



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2130

Introduced 2/26/2021, by Sen. Rachelle Crowe

SYNOPSIS AS INTRODUCED:

235 ILCS 5/6-5 from Ch. 43, par. 122
235 ILCS 5/6-9.5 new
235 ILCS 5/6-9.10 new
235 ILCS 5/6-9.15 new
235 ILCS 5/6-9.20 new
235 ILCS 5/6-9.25 new

Amends the Liquor Control Act of 1934. Provides that a verified written list of delinquent retail licensees shall be developed, administered, and maintained only by the Illinois Liquor Control Commission. Provides that determinations of delinquency or nondelinquency shall be made only by the State Commission and shall be made only after determining there is not a bona fide dispute between such retail licensee and the manufacturer, importing distributor, or distributor with respect to the amount of the indebtedness existing because of such alleged sale. Adds provisions concerning cooperative purchasing agreements, quantity discount programs, credit or rebate programs, and combination sales offers. Effective immediately.

LRB102 10761 RPS 16090 b

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 6-5 and by adding Sections 6-9.5, 6-9.10,
6 6-9.15, 6-9.20, and 6-9.25 as follows:

7 (235 ILCS 5/6-5) (from Ch. 43, par. 122)

8 Sec. 6-5. Except as otherwise provided in this Section, it
9 is unlawful for any person having a retailer's license or any
10 officer, associate, member, representative or agent of such
11 licensee to accept, receive or borrow money, or anything else
12 of value, or accept or receive credit (other than
13 merchandising credit in the ordinary course of business for a
14 period not to exceed 30 days) directly or indirectly from any
15 manufacturer, importing distributor or distributor of
16 alcoholic liquor, or from any person connected with or in any
17 way representing, or from any member of the family of, such
18 manufacturer, importing distributor, distributor or
19 wholesaler, or from any stockholders in any corporation
20 engaged in manufacturing, distributing or wholesaling of such
21 liquor, or from any officer, manager, agent or representative
22 of said manufacturer. Except as provided below, it is unlawful
23 for any manufacturer or distributor or importing distributor

1 to give or lend money or anything of value, or otherwise loan
2 or extend credit (except such merchandising credit) directly
3 or indirectly to any retail licensee or to the manager,
4 representative, agent, officer or director of such licensee. A
5 manufacturer, distributor or importing distributor may furnish
6 free advertising, posters, signs, brochures, hand-outs, or
7 other promotional devices or materials to any unit of
8 government owning or operating any auditorium, exhibition
9 hall, recreation facility or other similar facility holding a
10 retailer's license, provided that the primary purpose of such
11 promotional devices or materials is to promote public events
12 being held at such facility. A unit of government owning or
13 operating such a facility holding a retailer's license may
14 accept such promotional devices or materials designed
15 primarily to promote public events held at the facility. No
16 retail licensee delinquent beyond the 30 day period specified
17 in this Section shall solicit, accept or receive credit,
18 purchase or acquire alcoholic liquors, directly or indirectly
19 from any other licensee, and no manufacturer, distributor or
20 importing distributor shall knowingly grant or extend credit,
21 sell, furnish or supply alcoholic liquors to any such
22 delinquent retail licensee; provided that the purchase price
23 of all beer sold to a retail licensee shall be paid by the
24 retail licensee in cash on or before delivery of the beer, and
25 unless the purchase price payable by a retail licensee for
26 beer sold to him in returnable bottles shall expressly include

1 a charge for the bottles and cases, the retail licensee shall,
2 on or before delivery of such beer, pay the seller in cash a
3 deposit in an amount not less than the deposit required to be
4 paid by the distributor to the brewer; but where the brewer
5 sells direct to the retailer, the deposit shall be an amount no
6 less than that required by the brewer from his own
7 distributors; and provided further, that in no instance shall
8 this deposit be less than 50 cents for each case of beer in
9 pint or smaller bottles and 60 cents for each case of beer in
10 quart or half-gallon bottles; and provided further, that the
11 purchase price of all beer sold to an importing distributor or
12 distributor shall be paid by such importing distributor or
13 distributor in cash on or before the 15th day (Sundays and
14 holidays excepted) after delivery of such beer to such
15 purchaser; and unless the purchase price payable by such
16 importing distributor or distributor for beer sold in
17 returnable bottles and cases shall expressly include a charge
18 for the bottles and cases, such importing distributor or
19 distributor shall, on or before the 15th day (Sundays and
20 holidays excepted) after delivery of such beer to such
21 purchaser, pay the seller in cash a required amount as a
22 deposit to assure the return of such bottles and cases.
23 Nothing herein contained shall prohibit any licensee from
24 crediting or refunding to a purchaser the actual amount of
25 money paid for bottles, cases, kegs or barrels returned by the
26 purchaser to the seller or paid by the purchaser as a deposit

1 on bottles, cases, kegs or barrels, when such containers or
2 packages are returned to the seller. Nothing herein contained
3 shall prohibit any manufacturer, importing distributor or
4 distributor from extending usual and customary credit for
5 alcoholic liquor sold to customers or purchasers who live in
6 or maintain places of business outside of this State when such
7 alcoholic liquor is actually transported and delivered to such
8 points outside of this State.

