission**

The Commission is comprised of four (4) members, which are appointed by the Governor. One of those members shall serve as Chairman, which is decided by the Governor. Additionally, one member serves as Chairman Pro Tempore in the absence of the Chairman. The Commission meets twice a month, on the first and third Tuesdays of the month.



The Commission has the power to hold hearings, take testimony, conduct inquiries, receive reports from enforcement officers or other governmental officers, administer oaths, subpoena witnesses, and institute proceedings to enforce its own orders. The Commission also has the power to make rules and regulations governing both the Commission itself as well as the business of any permittee authorized by Indiana alcohol regulations.

- **Chairman**

The Chairman functions as both agency head for the Alcohol and Tobacco Commission as well as the presiding officer for any Commission actions.

- **Prosecutor**

The Governor also appoints a Prosecutor to oversee the division of the office of the Prosecutor. The Prosecutor shall prosecute before the Commission all violations of Indiana alcohol regulations. The Prosecutor shall also assist the prosecuting attorneys of the various jurisdictions as well as appear before grand juries.

- **Executive Secretary**

The Commission employs an Executive Secretary who shall assist in the administration of the responsibilities of the Commission.

- **Indiana State Excise Police and Superintendent**

The Commission shall employ enforcement officers who are vested with full police powers. These officers enforce the provisions of Indiana alcohol regulations as well as any other laws of the state. These enforcement officers are overseen by the Superintendent.

- **Local County Alcoholic Beverage Boards** (*7.1-2-4-1 through 7.1-2-4-22*)

Each county has at least one local alcohol beverage board. These boards are composed of four (4) persons. Three of these members are appointed by the local jurisdiction, and the last member is a representative of the Commission, generally an officer from the Indiana State Excise Police. The local board is a public meeting which reviews applications for new permits, transfer of location or ownership of existing permits, and renewals of permits. The local board makes recommendations based upon public hearings that are then reviewed by the Commission for final action.

## **2. General Aspects of Permits**

- **Three Tier System**

The basic premise of Indiana's alcohol regulatory structure is the "three tiered system". This term references that alcohol permits within the state of Indiana fall into three distinct categories: manufacture, wholesale, and retail. Barring some specific exceptions, members in one tier cannot have an interest in another tier. This is specifically addressed in Indiana's "Prohibited Interests" statutes (*IC 7.1-5-9-1 through 7.1-5-9-14*). An "interest" under these provisions is



broad and includes both financial interest as well as exercising control over a permit. As these provisions are complex and fact sensitive, we recommend consulting an attorney for specific inquiries regarding prohibited interest analysis.

- **Provisions applicable to all permits**

Regardless of which specific tier a permit may fall under, these general provisions apply to all permits:

- Consent to Search (*IC 7.1-2-3-12*): The Commission has the authority to search and inspect any location in which alcohol is kept, manufactured, or stored. Additionally, the Commission can seize any alcohol, container, or personal property used to violate or prevent the investigation of Indiana alcohol regulations.
- Disclosure of Interested Persons (*IC 7.1-3-21-8*): The Commission will not issue a permit of any type unless the applicant lists all persons that have a financial interest in the permit. Any changes to the list of interested persons must be filed within ten (10) days of the change.
- Quotas on Permits (*IC 7.1-3-22-1 through 7.1-3-22-10*): The Commission is restricted on the number of permits of certain types that it can grant in a particular jurisdiction. These quotas are based on both location and population of the specific area.

### 3. **Manufacturing (primary source)**

- Beer Manufacturing Permit (Brewer) (*IC 7.1-3-2-1 through 7.1-3-2-9*)
  - A brewer's permit allows a permittee to manufacture beer (*defined by IC 7.1-1-3-6*), place beer in approved containers, and sell beer to a beer wholesaler. (*IC 7.1-3-2-7*)
  - A brewer who sells less than 90,000 barrels of beer in Indiana (craft brewer) may hold a retail permit, operate a tasting room, and sell beer directly to a retail permittee.
- Distiller and Rectifier's Permit (*IC 7.1-3-7-1 through 7.1-3-7-9*)
  - A distiller's permit allows a permittee to manufacture liquor, rectify liquor (*defined by IC 7.1-1-3-36*), and bottle liquor. A distiller may sell liquor directly to a liquor wholesaler, but may NOT sell directly to retail permittee or consumer. (*IC 7.1-3-7-3*)
  - A rectifier may rectify liquor and bottle it. A rectifier may sell liquor to a liquor wholesaler, but may NOT sell directly to a retail permittee or consumer. (*IC 7.1-3-7-7*)
- Artisan Distiller's Permit (*IC 7.1-3-27-1 through 7.1-3-27-15*)



