

HB2878



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2878

by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

235 ILCS 5/3-12

Amends the Liquor Control Act of 1934. Provides that an action for a violation of the Act shall be commenced by the State Commission within 2 years after the date of the violation. Provides that any notice issued by the State Commission to a licensee for a violation of the Act or any notice with respect to a settlement or offer in compromise shall include the field report, photographs, and any other supporting documentation necessary to reasonably inform the licensee of the nature and extent of the violation or the conduct alleged to have occurred. Effective immediately.

LRB100 09902 RPS 20073 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. An
6 action for a violation of this Act shall be commenced by
7 the State Commission within 2 years after the date of the
8 violation.

9 In lieu of suspending or revoking a license, the
10 commission may impose a fine, upon the State commission's
11 determination and notice after hearing, that a licensee has
12 violated any provision of this Act or any rule or
13 regulation issued pursuant thereto and in effect for 30
14 days prior to such violation.

15 For the purpose of this paragraph (1), when determining
16 multiple violations for the sale of alcohol to a person
17 under the age of 21, a second or subsequent violation for
18 the sale of alcohol to a person under the age of 21 shall
19 only be considered if it was committed within 5 years after
20 the date when a prior violation for the sale of alcohol to
21 a person under the age of 21 was committed.

22 The fine imposed under this paragraph may not exceed
23 \$500 for each violation. Each day that the activity, which
24 gave rise to the original fine, continues is a separate
25 violation. The maximum fine that may be levied against any
26 licensee, for the period of the license, shall not exceed

1 \$20,000. The maximum penalty that may be imposed on a
2 licensee for selling a bottle of alcoholic liquor with a
3 foreign object in it or serving from a bottle of alcoholic
4 liquor with a foreign object in it shall be the destruction
5 of that bottle of alcoholic liquor for the first 10 bottles
6 so sold or served from by the licensee. For the eleventh
7 bottle of alcoholic liquor and for each third bottle
8 thereafter sold or served from by the licensee with a
9 foreign object in it, the maximum penalty that may be
10 imposed on the licensee is the destruction of the bottle of
11 alcoholic liquor and a fine of up to \$50.

12 Any notice issued by the State Commission to a licensee
13 for a violation of this Act or any notice with respect to
14 settlement or offer in compromise shall include the field
15 report, photographs, and any other supporting
16 documentation necessary to reasonably inform the licensee
17 of the nature and extent of the violation or the conduct
18 alleged to have occurred.

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

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

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

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

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

26 (5.2) To issue a cease and desist notice to persons

1 shipping alcoholic liquor into this State from a point
2 outside of this State if the shipment is in violation of
3 this Act.

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

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

25 (7) The commission shall establish uniform systems of
26 accounts to be kept by all retail licensees having more

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

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

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

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

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

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

1 (11) To develop industry educational programs related
2 to responsible serving and selling, particularly in the
3 areas of overserving consumers and illegal underage
4 purchasing and consumption of alcoholic beverages.

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

15 (12) To develop and maintain a repository of license
16 and regulatory information.

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

26 As part of its report, the Commission shall provide the

1 following essential information:

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

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

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

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

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

23 The Commission shall consult with the Department of
24 Public Health, the Department of Human Services, the
25 Illinois State Police and any other executive branch
26 agency, and private organizations that may have

1 information relevant to this report.

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

8 (14) On or before April 30, 2008 and every 2 years
9 thereafter, the Commission shall present a written report
10 to the Governor and the General Assembly that shall be
11 based on a study of the impact of Public Act 95-634 ~~this~~
12 ~~amendatory Act of the 95th General Assembly~~ on the business
13 of soliciting, selling, and shipping wine from inside and
14 outside of this State directly to residents of this State.
15 As part of its report, the Commission shall provide all of
16 the following information:

17 (A) The amount of State excise and sales tax
18 revenues generated.

19 (B) The amount of licensing fees received.

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

23 (D) The number of alcohol compliance operations
24 conducted.

25 (E) The number of winery shipper's licenses
26 issued.

1 (F) The number of each of the following: reported
2 violations; cease and desist notices issued by the
3 Commission; notices of violations issued by the
4 Commission and to the Department of Revenue; and
5 notices and complaints of violations to law
6 enforcement officials, including, without limitation,
7 the Illinois Attorney General and the U.S. Department
8 of Treasury's Alcohol and Tobacco Tax and Trade Bureau.

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

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

24 (17) (A) A person licensed to make wine under the laws
25 of another state who has a winery shipper's license under
26 this ~~amendatory~~ Act and annually produces less than 25,000

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

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

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

1 wine; and (4) will not annually sell more than 5,000
2 gallons of its wine to retail licensees.