9 A manufacturer, distributor, or importing distributor may
10 furnish free social media advertising to a retail licensee if
11 the social media advertisement does not contain the retail
12 price of any alcoholic liquor and the social media
13 advertisement complies with any applicable rules or
14 regulations issued by the Alcohol and Tobacco Tax and Trade
15 Bureau of the United States Department of the Treasury. A
16 manufacturer, distributor, or importing distributor may list
17 the names of one or more unaffiliated retailers in the
18 advertisement of alcoholic liquor through social media.
19 Nothing in this Section shall prohibit a retailer from
20 communicating with a manufacturer, distributor, or importing
21 distributor on social media or sharing media on the social
22 media of a manufacturer, distributor, or importing
23 distributor. A retailer may request free social media
24 advertising from a manufacturer, distributor, or importing
25 distributor. Nothing in this Section shall prohibit a
26 manufacturer, distributor, or importing distributor from

1 sharing, reposting, or otherwise forwarding a social media
2 post by a retail licensee, so long as the sharing, reposting,
3 or forwarding of the social media post does not contain the
4 retail price of any alcoholic liquor. No manufacturer,
5 distributor, or importing distributor shall pay or reimburse a
6 retailer, directly or indirectly, for any social media
7 advertising services, except as specifically permitted in this
8 Act. No retailer shall accept any payment or reimbursement,
9 directly or indirectly, for any social media advertising
10 services offered by a manufacturer, distributor, or importing
11 distributor, except as specifically permitted in this Act. For
12 the purposes of this Section, "social media" means a service,
13 platform, or site where users communicate with one another and
14 share media, such as pictures, videos, music, and blogs, with
15 other users free of charge.

16 No right of action shall exist for the collection of any
17 claim based upon credit extended to a distributor, importing
18 distributor or retail licensee contrary to the provisions of
19 this Section.

20 Every manufacturer, importing distributor and distributor
21 shall submit or cause to be submitted, to the State
22 Commission, in triplicate, not later than Thursday of each
23 calendar week, a verified written list of the names and
24 respective addresses of each retail licensee purchasing
25 spirits or wine from such manufacturer, importing distributor
26 or distributor who, on the first business day of that calendar

1 week, was delinquent beyond the above mentioned permissible
2 merchandising credit period of 30 days; or, if such is the
3 fact, a verified written statement that no retail licensee
4 purchasing spirits or wine was then delinquent beyond such
5 permissible merchandising credit period of 30 days.

6 Every manufacturer, importing distributor and distributor
7 shall submit or cause to be submitted, to the State
8 Commission, in triplicate, a verified written list of the
9 names and respective addresses of each previously reported
10 delinquent retail licensee who has cured such delinquency by
11 payment, which list shall be submitted not later than the
12 close of the second full business day following the day such
13 delinquency was so cured.

14 The verified written list of delinquent retail licensees
15 shall be developed, administered, and maintained only by the
16 State Commission. Determinations of delinquency or
17 nondelinquency shall be made only by the State Commission and
18 shall be made only after determining there is not a bona fide
19 dispute between such retail licensee and manufacturer,
20 importing distributor, or distributor with respect to the
21 amount of indebtedness existing because of such alleged sale.

22 Such written verified reports required to be submitted by
23 this Section shall be posted by the State Commission in each of
24 its offices in places available for public inspection not
25 later than the day following receipt thereof by the State
26 Commission. The reports so posted shall constitute notice to

1 every manufacturer, importing distributor and distributor of
2 the information contained therein. Actual notice to
3 manufacturers, importing distributors and distributors of the
4 information contained in any such posted reports, however
5 received, shall also constitute notice of such information.

6 The 30 day merchandising credit period allowed by this
7 Section shall commence with the day immediately following the
8 date of invoice and shall include all successive days
9 including Sundays and holidays to and including the 30th
10 successive day.

11 In addition to other methods allowed by law, payment by
12 check during the period for which merchandising credit may be
13 extended under the provisions of this Section shall be
14 considered payment. All checks received in payment for
15 alcoholic liquor shall be promptly deposited for collection. A
16 post dated check or a check dishonored on presentation for
17 payment shall not be deemed payment.

