

IC 7.1-3-26

Chapter 26. Direct Wine Seller's Permit

IC 7.1-3-26-1

Applicability

Sec. 1. This chapter does not apply to the serving or selling of:

- (1) wine in accordance with IC 7.1-3-12; or
- (2) brandy in accordance with IC 7.1-3-7.5.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-2

"Applicant"

Sec. 2. As used in this chapter, "applicant" means a person that applies to the commission for a direct wine seller's permit.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-3

"Consumer"

Sec. 3. As used in this chapter, "consumer" means an individual with an Indiana address who purchases wine from a seller.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-4

"Seller"

Sec. 4. As used in this chapter, "seller" means the holder of a direct wine seller's permit issued under this chapter.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-5

Direct wine seller permit required for direct sales to consumers

Sec. 5. A person located within Indiana or outside Indiana that wants to sell and ship wine directly to a consumer must be the holder of a direct wine seller's permit and comply with this chapter.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-6

Consumer qualifications

Sec. 6. A seller may sell and ship wine directly only to a consumer who meets all of the following requirements:

- (1) The consumer is at least twenty-one (21) years of age.
- (2) The consumer has an Indiana address.
- (3) The consumer intends to use wine purchased under this chapter for personal use only and not for resale or other commercial purposes.
- (4) Except as provided in subdivision (5), the consumer has provided to the seller in one (1) initial face-to-face transaction at the seller's place of business appearing on the seller's application for a direct wine seller's permit or any locations authorized by IC 7.1-3-12-5 all the following:
 - (A) Name, telephone number, Indiana address, or consumer's

Indiana business address.

(B) Proof of age by a state issued driver's license or state issued identification card showing the consumer to be at least twenty-one (21) years of age.

(C) A verified statement, made under penalties for perjury, that the consumer satisfies the requirements of subdivisions (1) through (3).

(5) If:

(A) before April 1, 2006, the consumer has engaged in a transaction with a seller in which the seller sold wine to the consumer and, after April 1, 2006, but before December 31, 2006, the consumer provides the seller with a verified statement, made under penalties for perjury, that the consumer is at least twenty-one (21) years of age; and

(B) the seller provides the name and Indiana address of the consumer to the commission before January 15, 2007;

the seller may sell directly to the consumer in accordance with this chapter.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-7

Qualifications of applicant for direct wine seller permit

Sec. 7. (a) The commission may issue a direct wine seller's permit to an applicant who meets all of the following requirements:

(1) The applicant is domiciled and has its principal place of business in the United States.

(2) The applicant is engaged in the manufacture of wine.

(3) The applicant holds and acts within the scope of authority of an alcoholic beverage license or permit to manufacture wine that is required:

(A) in Indiana or the state where the applicant is domiciled; and

(B) by the Tax and Trade Bureau of the United States Department of the Treasury.

(4) The applicant qualifies with the secretary of state to do business in Indiana and consents to the personal jurisdiction of the commission and the courts of Indiana.

(5) The applicant files a surety bond with the commission in accordance with IC 7.1-3-1, or deposits cash in an escrow account with the commission, in the amount required of an applicant for a vintner's permit under IC 7.1-3-1-7.

(6) The applicant:

(A) has not distributed wine through a wine wholesaler in Indiana within the one hundred twenty (120) days immediately preceding the applicant's application for a direct wine seller's permit and does not distribute wine through a wine wholesaler in Indiana during the term of the direct wine seller's permit; or

(B) has operated as a farm winery under IC 7.1-3-12.

(7) The applicant completes documentation regarding the

applicant's application required by the commission.

(b) The commission may issue a direct wine seller's permit to an applicant who:

- (1) meets the requirements under subsection (a); and
- (2) holds a permit issued under this title that allows the sale of an alcoholic beverage at retail.

As added by P.L.165-2006, SEC.34. Amended by P.L.54-2008, SEC.3; P.L.186-2011, SEC.8.

IC 7.1-3-26-8

Permit expiration, renewal, and fee

Sec. 8. (a) The term of a direct wine seller's permit begins:

- (1) the date approved by the commission for an initial application; and
- (2) on July 1 to renew a permit;

and expires on June 30 of the following year. A direct wine seller's permit may be renewed in accordance with rules adopted by the commission.

(b) The annual direct wine seller's permit fee is one hundred dollars (\$100).

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-9

Direct wine seller; conditions and requirements

Sec. 9. A direct wine seller's permit entitles a seller to sell and ship wine to a consumer by receiving and filling orders that the consumer transmits by electronic or other means if all of the following conditions are satisfied before the sale or by the times set forth as follows:

(1) The consumer provides the direct wine seller with the following:

(A) The verification required by section 6(4) of this chapter in an initial face-to-face transaction.

