

HB2484



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2484

by Rep. Timothy L. Schmitz

SYNOPSIS AS INTRODUCED:

235 ILCS 5/3-12

Amends the Liquor Control Act of 1934. Provides that the Illinois Liquor Control Commission shall designate independent hearing officers to conduct hearings under the Act. Authorizes the hearing officer to administer oaths to witnesses and issue subpoenas for the attendance of witnesses or other persons and the production of relevant documents, records, and other evidence and to require examination of the evidence. Provides that parties to a hearing may conduct cross-examination required for a full and fair disclosure of the facts. Provides that the Commission shall record the testimony and preserve a record of all proceedings at the hearing by proper means of recordation. Effective immediately.

LRB098 09276 MGM 39416 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning liquor.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Liquor Control Act of 1934 is amended by
5 changing Section 3-12 as follows:

6 (235 ILCS 5/3-12)

7 Sec. 3-12. Powers and duties of State Commission.

8 (a) The State commission shall have the following powers,
9 functions and duties:

10 (1) To receive applications and to issue licenses to
11 manufacturers, foreign importers, importing distributors,
12 distributors, non-resident dealers, on premise consumption
13 retailers, off premise sale retailers, special event
14 retailer licensees, special use permit licenses, auction
15 liquor licenses, brew pubs, caterer retailers,
16 non-beverage users, railroads, including owners and
17 lessees of sleeping, dining and cafe cars, airplanes,
18 boats, brokers, and wine maker's premises licensees in
19 accordance with the provisions of this Act, and to suspend
20 or revoke such licenses upon the State commission's
21 determination, upon notice after hearing, that a licensee
22 has violated any provision of this Act or any rule or
23 regulation issued pursuant thereto and in effect for 30

1 days prior to such violation. Except in the case of an
2 action taken pursuant to a violation of Section 6-3, 6-5,
3 or 6-9, any action by the State Commission to suspend or
4 revoke a licensee's license may be limited to the license
5 for the specific premises where the violation occurred.

6 In lieu of suspending or revoking a license, the
7 commission may impose a fine, upon the State commission's
8 determination and notice after hearing, that a licensee has
9 violated any provision of this Act or any rule or
10 regulation issued pursuant thereto and in effect for 30
11 days prior to such violation. The fine imposed under this
12 paragraph may not exceed \$500 for each violation. Each day
13 that the activity, which gave rise to the original fine,
14 continues is a separate violation. The maximum fine that
15 may be levied against any licensee, for the period of the
16 license, shall not exceed \$20,000. The maximum penalty that
17 may be imposed on a licensee for selling a bottle of
18 alcoholic liquor with a foreign object in it or serving
19 from a bottle of alcoholic liquor with a foreign object in
20 it shall be the destruction of that bottle of alcoholic
21 liquor for the first 10 bottles so sold or served from by
22 the licensee. For the eleventh bottle of alcoholic liquor
23 and for each third bottle thereafter sold or served from by
24 the licensee with a foreign object in it, the maximum
25 penalty that may be imposed on the licensee is the
26 destruction of the bottle of alcoholic liquor and a fine of

1 up to \$50.

2 (2) To adopt such rules and regulations consistent with
3 the provisions of this Act which shall be necessary to
4 carry on its functions and duties to the end that the
5 health, safety and welfare of the People of the State of
6 Illinois shall be protected and temperance in the
7 consumption of alcoholic liquors shall be fostered and
8 promoted and to distribute copies of such rules and
9 regulations to all licensees affected thereby.

10 (3) To call upon other administrative departments of
11 the State, county and municipal governments, county and
12 city police departments and upon prosecuting officers for
13 such information and assistance as it deems necessary in
14 the performance of its duties.

15 (4) To recommend to local commissioners rules and
16 regulations, not inconsistent with the law, for the
17 distribution and sale of alcoholic liquors throughout the
18 State.

19 (5) To inspect, or cause to be inspected, any premises
20 in this State where alcoholic liquors are manufactured,
21 distributed, warehoused, or sold.

22 (5.1) Upon receipt of a complaint or upon having
23 knowledge that any person is engaged in business as a
24 manufacturer, importing distributor, distributor, or
25 retailer without a license or valid license, to notify the
26 local liquor authority, file a complaint with the State's

1 Attorney's Office of the county where the incident
2 occurred, or initiate an investigation with the
3 appropriate law enforcement officials.

4 (5.2) To issue a cease and desist notice to persons
5 shipping alcoholic liquor into this State from a point
6 outside of this State if the shipment is in violation of
7 this Act.