- An artisan distiller (craft distiller) may manufacture, bottle, and sell liquor to a liquor wholesaler (IC 7.1-3-27-8), however, they may produce up to ten thousand (10,000) gallons of liquor in any calendar year. (IC 7.1-3-27-3)
- An artisan distiller applicant must have held a brewer's permit, farm winery permit, or distiller's permit for 18 months prior to application for an artisan distiller permit. (IC 7.1-3-27-5)
- An artisan distiller may hold a farm winery permit, brewer's permit, or distiller's permit (IC 7.1-3-27-6)
- An artisan distiller may hold a retail permit or operate a tasting room. (IC 7.1-3-27-8)
- Vintner's Permit (IC 7.1-3-12-1 through 7.1-3-12-7.5)
  - A vintner may manufacture wine and place it in other containers for sale to wine wholesalers. A vintner may NOT sell wine directly to retailers or consumers. (IC 7.1-3-12-2)
- Farm Winery Permit (IC 7.1-3-12-3 through 7.1-3-12-7.5)
  - A farm winery permit holder (craft winery) may manufacture wine and bottle wine for sale to a wine wholesaler permittee. A farm winery may sell wine by the bottle directly to consumers and may hold a retail permit (IC 7.1-3-12-5).

#### **4. Wholesaler (distributor)**

- Beer Wholesaler Permit (IC 7.1-3-3-1 through 7.1-3-3-18)
  - A beer wholesaler may purchase and import beer and flavored malt beverages from an in-state brewer or out-of-state primary source for resale to retail permits in Indiana. (IC 7.1-3-3-5)
  - A beer wholesaler and a brewer (in-state or out-of-state) may enter into a franchise agreement for distribution rights of the brewer's products within a particular jurisdiction. (IC 7.1-3-3-17 and 7.1-5-5-9)
  - A beer wholesaler may not have an interest in a liquor permit of any time. (IC 7.1-5-9-3)
- Liquor Wholesalers Permit (IC 7.1-3-8-1 through 7.1-3-8-3)
  - A liquor wholesaler may purchase and import liquor from an in-state or out-of-state distiller for resale to retail permits in Indiana. (IC 7.1-3-8-3)



- A liquor wholesaler may not have an interest in a beer permit of any type. (*IC 7.1-5-9-6*)
- Wine Wholesalers' and Bottler's Permits (*IC 7.1-3-13-1 through 7.1-3-13-6*)
  - A wine wholesaler may purchase and import wine or flavored malt beverage from an in-state or out-of-state primary source of supply for resale to retail locations in Indiana. (*IC 7.1-3-13-3*)
- Common Issues regarding Wholesale tier permittees:
  - Product Management:
    - A primary source of supply or wholesaler may, on a non-discriminatory basis, manage the display space at a retail location. This can include rotating products on display shelves, from storage areas, or floor displays. However, these services must be provided to all similarly situated permittees. (*905 IAC 1-5.2.15*)
  - Advertising:
    - Cooperative Advertising: A primary source of supply or wholesaler cannot participate with a retail location in joint advertising. (*905 IAC 1-5.1-7*)
    - Exterior signs: A primary source of supply or wholesaler cannot provide any sign advertising alcoholic beverages by brand name within 200 feet of a retail location. (*905 IAC 1-38-1*)
    - Outside Signs: A primary source of supply or wholesaler cannot provide outside signs for retail locations. (*905 IAC 1-5.1-6*)
  - Tie-in Sales: A wholesaler cannot require a retail location to purchase one product to get another. (*905 IAC 1-5.1-11*)
  - Quota Sales: A wholesaler cannot require a retail location to take a certain quota of alcohol. (*905 IAC 1-5.1-10*)

## 5. Retail (retailer or dealer)

- Beer Retailer Permit
  - A beer retailer's permit is required to sell beer to consumers on the licensed location. (*IC 7.1-3-4-1*)