3 (D) A self-distribution exemption holder shall
4 annually certify to the Commission its production of
5 wine in the previous 12 months and its anticipated
6 production and sales for the next 12 months. The
7 Commission may fine, suspend, or revoke a
8 self-distribution exemption after a hearing if it
9 finds that the exemption holder has made a material
10 misrepresentation in its application, violated a
11 revenue or liquor law of Illinois, exceeded production
12 of 25,000 gallons of wine in any calendar year, or
13 become part of an affiliated group producing more than
14 25,000 gallons of wine or any other alcoholic liquor.

15 (E) Except in hearings for violations of this Act
16 or Public Act 95-634 ~~amendatory Act~~ or a bona fide
17 investigation by duly sworn law enforcement officials,
18 the Commission, or its agents, the Commission shall
19 maintain the production and sales information of a
20 self-distribution exemption holder as confidential and
21 shall not release such information to any person.

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

25 (G) Nothing in this subsection (17) shall prohibit
26 a self-distribution exemption holder from entering

1 into or simultaneously having a distribution agreement
2 with a licensed Illinois distributor.

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

16 (18) (A) A class 1 brewer licensee, who must also be
17 either a licensed brewer or licensed non-resident dealer
18 and annually manufacture less than 930,000 gallons of beer,
19 may make application to the State Commission for a
20 self-distribution exemption to allow the sale of not more
21 than 232,500 gallons of the exemption holder's beer to
22 retail licensees per year.

23 (B) In the application, which shall be sworn under
24 penalty of perjury, the class 1 brewer licensee shall
25 state (1) the date it was established; (2) its volume
26 of beer manufactured and sold for each year since its

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

8 (C) Any application submitted shall be posted on
9 the State Commission's website at least 45 days prior
10 to action by the State Commission. The State Commission
11 shall approve the application for a self-distribution
12 exemption if the class 1 brewer licensee: (1) is in
13 compliance with the State, revenue, and alcoholic
14 beverage laws; (2) is not a member of any affiliated
15 group that manufactures ~~manufacturers~~ more than
16 930,000 gallons of beer per annum or produces any other
17 alcoholic beverages; (3) shall not annually
18 manufacture for sale more than 930,000 gallons of beer;
19 (4) shall not annually sell more than 232,500 gallons
20 of its beer to retail licensees; and (5) has
21 relinquished any brew pub license held by the licensee,
22 including any ownership interest it held in the
23 licensed brew pub.

24 (D) A self-distribution exemption holder shall
25 annually certify to the State Commission its
26 manufacture of beer during the previous 12 months and

1 its anticipated manufacture and sales of beer for the
2 next 12 months. The State Commission may fine, suspend,
3 or revoke a self-distribution exemption after a
4 hearing if it finds that the exemption holder has made
5 a material misrepresentation in its application,
6 violated a revenue or alcoholic beverage law of
7 Illinois, exceeded the manufacture of 930,000 gallons
8 of beer in any calendar year or became part of an
9 affiliated group manufacturing more than 930,000
10 gallons of beer or any other alcoholic beverage.

11 (E) The State Commission shall issue rules and
12 regulations governing self-distribution exemptions
13 consistent with this Act.

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

25 (G) It is the intent of this paragraph (18) to
26 promote and continue orderly markets. The General

1 Assembly finds that in order to preserve Illinois'
2 regulatory distribution system, it is necessary to
3 create an exception for smaller manufacturers in order
4 to afford and allow such smaller manufacturers of beer
5 access to the marketplace in order to develop a
6 customer base without impairing the integrity of the
7 3-tier system.

8 (b) On or before April 30, 1999, the Commission shall
9 present a written report to the Governor and the General
10 Assembly that shall be based on a study of the impact of Public
11 Act 90-739 ~~this amendatory Act of 1998~~ on the business of
12 soliciting, selling, and shipping alcoholic liquor from
13 outside of this State directly to residents of this State.

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

16 (i) the amount of State excise and sales tax revenues
17 generated as a result of Public Act 90-739 ~~this amendatory~~
18 ~~Act of 1998~~;

19 (ii) the amount of licensing fees received as a result
20 of Public Act 90-739 ~~this amendatory Act of 1998~~;

21 (iii) the number of reported violations, the number of
22 cease and desist notices issued by the Commission, the
23 number of notices of violations issued to the Department of
24 Revenue, and the number of notices and complaints of
25 violations to law enforcement officials.

26 (Source: P.A. 98-401, eff. 8-16-13; 98-939, eff. 7-1-15;

1 98-941, eff. 1-1-15; 99-78, eff. 7-20-15; 99-448, eff. 8-24-15;
2 revised 9-13-16.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.