



Sen. Mike Jacobs

Filed: 3/6/2013

09800SB1788sam001

LRB098 09666 MGM 41999 a

1 AMENDMENT TO SENATE BILL 1788

2 AMENDMENT NO. _____. Amend Senate Bill 1788 by replacing
3 everything after the enacting clause with the following:

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

1 lessees of sleeping, dining and cafe cars, airplanes,
2 boats, brokers, and wine maker's premises licensees in
3 accordance with the provisions of this Act, and to suspend
4 or revoke such licenses upon the State commission's
5 determination, upon notice after hearing, that a licensee
6 has violated any provision of this Act or any rule or
7 regulation issued pursuant thereto and in effect for 30
8 days prior to such violation. Except in the case of an
9 action taken pursuant to a violation of Section 6-3, 6-5,
10 or 6-9, any action by the State Commission to suspend or
11 revoke a licensee's license may be limited to the license
12 for the specific premises where the violation occurred.

13 (1.1) In lieu of suspending or revoking a license, to
14 ~~the commission may~~ impose a fine, upon the State
15 commission's determination and notice after hearing, that
16 a licensee has violated any provision of this Act or any
17 rule or regulation issued pursuant thereto and in effect
18 for 30 days prior to such violation. However, if any
19 licensee is found in violation of selling alcohol to an
20 underage individual, the Commission shall assess a civil
21 penalty as follows:

22 (A) a violation shall subject the licensee to a
23 civil penalty in an amount not to exceed \$500; the
24 Commission shall not require any licensee to appear
25 before the Commission for a first violation;

26 (B) a second violation within a 2-year period shall

1 subject the licensee to a license suspension not to
2 exceed 5 days or a civil penalty in an amount not to
3 exceed \$1,500;

4 (C) a third violation within a 2-year period shall
5 subject the licensee to a suspension, not to exceed 16
6 days or to a civil penalty in an amount not to exceed
7 \$3,000; and

8 (D) a fourth violation within a 2-year period shall
9 result in the revocation of the license or permit for
10 that specific license location.

11 For the purpose of this paragraph (1.1), (i) the date
12 of any violation shall be used in determining the period
13 between violations, (ii) the suspension may be limited to
14 the specific license or permit for the premises found in
15 violation, and (iii) revocation shall be limited to the
16 specific license or permit found in violation and shall not
17 disqualify a licensee or permittee from holding the license
18 or permit at a separate location.

19 Other general violations at each inspection shall be
20 assessed in the following manner: a first violation shall
21 be \$100, without requiring an appearance before the
22 Commission; a second violation, the fine shall be \$200,
23 without requiring an appearance before the Commission; a
24 third violation, the fine shall be \$300, without requiring
25 an appearance before the Commission. Further violations
26 shall be assessed with an increase of \$100 per violation,

1 without requiring an appearance before the Commission.

2 ~~The fine imposed under this paragraph may not exceed \$500 for~~
3 ~~each violation. Each day that the activity, which gave rise~~
4 ~~to the original fine, continues is a separate violation.~~
5 ~~The maximum fine that may be levied against any licensee,~~
6 ~~for the period of the license, shall not exceed \$20,000.~~
7 ~~The maximum penalty that may be imposed on a licensee for~~
8 ~~selling a bottle of alcoholic liquor with a foreign object~~
9 ~~in it or serving from a bottle of alcoholic liquor with a~~
10 ~~foreign object in it shall be the destruction of that~~
11 ~~bottle of alcoholic liquor for the first 10 bottles so sold~~
12 ~~or served from by the licensee. For the eleventh bottle of~~
13 ~~alcoholic liquor and for each third bottle thereafter sold~~
14 ~~or served from by the licensee with a foreign object in it,~~
15 ~~the maximum penalty that may be imposed on the licensee is~~
16 ~~the destruction of the bottle of alcoholic liquor and a~~
17 ~~fine of up to \$50.~~

18 (2) To adopt such rules and regulations consistent with
19 the provisions of this Act which shall be necessary to
20 carry on its functions and duties to the end that the
21 health, safety and welfare of the People of the State of
22 Illinois shall be protected and temperance in the
23 consumption of alcoholic liquors shall be fostered and
24 promoted and to distribute copies of such rules and
25 regulations to all licensees affected thereby.

26 (3) To call upon other administrative departments of

1 the State, county and municipal governments, county and
2 city police departments and upon prosecuting officers for
3 such information and assistance as it deems necessary in
4 the performance of its duties.

5 (4) To recommend to local commissioners rules and
6 regulations, not inconsistent with the law, for the
7 distribution and sale of alcoholic liquors throughout the
8 State.

