

# Confused About Booze: New Development in the Ongoing Saga of Indiana's Alcoholic Beverage Laws

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The sale of alcoholic beverages in Indiana is, to the say the least, heavily regulated. You probably know that Indiana is one of just a few states that generally prohibits the sale of alcoholic beverages on Sundays. You may also know that while liquor stores, grocery stores and convenience stores all carry beer, if you want a cold one, you have to go to the liquor store. Did you also know that if you are a wholesaler of beer, you cannot also be a wholesaler of liquor? A recent court decision may muddy the waters on that last prohibition, but first, how did Indiana's laws become so disjointed?

## **Prohibition leads to Confusion**

Let's turn back the clock to the time of Prohibition. In 1920, the 18<sup>th</sup> Amendment of the U.S. Constitution resulted in a national ban on the sale of alcoholic beverages. Thirteen years later, after widespread backlash and rampant efforts to avoid and violate the law, the era of Prohibition officially ended with the enactment of the 21<sup>st</sup> Amendment. This repeal of the 18<sup>th</sup> Amendment essentially gave control of the laws regarding the sale of alcohol back to the individual states.

Shortly thereafter, in 1935, Indiana passed the Liquor Control Act, which governed the sale of all alcoholic beverages in the state. The act allowed for the issuance of a beer dealer's permit, enabling the holder to sell beer to be consumed off of the premises. This permit could be issued to grocery stores, drug stores and certain other stores. The act also allowed for liquor dealer's permits, giving the permit holder the right to sell liquor and wine, but not beer, to be consumed off of the premises. The act also banned sales on Sundays, certain holidays and Election Day, and set the minimum drinking age at 21.

In 1941, the Liquor Control Act was amended to prohibit holders of beer dealer permits from selling iced or cooled beer; however, the holders of beer retailer permits (bars and taverns) could still serve cold beer. In 1953, the act was amended to allow liquor stores to sell beer, provided that they obtained a beer dealer's permit. However, at this time, liquor stores (like grocery stores and other beer dealer permit holders) could only sell warm beer. Ten years later, in 1963,

the Alcoholic Beverage Commission issued a bulletin that made it legal for liquor stores to sell cold beer, provided that the liquor store was located in a metropolitan area and met certain other conditions. For whatever reason, the bulletin did not permit grocery stores and other beer dealer permit holders to sell cold beer.

Since 1963, those laws have permitted liquor stores to sell cold or “cooled” beer, but do not permit grocery stores or convenience stores to do the same. Specifically, the present statute, Indiana Code Section 7.1-5-10-11, states that it “is unlawful for the holder of a beer dealer’s permit to offer or display for sale ... a bottle, can, container, or package of beer that was iced or cooled by the permittee before or at the time of the sale ...”

Beginning in the 1970s, the restrictions on the sale of alcohol began to ease a bit. In 1971, a law was passed that enabled wineries to sell product on Sundays. In 1972, the law was amended to permit Sunday sales at restaurants, bars and similar establishments. In 1979, the amount of beer that liquor stores and taverns could sell, warm or cold, increased, though the increase did not apply to holders of beer dealer permits (e.g., grocery stores and convenience stores).

In 2010, the ban on Election Day sales of alcohol was lifted, and microbreweries (e.g., Sun King) could begin carryout sales on Sundays. In 2013, local distilleries could begin selling their product directly to consumers. On February 25, 2014, the Indiana House of Representatives passed a bill that repealed the ban on alcohol sales at the State Fair, which had stood since 1947.

### **The “cooled” debate and Sunday sales**

Despite these changes, grocery stores and convenience stores still cannot sell cold beer, which led to the filing of a lawsuit by the Indiana Petroleum Marketers and Convenience Store Association in late 2013, seeking to have a portion of Indiana’s alcoholic beverage laws ruled unconstitutional. In that suit, they argued that Indiana’s alcohol laws violate the “Equal Protection” and “Privileges and Immunities” provisions of the U.S. Constitution by treating grocery stores and convenience stores differently from other permit holders (such as liquor stores) by not letting the beer dealer permit holders to sell cold beer, and that the law violates the “Due Process” Clause of the 14th Amendment to the U.S. Constitution because it is too vague as to the meaning of “cooled” beer.

