

Indiana Alcohol & Tobacco Commission 2020 Emergency Response Report

The Indiana Alcoholic Beverage Commission was created by an Act of the Indiana General Assembly in 1933, following the repeal of Prohibition. Effective July 1, 2001, the name was changed to the Alcohol and Tobacco Commission.

The Commission is composed of four (4) members appointed by the Governor of the State of Indiana. There are also local alcoholic beverage boards in each of the state's 92 counties who consider and review all applications for alcoholic beverage permits in their particular area. An important part of the Commission is its law enforcement division - the Indiana State Excise Police. The State Excise Police enforce the laws of the State of Indiana related to alcoholic beverages as well as the rules of the Commission.

The Commission licenses and regulates over 15,000 permits for the manufacture, distribution or sale of alcoholic beverages at restaurants, breweries, wineries, grocery stores, hotels, drug stores, package stores, stadiums, civic centers, social and fraternal clubs, horse tracks and river boats throughout the State of Indiana. In addition to business alcoholic beverage permits, the Commission licenses and regulates the permits of every bartender, waiter, waitress, salesperson and clerk associated with the sale or service of alcoholic beverages in the State of Indiana - over 200,000 in number. The Commission also licenses and regulates nearly 8,500 tobacco retailers, distributors and manufacturers. The Commission is responsible for raising revenue of approximately \$45 million for the citizens of Indiana.

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1. Overview of which operations or services were reduced or suspended during the pandemic including whether the suspension or reduction was required by an executive order.

New & Renewal Permits

Between March 20, 2020 and May 1, 2020, the Indiana Alcohol and Tobacco Commission, along with the local boards in all 92 counties, did not hold any hearings. Because there were no local board hearings or full commission hearings, new applications for alcoholic beverage permits did not get considered.

We began doing virtual local board hearings and Commission meetings in May so the ATC could continue processing new applications.

Governor Holcomb issued an Executive Order that extended state-issued permits and licenses to June 30, 2020. Despite not having hearings, this EO allowed permittees to continue operation even though their permit may have been expired, so those with permits issued by the Alcohol and Tobacco Commission were largely unaffected.

Enforcement – ISEP, On-Premises Consumption, Non-Essential Businesses

Once the emergency was declared by Governor Holcomb, the Superintendent of the Indiana State Excise Police suspended Survey of Alcohol Compliance checks and tobacco compliance checks, and they remain suspended. It is likely that he will not reinstate it until the governor authorizes Stage 5 of the reopening plan.

ISEP also suspended Intensified College Enforcement, Stop Underage Drinking and Sales (SUDS) and Cops in Shops (CIS). CIS and SUDS resumed at the end of June in limited capacity. CIS details are being worked at high volume stores and the SUDS details I am aware of are being conducted in partnership with Indiana Conservation Officers who are having problems at beaches.

Through Executive Order 20-10, the Indiana Alcohol and Tobacco Commission was charged with overseeing the enforcement of the governor's prohibition on on-premises consumption. The ATC was, in part, charged with:

Issuing an order prohibited the sale of alcoholic beverages for on-premises consumption at restaurants, bars, nightclubs and other establishments that provide in-dining services pursuant to Ind. Code 7.1-2-3-11 as it is necessary during a time of public emergency or epidemic.

If an establishment fails to comply with the chairman's order to discontinue in-person dining where alcoholic beverages are served, the ATC shall take all available administrative and enforcement actions, including suspension or revocation of an alcoholic beverage permit, against such establishments.

Governor Holcomb created the Enforcement Response Team through Executive Order 20-18, which consisted of sixty-six Indiana State Excise Police officers, twenty Indiana Conservation officers and twenty agents from the Indiana Gaming Commission, on April 6, 2020. A total of 106 officers were assigned to the task force, responsible for enforcing Governor Holcomb's Executive Orders on essential and non-essential businesses.

The numbers outlined below reflect activity from the start of the task force on April 7th through the last day of the task force on June 13th, 2020.

During the 68-day operation, a total of 2,031 complaint investigations were conducted. The following is a breakdown of those investigations:

- 1,805 complaints were unfounded, meaning the business was not open or was operating in compliance with the Executive Order.
- 31 complaints were referred to local health departments for further investigation.
- 29 complaints were referred to other agencies for further investigations. Other agencies include local law enforcement, Indiana State Fire Marshalls Office and IOSHA.
- 165 verbal warnings were issued.
- 1 cease and desist letter was issued.

Once the task force began, all of the normal excise operations were suspended; however, some of them, i.e., local boards, floor plan inspections, and complaint investigations have resumed. At this time, there have been no proactive activity (PVs, etc.). This will likely remain until Stage 5.

Hearings

When operations were suspended, there were no new violations to enter and process. The ATC Prosecutor continued to accept fines for violations that were issued prior to the shutdown and reached out to each of the permittees with a pending violation in an attempt to resolve the violation by mutual agreement.

All pending violations hearings, which includes prehearings, final hearings, and order to show cause hearings, were postponed due to restrictions on public meetings in the Government Center.

New violations were reviewed and settlement offer letters sent, as usual.

2. Overview on preparation to address future emergencies and recovery based on the agency's experience with Covid-19

Permit Processing

Our MLO licensing system currently only has employee permit licenses online at this time. The facility business permits are all handled by paper, which has many challenges when working from home. One challenge was to educate the public on how to get items to us without the capability of dropping the documents off at our office. Not having the facility licenses online during the COVID shutdown was a deficiency for the Alcohol and Tobacco Commission. ATC staff would have had no problems working from home if these licenses were online.

We are currently working on an upgrade to our systems to provide this service. The upgrades have been delayed due to COVID, but we are hoping to have online applications for facility permits live in early 2021.

Hearings

The use and implementation of Microsoft Teams for the agency has given us the ability to hold hearings virtually. This software has allowed the ATC to conduct statutorily-required hearings despite employees working from home. We will continue to utilize this software.

Internally, we need to review our administrative rules (905 IAC 1-37-1) which outline the processes for violations in light of the actual statutory requirements of 7.1 to see if there is a more flexible procedure for addressing pending violations – specifically default judgments.

3. Recommendations, if any, for legislation that may be needed to help ensure the agency is prepared to address future emergencies.

The ATC has no recommendations.

4. Recommendations, if any, for legislation to permanently repeal or modify any regulations or laws that were or are partially or fully suspended due to Covid-19.

The following changes were made via Executive Order related to the sale of alcoholic beverages:

- i. The requirements of IC 7.1-3-20-9.5 were suspended, allowing restaurants permitted to sell for carryout to sell alcoholic beverages for carryout only and eliminates the requirements that at least 60% of alcoholic beverages be sold for on-premises consumption.

- ii. Executive Order 20-11 relaxed the sale of carryout alcoholic beverages for dining establishments. This includes establishments that allow for on-premises consumption only (i.e. riverfront, civic centers, 210-1 permits, etc).
- iii. Executive Order 20-11 suspended the provisions of Ind. Code to the extent they require alcoholic beverages to be consumed on-premises and to the extent it prohibits the fill, refill and carryout of alcoholic beverages in bottles or containers. Pursuant to this Order, all on-premises retail permit holders may sell alcoholic beverages for carryout consumption. Additionally, any beer retailer's permit holder may fill, refill, and carry out beer in permissible refillable containers (e.g. growlers, howlers, and crowlers). Selling mixed drinks for carryout is prohibited.

As a regulatory agency, it is our position that any legislative changes related to the sale of alcoholic beverages are a policy decision best left for the legislature. None of the changes above increased enforcement for ISEP nor created additional administrative burdens for the agency.