9 (5) To inspect, or cause to be inspected, any premises
10 in this State where alcoholic liquors are manufactured,
11 distributed, warehoused, or sold. Nothing in this Act
12 authorizes an agent of the Commission or law enforcement to
13 search private areas within the premises without probable
14 cause or a warrant for the search during an inspection.
15 "Private areas" include, but are not limited to, safes,
16 cash registers, personal property, and closed desks.

17 (5.1) Upon receipt of a complaint or upon having
18 knowledge that any person is engaged in business as a
19 manufacturer, importing distributor, distributor, or
20 retailer without a license or valid license, to notify the
21 local liquor authority, file a complaint with the State's
22 Attorney's Office of the county where the incident
23 occurred, or initiate an investigation with the
24 appropriate law enforcement officials.

25 (5.2) To issue a cease and desist notice to persons
26 shipping alcoholic liquor into this State from a point

1 outside of this State if the shipment is in violation of
2 this Act.

3 (5.3) To receive complaints from licensees, local
4 officials, law enforcement agencies, organizations, and
5 persons stating that any licensee has been or is violating
6 any provision of this Act or the rules and regulations
7 issued pursuant to this Act. Such complaints shall be in
8 writing, signed and sworn to by the person making the
9 complaint, and shall state with specificity the facts in
10 relation to the alleged violation. If the Commission has
11 reasonable grounds to believe that the complaint
12 substantially alleges a violation of this Act or rules and
13 regulations adopted pursuant to this Act, it shall conduct
14 an investigation. If, after conducting an investigation,
15 the Commission is satisfied that the alleged violation did
16 occur, it shall proceed with disciplinary action against
17 the licensee as provided in this Act.

18 (6) To hear and determine appeals from orders of a
19 local commission in accordance with the provisions of this
20 Act, as hereinafter set forth. Hearings under this
21 subsection shall be held in Springfield or Chicago, at
22 whichever location is the more convenient for the majority
23 of persons who are parties to the hearing.

24 (7) The commission shall establish uniform systems of
25 accounts to be kept by all retail licensees having more
26 than 4 employees, and for this purpose the commission may

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

22 (8) In the conduct of any hearing authorized to be held
23 by the commission, to appoint, at the commission's
24 discretion, hearing officers to conduct hearings involving
25 complex issues or issues that will require a protracted
26 period of time to resolve, to examine, or cause to be

1 examined, under oath, any licensee, and to examine or cause
2 to be examined the books and records of such licensee; to
3 hear testimony and take proof material for its information
4 in the discharge of its duties hereunder; to administer or
5 cause to be administered oaths; for any such purpose to
6 issue subpoena or subpoenas to require the attendance of
7 witnesses and the production of books, which shall be
8 effective in any part of this State, and to adopt rules to
9 implement its powers under this paragraph (8).

10 Any Circuit Court may by order duly entered, require
11 the attendance of witnesses and the production of relevant
12 books subpoenaed by the State commission and the court may
13 compel obedience to its order by proceedings for contempt.

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

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

26 (11) To develop industry educational programs related

1 to responsible serving and selling, particularly in the
2 areas of overserving consumers and illegal underage
3 purchasing and consumption of alcoholic beverages.

4 (11.1) To license persons providing education and
5 training to alcohol beverage sellers and servers under the
6 Beverage Alcohol Sellers and Servers Education and
7 Training (BASSET) programs and to develop and administer a
8 public awareness program in Illinois to reduce or eliminate
9 the illegal purchase and consumption of alcoholic beverage
10 products by persons under the age of 21. Application for a
11 license shall be made on forms provided by the State
12 Commission.

13 (12) To develop and maintain a repository of license
14 and regulatory information.

15 (13) On or before January 15, 1994, the Commission
16 shall issue a written report to the Governor and General
17 Assembly that is to be based on a comprehensive study of
18 the impact on and implications for the State of Illinois of
19 Section 1926 of the Federal ADAMHA Reorganization Act of
20 1992 (Public Law 102-321). This study shall address the
21 extent to which Illinois currently complies with the
22 provisions of P.L. 102-321 and the rules promulgated
23 pursuant thereto.

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

26 (i) the number of retail distributors of tobacco

1 products, by type and geographic area, in the State;

2 (ii) the number of reported citations and
3 successful convictions, categorized by type and
4 location of retail distributor, for violation of the
5 Prevention of Tobacco Use by Minors and Sale and
6 Distribution of Tobacco Products Act and the Smokeless
7 Tobacco Limitation Act;

8 (iii) the extent and nature of organized
9 educational and governmental activities that are
10 intended to promote, encourage or otherwise secure
11 compliance with any Illinois laws that prohibit the
12 sale or distribution of tobacco products to minors; and

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

15 To obtain the data necessary to comply with the
16 provisions of P.L. 102-321 and the requirements of this
17 report, the Commission shall conduct random, unannounced
18 inspections of a geographically and scientifically
19 representative sample of the State's retail tobacco
20 distributors.