8 (5.3) To receive complaints from licensees, local
9 officials, law enforcement agencies, organizations, and
10 persons stating that any licensee has been or is violating
11 any provision of this Act or the rules and regulations
12 issued pursuant to this Act. Such complaints shall be in
13 writing, signed and sworn to by the person making the
14 complaint, and shall state with specificity the facts in
15 relation to the alleged violation. If the Commission has
16 reasonable grounds to believe that the complaint
17 substantially alleges a violation of this Act or rules and
18 regulations adopted pursuant to this Act, it shall conduct
19 an investigation. If, after conducting an investigation,
20 the Commission is satisfied that the alleged violation did
21 occur, it shall proceed with disciplinary action against
22 the licensee as provided in this Act.

23 (6) To hear and determine appeals from orders of a
24 local commission in accordance with the provisions of this
25 Act, as hereinafter set forth. Hearings under this
26 subsection shall be held in Springfield or Chicago, at

1 whichever location is the more convenient for the majority
2 of persons who are parties to the hearing.

3 (7) The commission shall establish uniform systems of
4 accounts to be kept by all retail licensees having more
5 than 4 employees, and for this purpose the commission may
6 classify all retail licensees having more than 4 employees
7 and establish a uniform system of accounts for each class
8 and prescribe the manner in which such accounts shall be
9 kept. The commission may also prescribe the forms of
10 accounts to be kept by all retail licensees having more
11 than 4 employees, including but not limited to accounts of
12 earnings and expenses and any distribution, payment, or
13 other distribution of earnings or assets, and any other
14 forms, records and memoranda which in the judgment of the
15 commission may be necessary or appropriate to carry out any
16 of the provisions of this Act, including but not limited to
17 such forms, records and memoranda as will readily and
18 accurately disclose at all times the beneficial ownership
19 of such retail licensed business. The accounts, forms,
20 records and memoranda shall be available at all reasonable
21 times for inspection by authorized representatives of the
22 State commission or by any local liquor control
23 commissioner or his or her authorized representative. The
24 commission, may, from time to time, alter, amend or repeal,
25 in whole or in part, any uniform system of accounts, or the
26 form and manner of keeping accounts.

1 (8) In the conduct of any hearing authorized to be held
2 by the commission, to appoint, at the commission's
3 discretion, hearing officers to conduct hearings involving
4 complex issues or issues that will require a protracted
5 period of time to resolve, to examine, or cause to be
6 examined, under oath, any licensee, and to examine or cause
7 to be examined the books and records of such licensee; to
8 hear testimony and take proof material for its information
9 in the discharge of its duties hereunder; to administer or
10 cause to be administered oaths; for any such purpose to
11 issue subpoena or subpoenas to require the attendance of
12 witnesses and the production of books, which shall be
13 effective in any part of this State, and to adopt rules to
14 implement its powers under this paragraph (8). When
15 complaints warrant an investigation, the Commission shall
16 designate independent hearing officers to conduct the
17 hearing. The administrative hearing officers shall be
18 attorneys licensed to practice law in this State.
19 Investigations and any public hearing initiated in
20 connection with an investigation shall commence no later
21 than 30 days after the independent hearing officers
22 determines that the complaint substantially alleges a
23 violation of this Act or rules adopted under this Act. At
24 the time and place fixed in the Commission's order, the
25 hearing officer shall proceed to hear the complaint, and
26 all parties to the protest shall be afforded an opportunity

1 to present in person or by counsel any relevant statements,
2 testimony, evidence, and arguments. The hearing officer
3 may continue the hearing date by agreement of the parties
4 or upon a finding of good cause, but in no event shall the
5 hearing be rescheduled more than 60 days after the
6 Commission's initial citation.

7 Upon any hearing, the hearing officer may administer
8 oaths to witnesses and issue subpoenas for the attendance
9 of witnesses or other persons and the production of
10 relevant documents, records, and other evidence and may
11 require examination of the evidence. For purposes of
12 discovery, the hearing officer may, if deemed appropriate
13 and proper under the circumstances, authorize the parties
14 to engage in the discovery procedures as provided in
15 Section 2-1003 of the Code of Civil Procedure. Discovery
16 shall be completed no later than 15 days prior to
17 commencement of the proceeding or hearing. Enforcement of
18 discovery procedures shall be provided in the rules.
19 Subpoenas issued shall be served in the same manner as
20 subpoenas issued by the circuit courts.