- Qualifications: To be issued a beer retailer's permit, a person must meet the following provisions: (*IC 7.1-3-4-2*)
  - Be a US Citizen
  - Be of "good repute" in the community
  - Must not have been convicted of a federal crime with a sentence of at least one (1) year or an Indiana level 1-5 Felony (or equivalent in another state) within the last ten (10) years
  - Must own or lease the location for the permit
  - Must be an adult of sound mind
  - Must not have had a beer retailer's permit revoked within one (1) year
  - Must be the proprietor of a restaurant
- Beer Dealer Permit
  - A beer dealer's permit is required to sell alcoholic beverages for consumption off of the licensed location. (*IC 7.1-3-5-1*)
  - A beer dealer's permit may be issued to a drug store, grocery, or package liquor store. A beer dealer must also meet all of the requirements of a beer retailer (other than be the proprietor of a restaurant). (*IC 7.1-3-5-2*)
- Liquor Retailer Permit
  - A liquor retailer's permit is required to sell liquor for consumption on the licensed location. (*IC 7.1-3-9-1*)
  - A liquor retailer's permit holder must also hold a beer retailer's permit and wine retailer's permit. The application and fees for all three can be combined into one "3-way permit". (*IC 7.1-3-9-8*)
- Liquor Dealer Permit
  - A liquor dealer's permit is required to sell liquor for consumption off of the licensed location. (*IC 7.1-3-10-1*)
  - A liquor dealer's permit can only be issued to a pharmacy or a package liquor store. (*IC 7.1-3-10-3 and 7.1-3-10-4*)
  - A package liquor store is limited to a specific list of additional items which can be sold at the permit location. (*IC 7.1-3-10-5*)



- Wine Retailer Permit
  - A wine retailer's permit is required for the sale of wine for consumption on the licensed location. (*IC 7.1-3-14-1*)
  - A wine retailer's permit is issued to someone who holds either a beer retailer's permit or a liquor retailer's permit. (*IC 7.1-3-14-3*)
- Wine Dealer Permit
  - A wine dealer's permit is required for the sale of wine or flavored malt beverage for consumption off of the licensed location. (*IC 7.1-3-15-1*)
  - A wine dealer's permit can only be issued to someone who also holds a beer dealer's permit or liquor dealer's permit. (*IC 7.1-3-15-2*)
- Common Issues regarding Retail tier permits:
  - Restaurants:
    - For consumption at the licensed location, a permittee must be a restaurant. To qualify as a restaurant, a location must provide food without lodging for at least twenty-five (25) people. (*IC 7.1-3-20-9*)
    - A restaurant must provide at least hot soups, hot sandwiches, coffee, milk, and soft drinks. (*905 IAC 1-20-1*)
    - Barring a specific list of exceptions, in order for a restaurant to sell alcoholic beverages for carry out, at least sixty percent (60%) of the location's alcohol sales must be for consumption at the location. (*IC 7.1-3-20-9.5*)
  - Legal Service Times:
    - For consumption at the licensed location, alcohol may be served between 7 am until 3 am local time all week long. (*IC 7.1-3-1-14*)
    - For consumption off of the licensed location, alcohol may be served between 7 am and 3 am local time Monday through Saturday. Alcohol may be served between noon and 8 pm local time on Sunday. (*IC 7.1-3-1-4*)
    - The sale of alcohol at times other than authorized is an administrative violation against the permit and could be criminally charged against the permit holder as a Class B misdemeanor. (*IC 7.1-5-10-1*)
    - A permittee can only allow customers to continue to drink at the permit location for thirty (30) minutes after the legal hours for sale. (*905 IAC 1-10-1*)



- Employee Permits:
  - All permits for consumption at the licensed location or package liquor store dealer permits must hire employees who have obtained an employee's permit. (*905 IAC 1-12.1-2*)
- Minors:
  - It is both an administrative violation and a criminal B misdemeanor to sell alcohol to a minor. (*IC 7.1-5-7-8*)
  - It is an administrative violation to allow a minor to loiter in a tavern, bar or other place where alcohol is furnished. (*IC 7.1-5-7-10*)
  - Permit locations which sell alcohol for consumption off of the licensed location must card all individuals that appear under the age of forty (40). (*IC 7.1-5-10-23*)
- Sales Practices:
  - Sales to Intoxicated Persons: It is an administrative violation as well as a Class B misdemeanor to knowingly sell alcohol to someone who is already intoxicated. In addition, both the retail location and the employee that served the alcohol could be responsible for any damages caused by the intoxicated person in a civil action. (*IC 7.1-5-10-15*)
  - Service of Set-Ups: A permitted location cannot allow a customer to bring alcohol for sale or for consumption onto the licensed location. (*IC 7.1-5-8-4*)
  - Sales Discrimination: All sales, discounts, or allowances must be available to all customers at the same time. (*IC 7.1-5-5-7*)
  - Reduced Prices (Happy Hour): A retail location cannot sell alcohol at any point in the day that is at a different price than what is charged the rest of the day. (*IC 7.1-5-10-20*)
  - Credit Sales: A permittee cannot extend credit or keep a running "tab" for the purchase of alcohol. This does not restrict the use of credit or debit cards. (*IC 7.1-5-10-12*)
  - Original Container: Other than the preparation of mixed drinks for consumption at the licensed location, all alcohol must be sold and dispensed from its original container. (*IC 7.1-5-3-2*)
  - Refilling Prohibited: Other than from the original manufacturer, it is illegal to refill alcohol bottles to be sold or dispensed from. (*IC 7.1-5-3-4*)





