

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**ANHEUSER-BUSCH, INC., WHOLESALER  
EQUITY DEVELOPMENT CORPORATION,  
CITY-BEVERAGE – ILLINOIS, L.L.C., CITY  
BEVERAGE L.L.C., CITY BEVERAGE –  
MARKHAM L.L.C., CHICAGO  
DISTRIBUTING L.L.C., SD OF ILLINOIS,  
INC., and DOUBLE EAGLE DISTRIBUTING  
COMPANY**

**Plaintiffs,**

**v.**

**STEPHEN B. SCHNORF, JOHN M.  
AGUILAR, DANIEL J. DOWNES, SAM  
ESTEBAN, MICHAEL F. MCMAHON,  
MARTIN MULCAHEY, DONALD  
O’CONNELL, Commissioners, of the Illinois  
Liquor Control Commission, in their official  
capacities; and RICHARD R. HAYMAKER,  
Chief Legal Counsel of the Illinois Liquor  
Control Commission, in his official capacity**

**Defendants.**

Case No. 10 CV 01601

Hon. Robert M. Dow, Jr.

Hon. Michael T. Mason

**BRIEF OF THE ASSOCIATED BEER DISTRIBUTORS OF ILLINOIS AS *AMICUS  
CURIAE* IN SUPPORT OF DEFENDANTS IN OPPOSITION TO PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

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**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... ii

**INTERESTS OF *AMICUS CURIAE*** ..... 1

**ARGUMENT** ..... 2

**CONCLUSION** ..... 12

**TRADE PRACTICE POLICIES** ..... Attachment 1

**TABLE OF AUTHORITIES**

**CASES**

*Beskind v. Easley*,  
325 F.3d 506 (4th Cir. 2003) .....11

*Costco v. Hoen*,  
407 F.Supp.2d 1247 (W.D. Wash. 2005).....9, 11

*Country of DuPage v. Illinois Labor Relations Bd.*,  
334 Ill. Dec. 151, 916 NE.2d 566 (App. Ct. 2d Dis. 2009) .....8

*Davis v. Michigan Dep’t of Treasury*,  
489 U.S. 803 (1989).....7

*Exxon Corp. v. Governor of Maryland*,  
437 U.S. 117 (1978).....10

*Granholt v. Heald*,  
544 U.S. 409 (2005) .....8, 9

*Harris v. United States*,  
536 U.S. 545 (2002) .....7

*Manuel v. State of Louisiana*,  
982 So. 2d 316 (La. Ct. App. 2008).....2

*McKesson Corp v. Div. of Alcoholic Beverages & Tobacco*,  
496 U.S. 18 (1990) .....11

*North Dakota v. United States*,  
495 U.S. 423, 432 (1986).....12

*Oregon Waste Sys., Inc. v. Dep’t of Envtl. Quality of Ore*,  
511 U.S. 269 (1994).....8

*United States, ex rel. Attorney General v. Delaware & Hudson Co.*,  
213 U.S. 366 (1909).....7

**OTHER AUTHORITIES**

Raymond B. Fosdick & Albert L. Scott,  
*Toward Liquor Control* (1933) .....2

815 ILCS 720/1 *et seq.*..... *Passim*

235 ILCS 5/1 *et seq.*.....*Passim*

TPP-1 *et seq.* ..... *Passim & Exhibit 1*

Big Beer Duopoly: A Primer for Policymakers and Regulations,  
Marin Institute Report (2009) .....6

## **INTERESTS OF AMICUS CURIAE**

Since 1939, the Associated Beer Distributors of Illinois (“ABDI”) has served as the state membership organization of the beer wholesaling industry in Illinois representing over 60 licensed Illinois beer distributors. In 2008, direct sales by Illinois beer distributors reached \$598 million dollars. Illinois beer distributors paid over \$220 million dollars in wages. Finally, the total federal, state, and local consumption taxes paid in Illinois on the sale of beer is over \$511 million dollars.

This case implicates the essential interests of ABDI and its members. The challenge brought by Plaintiffs threatens to dismantle Illinois’ three-tier regulatory system. Through this system, Illinois has addressed several fundamental interests: preventing vertical integration of the liquor industry, inhibiting overly aggressive sales and marketing, moderating consumption, collecting taxes, creating orderly distribution and importation systems, and preventing a recurrence of the problems that led to the enactment of Prohibition.