(B) Notwithstanding clause (A), if the consumer provided the information specified in section 6(5)(A) of this chapter after April 1, 2006, but before December 31, 2006, and the seller provides the name and Indiana address of the consumer under section 6(5)(B) of this chapter to the commission before January 15, 2007, the consumer is not required to comply with section 6(4) of this chapter.

(2) The direct wine seller meets the following requirements:

(A) Maintains for two (2) years all records of wine sales made under this chapter. If the records are requested by the commission, a direct wine seller shall:

- (i) make the records available to the commission during the direct wine seller's regular business hours; or
- (ii) at the direction of the commission, deliver copies to the commission.

(B) Stamps, prints, or labels on the outside of the shipping container the following: "CONTAINS WINE. SIGNATURE

OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

(C) Causes the wine to be delivered by the holder of a valid carrier's alcoholic beverage permit under IC 7.1-3-18.

(D) Directs the carrier to verify that the individual personally receiving the wine shipment is at least twenty-one (21) years of age.

(E) Does not ship to any consumer more than two hundred sixteen (216) liters of wine in any calendar year.

(F) Remits to the department of state revenue monthly all Indiana excise, sales, and use taxes on the shipments made into Indiana by the direct wine seller during the previous month.

(G) Ships to a consumer in Indiana only wine manufactured, produced, or bottled by the applicant.

As added by P.L.165-2006, SEC.34. Amended by P.L.186-2011, SEC.9.

IC 7.1-3-26-10

Direct sales of brandy prohibited

Sec. 10. It is unlawful for the holder of a farm winery brandy distiller's permit to ship or cause to be shipped brandy produced under this title to a consumer.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-11

Consumer information

Sec. 11. A consumer shall provide a direct wine seller with information the direct wine seller reasonably requires, including the consumer's name, Indiana address, telephone number, and other information required by the commission.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-12

Annual limit on seller's direct wine sales in Indiana

Sec. 12. During a permit year, a direct wine seller may not direct ship in Indiana more than twenty-seven thousand (27,000) liters of wine.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-13

Delivery to consumer or individual at least 21 years of age

Sec. 13. A wine shipment purchased under this chapter must be delivered to:

(1) the consumer, who shall take personal delivery of the shipment at the:

(A) consumer's residence;

(B) consumer's business address;

(C) carrier's business address; or

(D) address displayed on the shipping container; or

(2) an individual who is at least twenty-one (21) years of age, who shall take personal delivery of the shipment at the:

- (A) consumer's residence;
- (B) consumer's business address;
- (C) carrier's business address; or
- (D) address designated by the consumer and displayed on the shipping container.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-14

Annual limit on wine received by a consumer

Sec. 14. A consumer may not receive more than two hundred sixteen (216) liters of wine in total from one (1) or more direct wine sellers in a calendar year.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-15 Version a

Violations; penalties

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 15. (a) Except as provided in subsections (b) and (c), a seller who violates this chapter commits a Class A infraction.

(b) Except as provided in subsection (d), a seller who:

- (1) knowingly or intentionally violates this chapter; and
- (2) has one (1) prior unrelated conviction or judgment for an infraction under this section for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class A misdemeanor.

(c) Except as provided in subsection (d), a seller who:

- (1) knowingly or intentionally violates this chapter; and
- (2) has at least two (2) prior unrelated convictions or judgments for infractions under this section for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class D felony.

(d) A person who violates section 6(5) of this chapter commits a Class A infraction. The commission may consider an infraction committed under this subsection in its determination of whether to renew a seller's permit.

As added by P.L.165-2006, SEC.34.

IC 7.1-3-26-15 Version b

Violations; penalties

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 15. (a) Except as provided in subsections (b) and (c), a seller who violates this chapter commits a Class A infraction.

- (b) Except as provided in subsection (d), a seller who:
- (1) knowingly or intentionally violates this chapter; and
 - (2) has one (1) prior unrelated conviction or judgment for an infraction under this section for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class A misdemeanor.

- (c) Except as provided in subsection (d), a seller who:
- (1) knowingly or intentionally violates this chapter; and
 - (2) has at least two (2) prior unrelated convictions or judgments for infractions under this section for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Level 6 felony.

(d) A person who violates section 6(5) of this chapter commits a Class A infraction. The commission may consider an infraction committed under this subsection in its determination of whether to renew a seller's permit.

As added by P.L.165-2006, SEC.34. Amended by P.L.158-2013, SEC.124.

IC 7.1-3-26-16

Direct wine sellers; defense

Sec. 16. If a direct wine seller is charged under section 15 of this chapter with selling to a consumer who does not meet the requirements of section 6 of this chapter, it is a defense to the charge if the direct wine seller obtained from the consumer the verified statement required under section 6(4)(C) or 6(5)(A) of this chapter and produces a copy of the verified statement.

As added by P.L.165-2006, SEC.34. Amended by P.L.1-2007, SEC.68.