21 The Commission shall consult with the Department of
22 Public Health, the Department of Human Services, the
23 Illinois State Police and any other executive branch
24 agency, and private organizations that may have
25 information relevant to this report.

26 The Commission may contract with the Food and Drug

1 Administration of the U.S. Department of Health and Human
2 Services to conduct unannounced investigations of Illinois
3 tobacco vendors to determine compliance with federal laws
4 relating to the illegal sale of cigarettes and smokeless
5 tobacco products to persons under the age of 18.

6 (14) On or before April 30, 2008 and every 2 years
7 thereafter, the Commission shall present a written report
8 to the Governor and the General Assembly that shall be
9 based on a study of the impact of this amendatory Act of
10 the 95th General Assembly on the business of soliciting,
11 selling, and shipping wine from inside and outside of this
12 State directly to residents of this State. As part of its
13 report, the Commission shall provide all of the following
14 information:

15 (A) The amount of State excise and sales tax
16 revenues generated.

17 (B) The amount of licensing fees received.

18 (C) The number of cases of wine shipped from inside
19 and outside of this State directly to residents of this
20 State.

21 (D) The number of alcohol compliance operations
22 conducted.

23 (E) The number of winery shipper's licenses
24 issued.

25 (F) The number of each of the following: reported
26 violations; cease and desist notices issued by the

1 Commission; notices of violations issued by the
2 Commission and to the Department of Revenue; and
3 notices and complaints of violations to law
4 enforcement officials, including, without limitation,
5 the Illinois Attorney General and the U.S. Department
6 of Treasury's Alcohol and Tobacco Tax and Trade Bureau.

7 (15) As a means to reduce the underage consumption of
8 alcoholic liquors, the Commission shall conduct alcohol
9 compliance operations to investigate whether businesses
10 that are soliciting, selling, and shipping wine from inside
11 or outside of this State directly to residents of this
12 State are licensed by this State or are selling or
13 attempting to sell wine to persons under 21 years of age in
14 violation of this Act.

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

22 (17) (A) A person licensed to make wine under the laws
23 of another state who has a winery shipper's license under
24 this amendatory Act and annually produces less than 25,000
25 gallons of wine or a person who has a first-class or
26 second-class wine manufacturer's license, a first-class or

1 second-class wine-maker's license, or a limited wine
2 manufacturer's license under this Act and annually
3 produces less than 25,000 gallons of wine may make
4 application to the Commission for a self-distribution
5 exemption to allow the sale of not more than 5,000 gallons
6 of the exemption holder's wine to retail licensees per
7 year.

8 (B) In the application, which shall be sworn under
9 penalty of perjury, such person shall state (1) the
10 date it was established; (2) its volume of production
11 and sales for each year since its establishment; (3)
12 its efforts to establish distributor relationships;
13 (4) that a self-distribution exemption is necessary to
14 facilitate the marketing of its wine; and (5) that it
15 will comply with the liquor and revenue laws of the
16 United States, this State, and any other state where it
17 is licensed.

18 (C) The Commission shall approve the application
19 for a self-distribution exemption if such person: (1)
20 is in compliance with State revenue and liquor laws;
21 (2) is not a member of any affiliated group that
22 produces more than 25,000 gallons of wine per annum or
23 produces any other alcoholic liquor; (3) will not
24 annually produce for sale more than 25,000 gallons of
25 wine; and (4) will not annually sell more than 5,000
26 gallons of its wine to retail licensees.

1 (D) A self-distribution exemption holder shall
2 annually certify to the Commission its production of
3 wine in the previous 12 months and its anticipated
4 production and sales for the next 12 months. The
5 Commission may fine, suspend, or revoke a
6 self-distribution exemption after a hearing if it
7 finds that the exemption holder has made a material
8 misrepresentation in its application, violated a
9 revenue or liquor law of Illinois, exceeded production
10 of 25,000 gallons of wine in any calendar year, or
11 become part of an affiliated group producing more than
12 25,000 gallons of wine or any other alcoholic liquor.

13 (E) Except in hearings for violations of this Act
14 or amendatory Act or a bona fide investigation by duly
15 sworn law enforcement officials, the Commission, or
16 its agents, the Commission shall maintain the
17 production and sales information of a
18 self-distribution exemption holder as confidential and
19 shall not release such information to any person.