21 A party may conduct cross-examination required for a
22 full and fair disclosure of the facts. Within 60 days after
23 the date of the hearing, the hearing officer shall issue
24 his or her proposed decision to the Commission and shall,
25 by certified mail, return receipt requested, serve the
26 proposed decision upon the parties, with an opportunity

1 afforded to each party to file exceptions and present a
2 brief to the Commission within 10 days after their receipt
3 of the proposed decision. The proposed decision shall
4 contain a statement of the reasons for the decision and
5 each issue of fact or law necessary to the proposed
6 decision. The Commission shall then issue its final order
7 which, if applicable, shall include the award of attorney's
8 fees, expert witness fees, and an assessment of costs,
9 including other expenses incurred in the litigation, if
10 permitted under this Act, only if the fees and costs are
11 reasonable. The final order shall be issued by the
12 Commission within 30 days after receipt of the hearing
13 officer's proposed decision.

14 The Commission shall record the testimony and preserve
15 a record of all proceedings at the hearing by proper means
16 of recordation. The citation issued, the notice of hearing,
17 and all other documents in the nature of pleadings,
18 motions, and rulings, all evidence, offers of proof,
19 objections, and rulings thereon, the transcript of
20 testimony, the report of findings or proposed decision of
21 the hearing officer, and the orders of the Commission shall
22 constitute the record of the proceedings. The Commission
23 shall furnish a transcript of the record to any person
24 interested in the hearing upon payment of the actual cost
25 of the transcript.

26 Any Circuit Court may by order duly entered, require

1 the attendance of witnesses and the production of relevant
2 books subpoenaed by the State commission and the court may
3 compel obedience to its order by proceedings for contempt.

4 (9) To investigate the administration of laws in
5 relation to alcoholic liquors in this and other states and
6 any foreign countries, and to recommend from time to time
7 to the Governor and through him or her to the legislature
8 of this State, such amendments to this Act, if any, as it
9 may think desirable and as will serve to further the
10 general broad purposes contained in Section 1-2 hereof.

11 (10) To adopt such rules and regulations consistent
12 with the provisions of this Act which shall be necessary
13 for the control, sale or disposition of alcoholic liquor
14 damaged as a result of an accident, wreck, flood, fire or
15 other similar occurrence.

16 (11) To develop industry educational programs related
17 to responsible serving and selling, particularly in the
18 areas of overserving consumers and illegal underage
19 purchasing and consumption of alcoholic beverages.

20 (11.1) To license persons providing education and
21 training to alcohol beverage sellers and servers under the
22 Beverage Alcohol Sellers and Servers Education and
23 Training (BASSET) programs and to develop and administer a
24 public awareness program in Illinois to reduce or eliminate
25 the illegal purchase and consumption of alcoholic beverage
26 products by persons under the age of 21. Application for a

1 license shall be made on forms provided by the State
2 Commission.

3 (12) To develop and maintain a repository of license
4 and regulatory information.

5 (13) On or before January 15, 1994, the Commission
6 shall issue a written report to the Governor and General
7 Assembly that is to be based on a comprehensive study of
8 the impact on and implications for the State of Illinois of
9 Section 1926 of the Federal ADAMHA Reorganization Act of
10 1992 (Public Law 102-321). This study shall address the
11 extent to which Illinois currently complies with the
12 provisions of P.L. 102-321 and the rules promulgated
13 pursuant thereto.

14 As part of its report, the Commission shall provide the
15 following essential information:

16 (i) the number of retail distributors of tobacco
17 products, by type and geographic area, in the State;

18 (ii) the number of reported citations and
19 successful convictions, categorized by type and
20 location of retail distributor, for violation of the
21 Prevention of Tobacco Use by Minors and Sale and
22 Distribution of Tobacco Products Act and the Smokeless
23 Tobacco Limitation Act;

24 (iii) the extent and nature of organized
25 educational and governmental activities that are
26 intended to promote, encourage or otherwise secure

1 compliance with any Illinois laws that prohibit the
2 sale or distribution of tobacco products to minors; and

3 (iv) the level of access and availability of
4 tobacco products to individuals under the age of 18.

5 To obtain the data necessary to comply with the
6 provisions of P.L. 102-321 and the requirements of this
7 report, the Commission shall conduct random, unannounced
8 inspections of a geographically and scientifically
9 representative sample of the State's retail tobacco
10 distributors.

11 The Commission shall consult with the Department of
12 Public Health, the Department of Human Services, the
13 Illinois State Police and any other executive branch
14 agency, and private organizations that may have
15 information relevant to this report.

16 The Commission may contract with the Food and Drug
17 Administration of the U.S. Department of Health and Human
18 Services to conduct unannounced investigations of Illinois
19 tobacco vendors to determine compliance with federal laws
20 relating to the illegal sale of cigarettes and smokeless
21 tobacco products to persons under the age of 18.