The Illinois Liquor Control Commission (the “Commission”) was correct in denying a distributor license to Plaintiff Anheuser-Busch, Inc. (“AB”). The denial of AB’s application for a distributor’s license was compelled by Illinois law and did not run afoul of the dormant Commerce Clause. Furthermore, the decision preserved the integrity of the State of Illinois’ three-tier system and prevented the world’s largest brewer from vertically integrating the beer industry in Illinois.

## ARGUMENT

1. **The three-tier system constitutes the backbone of effective alcohol regulation in Illinois and in the vast majority of states in this country.**

Like the vast majority of states, Illinois has adopted a three-tier regulatory system that mandates separation of the alcoholic beverage industry into three tiers: a supplier tier, a distributor tier, and a retailer tier. The three-tier system was created to avoid the harmful effects of vertical integration in the industry by restricting suppliers, distributors, and retailers to one level of activity. Historical experience has proven that “tied-houses” lead to excessive retail capacity and cutthroat competition for market share, which ultimately leads to intemperate consumption.<sup>1</sup>

The three-tier system is premised on the recognition that there is a causal relationship between industry sales practices and consumer consumption patterns. The aim is moderation in both the sale and consumption of intoxicating liquor. The appetite for intoxicating liquor and the profit motive are each to be constrained. The norms and practices of the distribution, sale, and consumption of intoxicating liquor are not to be left to the private arrangements of sellers seeking profits and buyers seeking products. Such practices are to be shaped by the state to restrict the profit motive and control alcohol abuse by preventing certain aggressive competitive practices, including, particularly, tied-house arrangements, that had characterized pre-prohibition alcoholic beverage distribution and sale.<sup>2</sup>

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<sup>1</sup>For an excellent, recent discussion of the historical and policy underpinnings of the three-tier system, see *Manuel v. State of Louisiana*, 982 So. 2d 316, 322-324 & 329-331 (La. Ct. App. 2008).

<sup>2</sup>As noted in Toward Liquor Control, the seminal work on alcohol regulation:

The “tied house” system had all the vices of absentee ownership. The manufacturer knew nothing and cared nothing about the community. All he wanted was increased sales.

Raymond B. Fosdick & Albert L. Scott, Toward Liquor Control, at 43 (1933).

By requiring that all alcohol destined for Illinois consumers must be sold to in-state distributors, who are licensed, subject to audit, and amenable to enforcement by the Commission, Illinois has created a transparent and accountable distribution system. Equally important, the three-tier system safeguards retailer independence and stability by inserting distributors as a buffer between brewers and retailers. In this way, brewers may not utilize their dominant market power to create excessive retail capacity, excessive sales stimulation, and cutthroat competition, all to the detriment of the state's core goals of promoting temperance and creating orderly alcohol markets.

Historically, "distribution" was defined as follows:

“. . . any person, other than a manufacturer licensed under this Act, who is engaged in this State in purchasing, storing, possessing, or warehousing any alcoholic liquors for resale or reselling at wholesale, whether within or without this State.”

235 ILCS 5/1-3.15 (emphasis added).

Under a separate provision, a "distributor" was authorized to engage in ". . . the wholesale purchase and storage of alcoholic liquors and sale of alcoholic liquors to licensees in this State and to persons without the State as may be required by law." (235 ILCS 5/5-1(b)). The Act has always required a holder of an "importing distributor" license to also obtain and hold a "distributor" license. 235 ILCS 5/5-1(c). While the "importing distributor" license provision did not contain explicitly the manufacturer exclusion, only a "distributor" was entitled to an "importing distributor" license.

Effective January 1, 1982, Illinois created the non-resident dealer's license ("NRD").

The NRD license is applicable to any person:

. . . which exports into this State from any point outside of this State any alcoholic liquors for the sale to Illinois licensed foreign importers or importing distributors. Such license shall be restricted to the actual manufacture of such alcoholic liquors

or the primary U.S. importer of such alcoholic liquors if manufactured outside of United States or the duly registered agent of such manufacturer or importer. The non-resident dealer's license will permit such licensee to ship alcoholic liquor into this State from any point outside of this State and to sell such alcoholic liquor to Illinois licensed foreign importers and importing distributors and to no one else in this State. . .

As a result of the NRD license, all manufacturers (brewers, wineries, and distillers) located outside the State of Illinois seeking to ship product into Illinois were required to secure an NRD license and required to sell the alcoholic liquor to Illinois licensed foreign importers and importing distributors.