20 (F) The Commission shall issue regulations
21 governing self-distribution exemptions consistent with
22 this Section and this Act.

23 (G) Nothing in this subsection (17) shall prohibit
24 a self-distribution exemption holder from entering
25 into or simultaneously having a distribution agreement
26 with a licensed Illinois distributor.

1 (H) It is the intent of this subsection (17) to
2 promote and continue orderly markets. The General
3 Assembly finds that in order to preserve Illinois'
4 regulatory distribution system it is necessary to
5 create an exception for smaller makers of wine as their
6 wines are frequently adjusted in varietals, mixes,
7 vintages, and taste to find and create market niches
8 sometimes too small for distributor or importing
9 distributor business strategies. Limited
10 self-distribution rights will afford and allow smaller
11 makers of wine access to the marketplace in order to
12 develop a customer base without impairing the
13 integrity of the 3-tier system.

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

21 (B) In the application, which shall be sworn under
22 penalty of perjury, the craft brewer licensee shall
23 state (1) the date it was established; (2) its volume
24 of beer manufactured and sold for each year since its
25 establishment; (3) its efforts to establish
26 distributor relationships; (4) that a

1 self-distribution exemption is necessary to facilitate
2 the marketing of its beer; and (5) that it will comply
3 with the alcoholic beverage and revenue laws of the
4 United States, this State, and any other state where it
5 is licensed.

6 (C) Any application submitted shall be posted on
7 the Commission's website at least 45 days prior to
8 action by the Commission. The Commission shall approve
9 the application for a self-distribution exemption if
10 the craft brewer licensee: (1) is in compliance with
11 the State, revenue, and alcoholic beverage laws; (2) is
12 not a member of any affiliated group that manufacturers
13 more than 465,000 gallons of beer per annum or produces
14 any other alcoholic beverages; (3) shall not annually
15 manufacture for sale more than 465,000 gallons of beer;
16 and (4) shall not annually sell more than 232,500
17 gallons of its beer to retail licensees.

18 (D) A self-distribution exemption holder shall
19 annually certify to the Commission its manufacture of
20 beer during the previous 12 months and its anticipated
21 manufacture and sales of beer for the next 12 months.
22 The Commission may fine, suspend, or revoke a
23 self-distribution exemption after a hearing if it
24 finds that the exemption holder has made a material
25 misrepresentation in its application, violated a
26 revenue or alcoholic beverage law of Illinois,

1 exceeded the manufacture of 465,000 gallons of beer in
2 any calendar year or became part of an affiliated group
3 manufacturing more than 465,000 gallons of beer or any
4 other alcoholic beverage.

5 (E) The Commission shall issue rules and
6 regulations governing self-distribution exemptions
7 consistent with this Act.

8 (F) Nothing in this paragraph (18) shall prohibit a
9 self-distribution exemption holder from entering into
10 or simultaneously having a distribution agreement with
11 a licensed Illinois importing distributor or a
12 distributor. If a self-distribution exemption holder
13 enters into a distribution agreement and has assigned
14 distribution rights to an importing distributor or
15 distributor, then the self-distribution exemption
16 holder's distribution rights in the assigned
17 territories shall cease in a reasonable time not to
18 exceed 60 days.

19 (G) It is the intent of this paragraph (18) to
20 promote and continue orderly markets. The General
21 Assembly finds that in order to preserve Illinois'
22 regulatory distribution system, it is necessary to
23 create an exception for smaller manufacturers in order
24 to afford and allow such smaller manufacturers of beer
25 access to the marketplace in order to develop a
26 customer base without impairing the integrity of the

1 3-tier system.

2 (b) On or before April 30, 1999, the Commission shall
3 present a written report to the Governor and the General
4 Assembly that shall be based on a study of the impact of this
5 amendatory Act of 1998 on the business of soliciting, selling,
6 and shipping alcoholic liquor from outside of this State
7 directly to residents of this State.

8 As part of its report, the Commission shall provide the
9 following information:

10 (i) the amount of State excise and sales tax revenues
11 generated as a result of this amendatory Act of 1998;

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

14 (iii) the number of reported violations, the number of
15 cease and desist notices issued by the Commission, the
16 number of notices of violations issued to the Department of
17 Revenue, and the number of notices and complaints of
18 violations to law enforcement officials.

19 (Source: P.A. 96-179, eff. 8-10-09; 96-446, eff. 1-1-10;
20 96-1000, eff. 7-2-10; 97-5, eff. 6-1-11.)".