

HB5369



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5369

Introduced 2/15/2012, by Rep. Maria Antonia Berrios

SYNOPSIS AS INTRODUCED:

235 ILCS 5/3-12

Amends the Liquor Control Act of 1934. Provides that as a means to reduce the sale of cheap alcoholic liquors that leads to binge drinking, the Illinois Liquor Control Commission shall provide by rule for a standard of minimum prices that shall be charged for alcoholic liquors sold in bars and restaurants.

LRB097 17829 AJ0 63047 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).

15 Any Circuit Court may by order duly entered, require
16 the attendance of witnesses and the production of relevant
17 books subpoenaed by the State commission and the court may
18 compel obedience to its order by proceedings for contempt.

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

26 (10) To adopt such rules and regulations consistent

1 with the provisions of this Act which shall be necessary
2 for the control, sale or disposition of alcoholic liquor
3 damaged as a result of an accident, wreck, flood, fire or
4 other similar occurrence.

5 (11) To develop industry educational programs related
6 to responsible serving and selling, particularly in the
7 areas of overserving consumers and illegal underage
8 purchasing and consumption of alcoholic beverages.

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

18 (12) To develop and maintain a repository of license
19 and regulatory information.

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

1 provisions of P.L. 102-321 and the rules promulgated
2 pursuant thereto.

3 As part of its report, the Commission shall provide the
4 following essential information:

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

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

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

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

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

26 The Commission shall consult with the Department of

1 Public Health, the Department of Human Services, the
2 Illinois State Police and any other executive branch
3 agency, and private organizations that may have
4 information relevant to this report.

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

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

20 (A) The amount of State excise and sales tax
21 revenues generated.

22 (B) The amount of licensing fees received.

23 (C) The number of cases of wine shipped from inside
24 and outside of this State directly to residents of this
25 State.

26 (D) The number of alcohol compliance operations

1 conducted.

2 (E) The number of winery shipper's licenses
3 issued.

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

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

20 (15.5) As a means to reduce the sale of cheap alcoholic
21 liquors that leads to binge drinking, the Commission shall
22 provide by rule for a standard of minimum prices that shall
23 be charged for alcoholic liquors sold in bars and
24 restaurants.

25 (16) The Commission shall, in addition to notifying any
26 appropriate law enforcement agency, submit notices of

1 complaints or violations of Sections 6-29 and 6-29.1 by
2 persons who do not hold a winery shipper's license under
3 this amendatory Act to the Illinois Attorney General and to
4 the U.S. Department of Treasury's Alcohol and Tobacco Tax
5 and Trade Bureau.

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

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

1 is licensed.

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

11 (D) A self-distribution exemption holder shall
12 annually certify to the Commission its production of
13 wine in the previous 12 months and its anticipated
14 production and sales for the next 12 months. The
15 Commission may fine, suspend, or revoke a
16 self-distribution exemption after a hearing if it
17 finds that the exemption holder has made a material
18 misrepresentation in its application, violated a
19 revenue or liquor law of Illinois, exceeded production
20 of 25,000 gallons of wine in any calendar year, or
21 become part of an affiliated group producing more than
22 25,000 gallons of wine or any other alcoholic liquor.

23 (E) Except in hearings for violations of this Act
24 or amendatory Act or a bona fide investigation by duly
25 sworn law enforcement officials, the Commission, or
26 its agents, the Commission shall maintain the

1 production and sales information of a
2 self-distribution exemption holder as confidential and
3 shall not release such information to any person.

4 (F) The Commission shall issue regulations
5 governing self-distribution exemptions consistent with
6 this Section and this Act.

7 (G) Nothing in this subsection (17) shall prohibit
8 a self-distribution exemption holder from entering
9 into or simultaneously having a distribution agreement
10 with a licensed Illinois distributor.

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

24 (18) (A) A craft brewer licensee, who must also be
25 either a licensed brewer or licensed non-resident dealer
26 and annually manufacture less than 465,000 gallons of beer,

1 may make application to the Commission for a
2 self-distribution exemption to allow the sale of not more
3 than 232,500 gallons of the exemption holder's beer to
4 retail licensees per year.

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

16 (C) Any application submitted shall be posted on
17 the Commission's website at least 45 days prior to
18 action by the Commission. The Commission shall approve
19 the application for a self-distribution exemption if
20 the craft brewer licensee: (1) is in compliance with
21 the State, revenue, and alcoholic beverage laws; (2) is
22 not a member of any affiliated group that manufacturers
23 more than 465,000 gallons of beer per annum or produces
24 any other alcoholic beverages; (3) shall not annually
25 manufacture for sale more than 465,000 gallons of beer;
26 and (4) shall not annually sell more than 232,500

1 gallons of its beer to retail licensees.

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

15 (E) The Commission shall issue rules and
16 regulations governing self-distribution exemptions
17 consistent with this Act.

18 (F) Nothing in this paragraph (18) shall prohibit a
19 self-distribution exemption holder from entering into
20 or simultaneously having a distribution agreement with
21 a licensed Illinois importing distributor or a
22 distributor. If a self-distribution exemption holder
23 enters into a distribution agreement and has assigned
24 distribution rights to an importing distributor or
25 distributor, then the self-distribution exemption
26 holder's distribution rights in the assigned

1 territories shall cease in a reasonable time not to
2 exceed 60 days.

3 (G) It is the intent of this paragraph (18) 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 manufacturers in order
8 to afford and allow such smaller manufacturers of beer
9 access to the marketplace in order to develop a
10 customer base without impairing the integrity of the
11 3-tier system.

12 (b) On or before April 30, 1999, the Commission shall
13 present a written report to the Governor and the General
14 Assembly that shall be based on a study of the impact of this
15 amendatory Act of 1998 on the business of soliciting, selling,
16 and shipping alcoholic liquor from outside of this State
17 directly to residents of this State.

18 As part of its report, the Commission shall provide the
19 following information:

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

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

24 (iii) the number of reported violations, the number of
25 cease and desist notices issued by the Commission, the
26 number of notices of violations issued to the Department of

1 Revenue, and the number of notices and complaints of
2 violations to law enforcement officials.

3 (Source: P.A. 96-179, eff. 8-10-09; 96-446, eff. 1-1-10;
4 96-1000, eff. 7-2-10; 97-5, eff. 6-1-11.)