18 A retail licensee shall not be deemed to be delinquent in
19 payment for any alleged sale to him of alcoholic liquor when
20 there exists a bona fide dispute between such retailer and a
21 manufacturer, importing distributor or distributor with
22 respect to the amount of indebtedness existing because of such
23 alleged sale. A retail licensee shall not be deemed to be
24 delinquent under this provision and 11 Ill. Adm. Code 100.90
25 until 30 days after the date on which the region in which the
26 retail licensee is located enters Phase 4 of the Governor's

1 Restore Illinois Plan as issued on May 5, 2020. A retail
2 licensee shall not be deemed to be delinquent in payment for
3 any alleged sale to the retail licensee of alcoholic liquor
4 unless such manufacturer, importing distributor, or
5 distributor has provided notice in writing to the retailer of
6 the amount of indebtedness existing because of such alleged
7 sale not less than 7 days prior to reporting the retailer as
8 delinquent.

9 A delinquent retail licensee who engages in the retail
10 liquor business at 2 or more locations shall be deemed to be
11 delinquent with respect to each such location.

12 The license of any person who violates any provision of
13 this Section shall be subject to suspension or revocation in
14 the manner provided by this Act.

15 If any part or provision of this Article or the
16 application thereof to any person or circumstances shall be
17 adjudged invalid by a court of competent jurisdiction, such
18 judgment shall be confined by its operation to the controversy
19 in which it was mentioned and shall not affect or invalidate
20 the remainder of this Article or the application thereof to
21 any other person or circumstance and to this and the
22 provisions of this Article are declared severable.

23 (Source: P.A. 101-631, eff. 6-2-20.)

24 (235 ILCS 5/6-9.5 new)

25 Sec. 6-9.5. Definitions. In this Section through Section

1 6-9.25:

2 "Common ownership" means any ownership interest of more
3 than 5% of the total ownership interests of 2 or more retail
4 licensees.

5 "Cooperative purchasing agreement" means an agreement
6 entered into between 2 or more individually owned, commonly
7 owned, or not commonly owned retail licensees or other
8 licensees with retail privileges for the purpose of purchasing
9 alcoholic beverages from licensees with distribution
10 privileges.

11 "Quantity discounting" means a sales program between a
12 licensee with distribution privileges and a retail licensee or
13 retail licensees in which the primary purpose of the program
14 is to increase product sales and merchandising to retail
15 licensees and is not a subterfuge to provide prohibited things
16 of value as inducements to retail licensees. "Quantity
17 discounting" includes circumstances in which a licensee with
18 distribution privileges offers a retail licensee or retail
19 licensees a discount based upon an agreement by which the
20 retail licensee may purchase a predetermined number of
21 products in return for receiving a discount on the goods
22 purchased, which may be applied either as a price reduction at
23 the time of sale or as a rebate or credit following the sale,
24 subject to the conditions found in Section 6-9.15.

1 Sec. 6-9.10. Cooperative purchasing agreements.

2 (a) A cooperative purchasing agreement shall only be valid
3 if the following conditions are met:

4 (1) the agreement is in writing and signed by all
5 parties to the agreement;

6 (2) the agreement contains the complete license
7 information for all parties to the agreement, including
8 State and local license numbers and expiration dates;

9 (3) a retail licensee that is a party to the agreement
10 must not be a party to any other liquor-related
11 cooperative purchasing agreement;

12 (4) the agreement designates an agent or select group
13 of agents who will place orders on behalf of the
14 participating members of the group;

15 (5) a copy of the executed agreement, including any
16 amendments, deletions, or additions, is kept on the
17 premises of each party to the agreement for a period of 3
18 years; and

19 (6) a copy of the executed agreement, including any
20 amendments, deletions, or additions, is delivered to the
21 relevant licensee with distribution privileges and to the
22 State Commission prior to making any purchases under the
23 agreement; any amendments, deletions, or additions must be
24 submitted to the State Commission within 7 business days
25 after the amendment, deletion, or addition is executed.

26 (b) A retail licensee may only be a member of one

1 cooperative purchasing agreement group at a time. A retail
2 licensee may make purchases as a party to a cooperative
3 purchasing agreement or independently of any such agreement.
4 Nothing in this or any other Section of this Act shall be
5 construed to prohibit commonly or not commonly owned retail
6 licensees from making purchases separate and apart from any
7 executed cooperative purchasing agreements.

8 (c) A retail licensee may change to a different
9 cooperative purchasing agreement group no more than twice in a
10 12-month period. However, if an existing cooperative
11 purchasing agreement group member purchases a retail location
12 from a member of another cooperative purchasing agreement, the
13 new owner of the retail location may move the membership of the
14 retail licensee to a different cooperative purchasing
15 agreement.