In 1984, after creating the NRD license in 1982, Illinois amended the definition of both "distributor" and "importing distributor" (Public Act 83-1254, effective August 13, 1984). The definition of "distributor" was defined to read: "Any person other than a manufacturer or non-resident dealer licensed under this Act . . ." (emphasis added). The definition of "importing distributor" was amended to read: "Any person other than a non-resident dealer licensed under this Act . . ." (emphasis added).

The insertion of the NRD language in both the distributor and importing distributor definition provisions was designed to exclude an NRD from holding a distributor or importing distributor's license.

In 1982 (Public Act 82-946), Illinois also enacted a comprehensive distribution law entitled the "Illinois Beer Industry Fair Dealing Act" ("BIFDA"). The law defines with great detail the relation between a brewer and an independent distributor/importing distributor (wholesaler) (815 ILCS 720/1, *et seq.*).<sup>3</sup> Subsequent amendments to BIFDA continued to further

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<sup>3</sup> BIFDA recites as one of its core purposes "assuring the beer wholesaler is free to manage its business enterprise, including the wholesaler's right to independently establish its selling prices." *See* 815 ILCS

clarify the separation between supplier and distributor. The most recent amendment occurred in 2009 (Public Act 96-0662 effective August 25, 2009).

In 1994, Illinois established its “brew pub” license (Public Act 88-91). That license permitted a brewpub to sell on-sale to the public beer which it manufactured on the premises. However, if the brewpub wished to sell off-sale, it was required to go through an importing distributor or distributor (235 ILCS 5/5-1(n)).<sup>4</sup>

Accordingly, enactments of the Illinois General Assembly since 1982 have been designed to ensure that all alcoholic beverages (including beer) be sold through Illinois licensed importing distributors and distributors. Through its liquor regulatory system, Illinois strives to maintain a stable, orderly, and controlled marketplace. Pursuant to this goal, the Commission has promulgated Trade Practice Policies. *See* TPP-1 *et seq*, a copy of which is attached as Exhibit 1. These voluminous, detailed policies are designed to enforce the three-tier, tied-house laws, and thereby protect retailers from undue sales pressure.

In order to prevent the exertion of undue pressure or influence, the Commission established “of value” standards which generally prohibit industry members from giving things “of value” to retailers. *See* TPP-1 *et seq*. In order to prevent sellers from circumventing these tied-house provisions, the Commission has developed specific rules which detail what constitutes giving a thing “of value” to a retailer:

- Signage and advertising is limited by type and by dollar values (TPP-10)
- Consumer coupons and rebates are regulated (TTP-11)

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720 (2). By assuring the distributor tier’s independence, BIFDA supports the three-tier system and safeguards the distributor’s role as a buffer between brewers and retailers.

<sup>4</sup> The other first-tier license is the foreign importer’s license which authorized the importation of alcoholic liquor from outside the United States which must be sold to Illinois licensed importing distributors and no one else (235 ILCS 5/5-1(k)).

- Stocking, rotating, and resetting of product within a retail establishment is closely regulated (TPP-25)
- There are prohibitions regarding employees of one tier working for another tier (TPP-28)
- Unless there is a bona fide business reason for replacement of damaged or defective product when delivered, it may not be replaced free of charge to the retailer (TPP-32)
- Sellers may not use “third party arrangements” to make indirect payments to retailers (TPP-34)

Furthermore, “[i]t is the Commission’s position . . . that all ‘of value’ activities between the tiers are prohibited unless specifically allowed . . .” (TPP-2(11)). These regulations reflect the strong policy in Illinois to maintain the integrity of the three-tier system with strict tied-house controls.

As a result of the recent acquisition of Anheuser-Busch by InBev Brewing and the recent joint venture between Miller Brewing Company and Coors Brewing Company, two foreign-owned brewers now control over 80% of the United States beer market creating, in essence, a “Beer Duopoly.” *See, Big Beer Duopoly: A Primer for Policymakers and Regulations*, Marin Institute Report (2009), attached to the Affidavit of Pam Erickson. Furthermore, at least one market analyst has reported that AB plans to aggressively vertically integrate the industry by driving at least 50% of its United States sales through brewery-owned branches. *Id.* at 10. The concentration of this much economic and market power in just two foreign brewers has alarming implications for effective liquor regulation and makes the state’s insistence on separation of the tiers and orderly markets timely and critical.