22 (14) On or before April 30, 2008 and every 2 years
23 thereafter, the Commission shall present a written report
24 to the Governor and the General Assembly that shall be
25 based on a study of the impact of this amendatory Act of
26 the 95th General Assembly on the business of soliciting,

1 selling, and shipping wine from inside and outside of this
2 State directly to residents of this State. As part of its
3 report, the Commission shall provide all of the following
4 information:

5 (A) The amount of State excise and sales tax
6 revenues generated.

7 (B) The amount of licensing fees received.

8 (C) The number of cases of wine shipped from inside
9 and outside of this State directly to residents of this
10 State.

11 (D) The number of alcohol compliance operations
12 conducted.

13 (E) The number of winery shipper's licenses
14 issued.

15 (F) The number of each of the following: reported
16 violations; cease and desist notices issued by the
17 Commission; notices of violations issued by the
18 Commission and to the Department of Revenue; and
19 notices and complaints of violations to law
20 enforcement officials, including, without limitation,
21 the Illinois Attorney General and the U.S. Department
22 of Treasury's Alcohol and Tobacco Tax and Trade Bureau.

23 (15) As a means to reduce the underage consumption of
24 alcoholic liquors, the Commission shall conduct alcohol
25 compliance operations to investigate whether businesses
26 that are soliciting, selling, and shipping wine from inside

1 or outside of this State directly to residents of this
2 State are licensed by this State or are selling or
3 attempting to sell wine to persons under 21 years of age in
4 violation of this Act.

5 (16) The Commission shall, in addition to notifying any
6 appropriate law enforcement agency, submit notices of
7 complaints or violations of Sections 6-29 and 6-29.1 by
8 persons who do not hold a winery shipper's license under
9 this amendatory Act to the Illinois Attorney General and to
10 the U.S. Department of Treasury's Alcohol and Tobacco Tax
11 and Trade Bureau.

12 (17) (A) A person licensed to make wine under the laws
13 of another state who has a winery shipper's license under
14 this amendatory Act and annually produces less than 25,000
15 gallons of wine or a person who has a first-class or
16 second-class wine manufacturer's license, a first-class or
17 second-class wine-maker's license, or a limited wine
18 manufacturer's license under this Act and annually
19 produces less than 25,000 gallons of wine may make
20 application to the Commission for a self-distribution
21 exemption to allow the sale of not more than 5,000 gallons
22 of the exemption holder's wine to retail licensees per
23 year.

24 (B) In the application, which shall be sworn under
25 penalty of perjury, such person shall state (1) the
26 date it was established; (2) its volume of production

1 and sales for each year since its establishment; (3)
2 its efforts to establish distributor relationships;
3 (4) that a self-distribution exemption is necessary to
4 facilitate the marketing of its wine; and (5) that it
5 will comply with the liquor and revenue laws of the
6 United States, this State, and any other state where it
7 is licensed.

8 (C) The Commission shall approve the application
9 for a self-distribution exemption if such person: (1)
10 is in compliance with State revenue and liquor laws;
11 (2) is not a member of any affiliated group that
12 produces more than 25,000 gallons of wine per annum or
13 produces any other alcoholic liquor; (3) will not
14 annually produce for sale more than 25,000 gallons of
15 wine; and (4) will not annually sell more than 5,000
16 gallons of its wine to retail licensees.

17 (D) A self-distribution exemption holder shall
18 annually certify to the Commission its production of
19 wine in the previous 12 months and its anticipated
20 production and sales for the next 12 months. The
21 Commission may fine, suspend, or revoke a
22 self-distribution exemption after a hearing if it
23 finds that the exemption holder has made a material
24 misrepresentation in its application, violated a
25 revenue or liquor law of Illinois, exceeded production
26 of 25,000 gallons of wine in any calendar year, or

1 become part of an affiliated group producing more than
2 25,000 gallons of wine or any other alcoholic liquor.

3 (E) Except in hearings for violations of this Act
4 or amendatory Act or a bona fide investigation by duly
5 sworn law enforcement officials, the Commission, or
6 its agents, the Commission shall maintain the
7 production and sales information of a
8 self-distribution exemption holder as confidential and
9 shall not release such information to any person.

10 (F) The Commission shall issue regulations
11 governing self-distribution exemptions consistent with
12 this Section and this Act.

13 (G) Nothing in this subsection (17) shall prohibit
14 a self-distribution exemption holder from entering
15 into or simultaneously having a distribution agreement
16 with a licensed Illinois distributor.