16 (d) When a retail licensee joins an existing cooperative
17 purchasing agreement group, the members of a group must be
18 members for a period of 7 days prior to being able to
19 participate in any quantity discount programs.

20 (e) Cooperative purchasing agreement group members must be
21 either all on-premises retail licensees or off-premises retail
22 licensees.

23 (f) Any individual retail licensee that fails to comply
24 with the terms and conditions of this Section may be deemed to
25 be in violation of Section 6-5. Any licensee with distribution
26 privileges that fails to comply with this Section may be

1 deemed to be in violation of Section 6-5.

2 (235 ILCS 5/6-9.15 new)

3 Sec. 6-9.15. Quantity discounting terms.

4 (a) Any and all quantity discount programs shall offer the
5 same quantity price discount to all retail licensees,
6 cooperative purchasing agreement groups, and their agents.
7 Quantity discount programs shall:

8 (1) be open and available for acceptance for 7
9 business days;

10 (2) be designed and implemented to produce product
11 volume growth with retail licensees;

12 (3) be based on the volume of product purchased;
13 discounts may include price reductions, cash, credits, and
14 rebates; no-charge alcoholic liquor products may be given
15 in lieu of a discount;

16 (4) be documented on related sales invoices or credit
17 memoranda;

18 (5) not require a retail licensee to take and dispose
19 of any quota of alcoholic liquors; bona fide quantity
20 discounts shall not be deemed to be quota sales;

21 (6) not require a retail licensee to purchase one
22 product in order to purchase another; this includes
23 combination sales if one or more products may be purchased
24 only in combination with other products and not
25 individually; and

1 (7) require a minimum quantity of 250 cases.

2 (b) A licensee who has distribution privileges and makes
3 quantity discount sales to participating members of a
4 cooperative purchasing agreement group shall issue customary
5 invoices to each participating retail licensee itemizing the
6 alcoholic liquor sold and delivered as part of a quantity
7 discount program to each participating retail licensee.

8 (c) A licensee who has distribution privileges may require
9 any participating member of a cooperative purchase group to
10 make the following minimum purchases:

11 (1) 2% of cases of any quantity discount program of
12 500 or fewer cases.

13 (2) 1.5% of cases of any quantity discount program of
14 at least 501 and not more than 2,000 cases.

15 (3) 1% of cases of any quantity discount program of
16 2,001 or more cases.

17 (235 ILCS 5/6-9.20 new)

18 Sec. 6-9.20. Credit or rebate programs.

19 (a) A licensee with distribution privileges may issue to a
20 retail licensee product credits and rebates as an adjustment
21 on the purchase price based on volume purchasing, such as end
22 of month, end of year, end of period, or other such temporary
23 cumulative discounts, credits, and rebates to a retail
24 licensee. These cumulative discounts are considered to be a
25 form of pricing arrangement or quantity discount program and

1 must be offered to all retail licensees.

2 (b) A licensee with distribution privileges utilizing
3 credits or rebates shall conform the credit or rebate program
4 to the following conditions:

5 (1) the credit or rebate program is made pursuant to a
6 written agreement established at or prior to the sale; the
7 licensee and the retail licensee shall maintain a record
8 of the written agreement per recordkeeping requirements;

9 (2) the agreement is entered into at the time of sale;

10 (3) the credit or rebate is extended for a specific
11 period of time;

12 (4) the credit or rebate is calculated based solely
13 upon the purchases made by the retail licensee receiving
14 the cumulative discount; and

15 (5) the credit or rebate is documented on a related
16 sales invoice or credit memoranda.

17 (c) If the retail licensee is part of a group of retail
18 licensees with common ownership or a member of a cooperative
19 purchasing agreement in compliance with Section 6-9.10,
20 cumulative discounts, credits, or rebates may be aggregated
21 into a single payment to each participating retail licensee.
22 If an aggregated payment is issued, the cumulative discount,
23 credit, or rebate must be calculated based upon the volume
24 purchases of each individual participating retail licensee and
25 must include supporting documentation that denotes the portion
26 of the discount, credit, or rebate attributable to each

1 individual retail licensee.

2 (235 ILCS 5/6-9.25 new)

3 Sec. 6-9.25. Combination sales offers. A licensee with
4 distribution privileges is not prohibited from selling, at a
5 special combination price, 2 or more kinds or brands of
6 products to a retail licensee if the retail licensee has the
7 option of purchasing either product at the usual price and the
8 retail licensee is not required to purchase any product it
9 does not want.

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