- Public Nuisance

- Any building where alcoholic beverages are sold, possessed, or manufactured in violation of law or rule of the Commission can be deemed a public nuisance. (*IC 7.1-2-6-1*)
- If a location is deemed a public nuisance or if the location becomes the scene of acts of acts or conduct which is a crime, the Commission can refuse to grant or renew, revoke, suspend, or fine for the violation. (*905 IAC 1-27-2*)

## 6. Individual Permits

- Employee Permits:

- The Commission shall issue a permit for an employee to work as a clerk in package liquor store, employee at farm winery, or bartender, waiter, waitress, or manager at retail establishment. (*IC 7.1-3-18-9*)
- Server Training: In addition to obtaining a license, employee permit holders must also complete an approved training program. (*IC 7.1-3-1.5-13*)
- Managers: In addition to holding a valid employees permit, managers must also submit a manager's questionnaire to the Commission before functioning as a manager. (*IC 7.1-5-9-15*)

- Salesman:

- To represent a permittee in regard to the sale of an alcoholic product, an individual must obtain a salesman's permit. (*IC 7.1-3-18-7*)

- Common Issues

- Employee acting without Permit: It is a Class B misdemeanor and administrative violation to work in a retail location or as a clerk in a package liquor store without obtaining a permit. (*IC 7.1-5-6-3*)
- Furnishing alcohol to a Minor: It is both an administrative violation as well as a Class B misdemeanor to furnish alcohol to a minor. (*IC 7.1-5-7-8*)
- Sales to Intoxicated Persons: It is an administrative violation as well as a Class B misdemeanor to knowingly sell alcohol to someone who is already intoxicated. In addition, both the retail location and the employee that served the alcohol could be



responsible for any damages caused by the intoxicated person in a civil action. (IC 7.1-5-10-15)

## **7. Other ATC Permits**

- **Tobacco Sales Certificate**

- Requirements and conditions: A person may not sell a tobacco product or e-cigarette at retail without a valid tobacco certificate. (IC 7.1-3-18.5-1)
- Consent to search: The Commission may search a tobacco certificate location at any time without a warrant. (IC 7.1-3-18.5-2.6)

- Common Issues:

- Sale of Tobacco to Juvenile: It is both a criminal infraction as well as an administrative violation to sell tobacco products to a minor. (IC 35-46-1-10.2)
- Prohibited Smoking: Smoking is prohibited in public places, places of employment, and areas within 8 feet of the entrance to a public place or place of employment. (IC 7.1-5-12-4)
- Minimum Pricing: A certificate holder must not sell cigarettes at less than the cost to the retailer. This “cost” includes a minimum markup that is defined by statute. (IC 24-3-2-2 and 24-3-2-3)
- Single Cigarettes/Unopened Packages: A certificate holder must sell tobacco in unopened packages and cannot sell single cigarettes. (IC 7.1-6-2-3)
- All cigarettes must be obtained from a licensed Indiana tobacco distributor and must have an Indiana tax stamp in order to be sold at retail. (IC 6-7-1-24)

- **Temporary Alcohol Permits**

- Temporary Beer and Wine:
  - The Commission may issue a temporary beer and wine permit to a person who meets the qualifications of a beer retailer’s permit. (IC 7.1-3-6-2 and 7.1-3-16-5)
  - A temporary permit may be used for a fair, athletic event, barbeque, picnic, wedding reception, convention, exhibition, or other activity that is publicly held. (IC 7.1-3-6-3 and 7.1-3-16-7)



