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## TITLE 905 ALCOHOL AND TOBACCO COMMISSION

*NOTE: Under P.L.204-2001, SECTION 69, the name of the Indiana Alcoholic Beverage Commission is changed to Alcohol and Tobacco Commission, effective July 1, 2001.*

### **Proposed Rule** LSA Document #01-13

#### DIGEST

Adds 905 IAC 1-29.5 to establish floor plans for proprietors that hold alcohol and tobacco commission dealer permits. Effective 30 days after filing with the secretary of state.

### **905 IAC 1-29.5**

SECTION 1. 905 IAC 1-29.5 IS ADDED TO READ AS FOLLOWS:

#### **Rule 29.5. Floor Plans; Pharmacy Permits**

### **905 IAC 1-29.5-1 Definitions**

**Authority:** IC 7.1-2-3-7

**Affected:** IC 7.1-1-3-20; IC 7.1-3-10-7; IC 25-26-13-7

**Sec. 1. (a) The definitions in this section apply throughout this rule.**

**(b) "Active security device" means the following:**

- (1) A ringer or other device that causes an audible alarm to sound when a person enters a liquor display area.**
- (2) An anti-theft label that means a label on a liquor container that, when passing through a label scanner, causes an audible alarm to sound if the container has not been paid for and the label deactivated.**
- (3) A security camera that means a camera installed by the permittee that records on videotape the activities of persons within the liquor display area.**
- (4) A security cap system for liquor containers that prevents the unauthorized removal of the cap without breaking the container.**
- (5) Any other suitable device approved by the commission.**

**(c) "Combo-store" means any permit premise that could qualify simultaneously for a grocery, pharmacy, restaurant, or any other combination of permits.**

**(d) "Commission" refers to the alcohol and tobacco commission created by IC 7.1.**

**(e) "Contained area" means a permanent or semipermanent partition or area with a minimum of five (5) foot high sides and incorporating a security line. Gondolas, shelving, and merchandise on pallets may serve as barriers, provided they meet the height requirements.**

**(f) "Liquor dealer permit" has the meaning set forth in IC 7.1-3-10-7.**

**(g) "Liquor display area" means that part of the licensed premises where liquor is displayed for sale to the public.**

(h) "Passive security device" means the following:

- (1) Employee training provided or approved by the Indiana excise police for the permittee's employees to prevent unlawful sales of alcoholic beverages.
- (2) A computer or sales system that provides age restriction prompts and requires special input for ringing the sale of alcoholic beverages.
- (3) Any other suitable device approved by the commission.

(i) "Pharmacy permit" means a permit for lawful operation of a drugstore or pharmacy issued by the Indiana board of pharmacy pursuant to IC 25-26-13-7.

(j) "Security line" means a gate, chain, rope, or other device that prohibits or reasonably deters entry into the liquor display area during the times when sales of liquor are unlawful. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-1*)

#### **905 IAC 1-29.5-2 Display of liquor**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-20

**Sec. 2. (a) All initial floor plans must be approved by the commission before the permit is released.**

**(b) Any changes in floor plans must have prior approval by the commission.**

**(c) All floor plans must abide by the following qualifications:**

- (1) They must identify area where alcoholic beverages will be displayed for sale.
- (2) They must include signage addressing age and hour of sale limitations.
- (3) They must describe the product management agreement between the retail permit holder and the wholesalers as required by 905 IAC 1-5.2-15.

**(d) In reviewing floor plans, the commission may consider the following:**

- (1) The amount of space dedicated to the sale of alcoholic beverages, with a preference for floor plans that have few, limited areas dedicated to the sale of alcoholic beverages.
- (2) The proximity of alcoholic beverages to the entrance and exits of the facility.
- (3) The proximity of alcoholic beverages to items that could be incompatible with the sale of alcoholic beverages, including breakfast food and products marketed primarily to juveniles.
- (4) The location of alcoholic beverages and their relationship to security measures taken by the permit premises, including one-way mirrors, cameras, security guards, and supervision.

**(e) The floor plan does not have to include the display of alcoholic beverages cross marketed with other items provided:**

- (1) the alcoholic beverages so displayed are not for sale; and
- (2) they are not displayed with products incompatible with the sale of alcohol, such as breakfast food and products marketed primarily to juveniles.

**(f) In the event the pharmacy is part of a combo-store, all liquor shall be displayed in a contained area within fifty (50) feet of the parameter of the pharmacy counter. In no event may the contained area be located in that part of the combo-store that, if segregated, would not qualify for a liquor dealers permit. Examples of such areas include grocery areas, restaurant areas, clothing areas, pet store areas, and hardware areas.**

**(g) Each display shall have one (1) active or two (2) passive security devices.**

**(h) The area containing alcoholic beverages shall be conspicuously marked and include signage about age requirements and hours to purchase alcohol.**

**(i) This section does not prohibit putting beer and wine in separate areas, provided they conform with applicable laws, rules, and regulations. (*Alcohol and Tobacco Commission; 905 IAC 1-29.5-2*)**

### **905 IAC 1-29.5-3 Sale of alcohol**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-20

**Sec. 3. (a) If a premises is a combo-store, then alcoholic beverages may only be sold when a licensed pharmacist is on duty.**

**(b) Any and all alcohol sales shall be deemed permissible wherever pharmacy sales are made unless the premises is a combo-store. If the premises is a combo-store, liquor sales may only be made through a register that is either in or attached to the pharmacy area. (Alcohol and Tobacco Commission; 905 IAC 1-29.5-3)**

### **905 IAC 1-29.5-4 Liquor containers**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-20

**Sec. 4. All liquor containers that hold less than three hundred seventy-five (375) milliliters shall be maintained behind the check out counter or in a display case. (Alcohol and Tobacco Commission; 905 IAC 1-29.5-4)**

### **905 IAC 1-29.5-5 Applicability**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-1-3-20

**Sec. 5. (a) This rule supersedes any contrary nonrule policies of the commission addressing the floor plan requirements of premises that hold pharmacy permits and liquor dealer permits.**

**(b) Local boards are prohibited from seeking to impose more restrictive floor plan or security requirements on premises operating under liquor dealer permits than are contained in this rule.**

**(c) Permittees who fall under this rule must come into compliance with this rule within three hundred sixty-five (365) days of their next application for renewal. (Alcohol and Tobacco Commission; 905 IAC 1-29.5-5)**

### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on November 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 302 W. Washington Street, Room E112, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on proposed new rules to establish floor plans for proprietors that hold alcohol and tobacco commission dealer permits. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Mary DePrez  
Chairman  
Alcohol and Tobacco Commission