The Indiana Attorney General opposed the lawsuit and contended that convenience stores are not similarly situated to liquor stores and thus it is permissible to treat them differently under the law, and that the law is not vague. The United States District Court for the Southern District of Indiana ultimately issued a ruling rejecting those arguments. Regarding the plaintiffs’ contention that the cold beer law is vague, Chief Judge Richard Young referred to the low number of citations from the Indiana State Excise Police as proof that the stores know what the law permits. Regarding the equal protection claims, Young found

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that the State's interest in limiting the sale of alcohol, especially to minors, justifies the restrictions on cold beer sales. The Indiana Petroleum Marketers and Convenience Store appealed Judge Young's ruling to the next level, the Federal Court of Appeals for the Seventh Circuit, located in Chicago, but the ruling was upheld.

However, the saga of Indiana's liquor laws almost saw another interesting twist in early 2015 when legislation was introduced in the Indiana House of Representatives that would have legalized Sunday sales of alcoholic beverages. There appeared to be support for the repeal of the Prohibition-era ban, but before it could be voted on the proposed bill was amended to add new restrictions on the sale of liquor by grocery stores, such as requiring that hard liquor had to be kept behind a counter (as opposed to being displayed in aisles). These changes effectively killed the bill. No significant efforts to change the law have been made since then.

#### **Wholesalers must choose beer or liquor, unless . . .**

Retailers (e.g., liquor stores, grocery stores) can choose to sell both beer and liquor, but current Indiana law requires wholesalers to choose one or the other. Monarch Beverage Co., likely Indiana's largest beer wholesaler, has thus been prohibited from distributing liquor, having lobbied for a change in the law for many years. However, a company related to Monarch, Spirited Sales LLC, was recently given permission to distribute liquor despite its affiliated entity (Monarch) being unable to do so.

Spirited is a separate company from Monarch, but opponents have objected to its application for a liquor wholesaler permit because of, among other things, its relationship to Monarch. For example, Spirited and Monarch have the same CEO and Board of Directors. Furthermore, Spirited is owned by a third company, E.F. Transit, which provides transportation services to Monarch, and the same shareholders that own Monarch also own E.F. Transit. Spirited argued, however, that its financial records and accounts and other corporate functions were separate from Monarch's and that the two companies should be not lumped together for purposes of Spirited's permit application.

#### **The Indiana Alcohol and Tobacco Commission (IATC) initially denied**

Spirited's permit application in 2014, but in August of this year, a Marion County Judge ruled that the IATC's decision to deny the application was "arbitrary and capricious" and ordered the IATC to issue the permit. The State then asked the Judge to postpone the implementation of that ruling, but in late September the Judge denied the request for stay, holding that Spirited had already waited long enough that that the competitors of Spirit who opposed the application were more than capable of attempting to compete with Spirited in the marketplace.

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However, the battle is not yet over. In late October, after the Indiana Court of Appeals denied the State's motion to stay the lower court's ruling, the Indiana Attorney General asked the Indiana Supreme Court to review the case and put the lower court's ruling on hold while it considers the matter, stating that the decisions about alcoholic beverage laws should be made in the Legislature, not by a court. Last week, the Indiana Supreme Court announced it would accept review of the case. A decision is expected in the new few months.

The process of making and changing laws has been compared to sausage making, and the Indiana legislature and courts have been grinding away at the state's alcohol laws for decades now. While some other industries have their own convoluted and changing legal hurdles, Indiana's laws regarding beer and liquor sales have never failed to provide an example of how regulatory frameworks can lead to confusing and controversial outcomes. So, when will you be able to buy cold beer at the grocery store, on a Sunday, distributed by the same company that also distributes liquor? You'll have to wait and see.

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