- A temporary permit holder can obtain beer and wine from a brewer, farm winery, or beer and wine dealer's permit holder. A temporary permit holder can only sell alcohol for consumption at the location and cannot sell alcohol for carry-out. (*IC 7.1-3-6-5 and 7.1-3-16-9*)
- Temporary Employee Permit:
  - The Commission may issue a temporary bartender's permit to an individual who is at least twenty-one (21) years old who intends to serve alcohol at a temporary beer and wine permit or at a nonprofit club. (*IC 7.1-3-18-11*)
- Supplemental Catering:
  - The Commission may issue a supplemental catering permit to a person who holds an active three-way permit (beer, wine, and liquor retail permit) who desires to sell alcohol at a location that is not their licensed location. (*IC 7.1-3-9.5-1*)
  - The holder of a supplemental catering permit may purchase directly from a brewery, farm winery, or other permittee entitled to sell to a retail permittee. The supplemental catering permit can only be used for consumption of alcohol at the location and cannot be sold for carry-out. (*IC 7.1-3-9.5-3*)
- **Type II Gaming Endorsement**

The Commission may issue an endorsement to a retail permit holder that allows the retail permittee to conduct Type II gaming at the retailer's location. (*IC 4-36-4-1*)

- Qualifications:
  - To qualify, the applicant must hold a retail permit for consumption of alcohol on the licensed location and must not fall into one of a specific list of exemptions listed in statute. (*IC 4-36-4-2*)
- Requirements:
  - In addition to Type II gaming, the holder of a Type II gaming endorsement may also conduct qualified drawings at the licensed location with the following requirements. (*IC 4-36-5-1*)
    - Purchase price for a chance to win must not exceed \$5;
    - The total value of all prizes cannot exceed \$300;
    - Not more than one daily drawings can be conducted per day;



- Not more than one weekly drawing can be conducted per week, and must be conducted on regular seven (7) day intervals;
  - Not more than one monthly drawing can be conducted per month, and must be conducted on regular monthly intervals;
  - The winner must be present to win a qualified drawing;
  - The winner cannot be chosen in any way by the outcome of a sporting event; and
  - All information relating to the drawing must be clearly posted;
- No Minors Permitted
    - All type II games and qualified drawings may not be offered or conducted where minors are present. *(IC 4-36-5-2)*
  - Distributor:
    - All type II games and tickets for qualified drawings must be obtained from a licensed Indiana gaming distributor. *(IC 4-36-5-3)*
  - Minimum payouts:
    - The total prizes awarded for one type II gambling game may not exceed five thousand dollars (\$5,000). *(IC 4-36-5-5(a))*
    - A single prize for one winning ticket in a type II gambling game may not exceed five hundred ninety-nine dollars (\$599). *(IC 4-36-5-5(b))*
  - Ineligible Participants:
    - None of the following may pay or participate in any many in a type II gambling game: *(IC 4-36-5-7)*
      - An employee of the Commission;
      - A person less than twenty-one (21) years of age;
      - The retailer offering the type II gambling game; or
      - Any employee of the retailer offering the type II gambling game.
  - Operations:
    - A retailer must post the flare card for each type II game currently in play. *(905 IAC 1-53-5(d))*



- A retailer may remove a type II game from play only once the minimum payouts have been met. Once removed a game cannot be restarted. (905 IAC 1-53-5(k))
- A retailer may not sell a type II gambling game for more than one dollar (\$1). (905 IAC 1-53-5(m))
- A retailer may not extend credit to any player for the purpose of playing a type II gambling game. (905 IAC 1-53-5(q))
- House Rules
  - A retailer must establish and post house rules governing its type II gambling operations. (905 IAC 1-53-6)
- Records of Retailer
  - A retailer must maintain adequate financial records of all type II gambling games. (905 IAC 1-53-11(a))
  - A retailer must set up separate bank accounts for all type II gambling operations. (905 IAC 1-53-11(b))
  - A retailer must maintain records including all flare cards, winning tickets, unplayed tabs, and all other documents kept in the regular course of type II gaming operations for Four (4) years. (905 IAC 1-53-11(c))
  - A retailer must submit to the Commission a quarterly income statement for all type II gaming operations. (905 IAC 1-53-11(f))

## 8. **Additional Information**

For the most up-to-date information in regard to current rulings by the Indiana Alcohol and Tobacco Commission, as well as for all forms and required submissions, please see the Commission's website at [www.in.gov/atc](http://www.in.gov/atc).

- Indiana alcohol statutes: <http://iga.in.gov/legislative/laws/2016/ic/titles/7.1/>
- Indiana alcohol administrative rules: <http://iac.iga.in.gov/iac//title905.html>
- Alcohol applications and forms: <https://www.in.gov/atc/2409.htm>
- Tobacco information and forms: <https://www.in.gov/atc/2476.htm>