17 (H) It is the intent of this subsection (17) to
18 promote and continue orderly markets. The General
19 Assembly finds that in order to preserve Illinois'
20 regulatory distribution system it is necessary to
21 create an exception for smaller makers of wine as their
22 wines are frequently adjusted in varietals, mixes,
23 vintages, and taste to find and create market niches
24 sometimes too small for distributor or importing
25 distributor business strategies. Limited
26 self-distribution rights will afford and allow smaller

1 makers of wine access to the marketplace in order to
2 develop a customer base without impairing the
3 integrity of the 3-tier system.

4 (18) (A) A craft brewer licensee, who must also be
5 either a licensed brewer or licensed non-resident dealer
6 and annually manufacture less than 465,000 gallons of beer,
7 may make application to the Commission for a
8 self-distribution exemption to allow the sale of not more
9 than 232,500 gallons of the exemption holder's beer to
10 retail licensees per year.

11 (B) In the application, which shall be sworn under
12 penalty of perjury, the craft brewer licensee shall
13 state (1) the date it was established; (2) its volume
14 of beer manufactured and sold for each year since its
15 establishment; (3) its efforts to establish
16 distributor relationships; (4) that a
17 self-distribution exemption is necessary to facilitate
18 the marketing of its beer; and (5) that it will comply
19 with the alcoholic beverage and revenue laws of the
20 United States, this State, and any other state where it
21 is licensed.

22 (C) Any application submitted shall be posted on
23 the Commission's website at least 45 days prior to
24 action by the Commission. The Commission shall approve
25 the application for a self-distribution exemption if
26 the craft brewer licensee: (1) is in compliance with

1 the State, revenue, and alcoholic beverage laws; (2) is
2 not a member of any affiliated group that manufacturers
3 more than 465,000 gallons of beer per annum or produces
4 any other alcoholic beverages; (3) shall not annually
5 manufacture for sale more than 465,000 gallons of beer;
6 and (4) shall not annually sell more than 232,500
7 gallons of its beer to retail licensees.

8 (D) A self-distribution exemption holder shall
9 annually certify to the Commission its manufacture of
10 beer during the previous 12 months and its anticipated
11 manufacture and sales of beer for the next 12 months.
12 The Commission may fine, suspend, or revoke a
13 self-distribution exemption after a hearing if it
14 finds that the exemption holder has made a material
15 misrepresentation in its application, violated a
16 revenue or alcoholic beverage law of Illinois,
17 exceeded the manufacture of 465,000 gallons of beer in
18 any calendar year or became part of an affiliated group
19 manufacturing more than 465,000 gallons of beer or any
20 other alcoholic beverage.

21 (E) The Commission shall issue rules and
22 regulations governing self-distribution exemptions
23 consistent with this Act.

24 (F) Nothing in this paragraph (18) shall prohibit a
25 self-distribution exemption holder from entering into
26 or simultaneously having a distribution agreement with

1 a licensed Illinois importing distributor or a
2 distributor. If a self-distribution exemption holder
3 enters into a distribution agreement and has assigned
4 distribution rights to an importing distributor or
5 distributor, then the self-distribution exemption
6 holder's distribution rights in the assigned
7 territories shall cease in a reasonable time not to
8 exceed 60 days.

9 (G) It is the intent of this paragraph (18) to
10 promote and continue orderly markets. The General
11 Assembly finds that in order to preserve Illinois'
12 regulatory distribution system, it is necessary to
13 create an exception for smaller manufacturers in order
14 to afford and allow such smaller manufacturers of beer
15 access to the marketplace in order to develop a
16 customer base without impairing the integrity of the
17 3-tier system.

18 (b) On or before April 30, 1999, the Commission shall
19 present a written report to the Governor and the General
20 Assembly that shall be based on a study of the impact of this
21 amendatory Act of 1998 on the business of soliciting, selling,
22 and shipping alcoholic liquor from outside of this State
23 directly to residents of this State.

24 As part of its report, the Commission shall provide the
25 following information:

26 (i) the amount of State excise and sales tax revenues

1 generated as a result of this amendatory Act of 1998;

2 (ii) the amount of licensing fees received as a result
3 of this amendatory Act of 1998;

4 (iii) the number of reported violations, the number of
5 cease and desist notices issued by the Commission, the
6 number of notices of violations issued to the Department of
7 Revenue, and the number of notices and complaints of
8 violations to law enforcement officials.

9 (Source: P.A. 96-179, eff. 8-10-09; 96-446, eff. 1-1-10;
10 96-1000, eff. 7-2-10; 97-5, eff. 6-1-11.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.