**Section 100.90 Credit to Retail Licensees**

The following rule shall govern in the application of the provisions of Section 6-5 of the Act [235 ILCS 5/6-5] relating to extension of credit to retail licensees by manufacturers, distributors and manufacturers with limited self-distribution privileges:

a) When two or more retail licensees are controlled by common ownership and one or more of the retail licensees becomes delinquent, all retail licensees under the common ownership shall be deemed delinquent. "Common ownership" shall be any ownership interest of more than 5% of the total ownership interests in each retailer.

b) In totaling the 30 day period for the purpose of determining the delinquency of a retailer, the first day shall be the day immediately following the date of the invoice of the purchase in question, if the invoice date and delivery are the same, and on the delivery date if the invoice is dated before the date of delivery, and all successive days shall be included, Sunday as well as holidays, up to and including the thirtieth successive day.

c) When a bona fide sale of a retail business occurs, the purchaser shall not be deemed delinquent because of the delinquency of the purchaser's predecessor in interest; however, in the event there is a continuity of interest, direct or indirect, between the seller and the purchaser, including, but not limited to, a change in control of the retailer licensee that requires notification to be filed with either the Commission or any local liquor control commissioner, the latter shall be deemed delinquent in the same manner, and to the same extent, as was the seller. In the event any bankruptcy proceeding is instituted by or against a retail liquor licensee, the "automatic stay" provision of the federal bankruptcy law mandates that the retail liquor licensee not be reported as "delinquent" pursuant to Section 6-5 of the Act. In order for that retail liquor licensee to continue to purchase alcoholic liquors, although not on credit, the properly filed bankruptcy petition must be served upon the Commission and the Wine and Spirits Distributors of Illinois (WSDI). Upon service of the filed petition on the Commission and WSDI, that retailer shall be automatically suspended from the delinquency list, if the retail liquor licensee was on the list. Additionally, proper service shall automatically suspend the application of the Illinois 30-day credit law (Section 6-5 of the Act) to any importing distributor, distributor or self-distributing manufacturer as to that retailer during the pendency of the bankruptcy petition. Nothing in this Section shall limit or foreclose importing distributors, distributors or self-distributing manufacturers from requiring retailers with pending bankruptcy actions to remit payment for wine and distilled spirits products on a COD or pre-payment prior to delivery basis.

d) When there exists a bona fide dispute between the retailer and the importing distributor, distributor or manufacturer as to the fact of payment for a given sale, the sale in itself shall not be deemed sufficient grounds for considering the retailer delinquent. Bona fide disputes shall be submitted to the Commission for hearing, which shall be expedited and heard at the next regularly scheduled meeting of the Commission.

e) When a retailer pays a salesman, or other agent of the importing distributor, distributor or manufacturer, the payment shall be deemed effective upon the receipt of the money or check by the salesman or other agent.

f) When a retailer is deemed delinquent and, therefore, not able to purchase for cash, or otherwise, any alcoholic liquors, the retailer may, nevertheless, purchase beer for cash.

g) Payment received from a delinquent retailer after the first business day of the calendar week and before a verified written statement of delinquency has been submitted to the Commission will entitle the manufacturer, importing distributor or distributor submitting the list to delete that retailer's name from the list.

h) Determinations of delinquency or non-delinquency shall be made by the Chairman, Executive Director or any individual so authorized by the Chairman or Executive Director on the basis of the verified report of delinquency and any affidavits or counter-affidavits before him or her. Any retail licensee objecting to the determination may request the Commission in writing for a hearing that will be set at the next regularly scheduled meeting of the Commission.

i) A copy of any verified written list of delinquencies shall be simultaneously caused to be forwarded to listed retail licensees by the manufacturer, importing distributor or distributor submitting the list.

j) Payment in cash by the retail licensee shall mean payment in legal tender as provided by the United States Code, checks (including certified checks, cashier's checks, teller's checks or traveler's checks), debit cards, drafts and electronic transfer of funds, provided the transfer of funds is initiated by an irrevocable payment order on or before the date payment is due.

k) Checks are the equivalent of payment in cash so long as they are not post-dated and are deposited by the importing distributor, distributor or manufacturer in the ordinary course of business. For purchases of wine and spirits, a post-dated check cleared prior to the end of the 30-day credit period, including any properly disclosed finance, delivery or other usual and customary charges in the industry, is considered to be a valid payment. An "NSF", void or stop payment check for purchases of wine and spirits that is properly replaced with cash or cash equivalent before the end of the 30-day period, including any properly disclosed usual and customary charges in the industry, is considered a valid payment.

l) Manufacturers, importing distributors or distributors may include finance, delivery and any and all usual and customary charges in the industry on credit issued and not paid and may charge usual and customary charges for NSF, void or stop-payment checks, provided a statement is printed on the original invoice delivered to the retailer at the time the merchandise is received indicating that the usual and customary charges will be assessed, with a statement specifying the terms and amounts of charges imposed. The charges, properly disclosed to the retailer, are considered to be part of the cost of the merchandise sold as of the invoice date and, therefore, the entire amount, including any usual and customary charges, must be paid before the retailer can be considered to be non-delinquent. All such usual and customary charges must be applied uniformly to all retailers.

m) A retailer may not charge a distributor, importing distributor or manufacturer for the costs of electronic transfers, nor may a distributor, importing distributor or manufacturer charge a retailer for the costs of electronic transfers. A retailer may not require a distributor, importing distributor or manufacturer to purchase or lease any software necessary to effectuate electronic transfers, nor may a distributor, importing distributor or manufacturer require a retailer to purchase or lease software necessary to effectuate electronic transfers. The use of the system must be available, but cannot be mandated as a requirement for conducting business, to all distributors, importing distributors, manufacturers and retailers. The use of a specific Value Added Network (VAN) cannot be mandated; all users of the system must be allowed to transmit information through any VAN. The users of the system must continue to maintain all required records of alcoholic beverage purchases and sales. The Commission shall have access, upon reasonable notice, to the systems for the purpose of inspection and review.

n) The use of electronic fund transfers shall be allowed so long as the transfer of funds is initiated by an irrevocable payment order on or before delivery of the alcoholic liquor and the transfer is supported by appropriate documentation.

(Source: Amended at 39 Ill. Reg. 4433, effective March 12, 2015)