2. **Under the constitutional avoidance doctrine, the court need not and should not reach the constitutional issues raised by Plaintiffs’ dormant commerce clause challenge.**

The clear intent of the Act is to channel all sales of beer through the three-tier system. The definition of “distributor” explicitly excludes “manufacturers” or “non-resident dealers” (i.e.

all brewers). 235 ILCS 5/1-3.15. The definition of “importing distributor” explicitly excludes a “non-resident dealer.” 235 ILCS 5/1-3.16. The definition of “brewer” is limited to “a person who is engaged in the manufacture of beer.” 235 ILCS 5/1-3.09. The definition of “non-resident dealer” recites that such a dealer may sell only to “Illinois licensed foreign importers and importing distributors.” 235 ILCS 5/1-1(m). These sections clearly limit brewers, whether located in-state or out-of-state, to sales to distributors only. There is no other section that specifically authorizes any brewer to hold a distributor’s license.<sup>5</sup>

Under the doctrine of constitutional avoidance, when “a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.” *Harris v. United States*, 536 U.S. 545, 555 (2002) (quoting *United States, ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)). Furthermore, it is axiomatic that “the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989). Finally, 235 ILCS 5/1-2 provides that the “Act shall be liberally construed, to the end that the health, safety, and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors.”

Contrary to the interpretation of the Commission, ABDI submits that the Act prohibits

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<sup>5</sup> There are only two very small brewers (microbrewers) who currently hold distributor licenses and are distributing beer to retailers. In 2009 and 2010, the Commission, on its own volition, issued the two microbreweries a distributor’s license. AB claims to be disadvantaged by the self-distribution of the Goose Island Brewery. Goose Island is an odd example for AB to cite since it is partly owned by AB. In any event, Goose Island does not self-distribute. Instead, distribution is exclusively through AB distributors, a fact of which AB must have been aware.

any brewer, whether located in-state or out-of-state, from holding a distributor's license or an importing distributor's license. To the extent that the Court concludes that there is an ambiguity, it should be guided by the doctrine of constitutional avoidance and by the rule of construction to the effect that the Act must be construed as a whole so as to avoid an interpretation that renders portions of the Act meaningless. *See, Country of DuPage v. Illinois Labor Relations Bd.*, 334 Ill. Dec. 151, 916 NE.2d 566 (App. Ct. 2d Dis. 2009). Reading the Act as ABDI submits removes any constitutional issue, preserves Illinois' orderly, accountable, and stable regulatory system, and gives effect to all provisions of the Act. AB's reading, on the other hand, raises a serious constitutional issue and threatens the integrity and efficacy of state regulation.

**3. The challenged Illinois statutes do not embody facial discrimination within the ambit of the *Granholm* decision.**

The Supreme Court has consistently held that "state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'" *Granholm v. Heald*, 544 U.S. 460, 473 (2005) (quoting, in part, *Oregon Waste Sys., Inc. v. Dep't of Env'tl. Quality of Ore*, 511 U.S. 269, 274 (1994) (emphasis added). In recognition that more than just theoretical discrimination was required, the *Granholm* court switched interchangeably from discussing discrimination against out-of-state "producers" to discrimination against out-of-state "products." Indeed, the two terms often appear in adjacent sentences: "State policies are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent. The instant cases, in contrast, involve straightforward attempts to discriminate in favor of local producers." *Granholm* at 489. They even appear in the same sentence: "This power, [the broad power of states to regulate alcohol], however, does not allow states to ban, or severely limit the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state

producers.” *Id.* at 493 (also quoted at page 9 of AB’s brief).

Furthermore, the *Granholm* court wrote at length about the significant discriminatory effect caused by the challenged laws on the importation of products from small wineries, such as the Plaintiffs in the joined cases. “The increasing winery-to-wholesaler ratio means that many small wineries do not produce enough wine or have insufficient consumer demand for their wine to make it economical for wholesalers to carry their products.” 544 U.S. at 467 (citing an FTC Report). The court noted that “many small wineries relied on direct shipping to consumers to reach the market.” *Id.* at 468. Under these circumstances, it was obvious that outside product in aggregate was detrimentally affected to the benefit of in-state producers and it was also noted that a number of out-of-state producers were barred from the in-state market or found their access to be severely limited.<sup>6</sup>

Such a showing has not been and cannot be made here. Obviously, Illinois law has not imposed an embargo – the quintessential dormant Commerce Clause violation – on the importation of out-of-state beer generally and of AB beer specifically. Nor has Illinois imposed the equivalent of a tariff – another clear violation of the dormant commerce clause – because the challenged law in no way reduces the competitiveness of AB products in the marketplace. While AB believes that vertical integration will enhance its profits, that is not the goal of Illinois liquor regulation, nor does it trigger a dormant commerce clause violation. As held by the Supreme Court, the dormant commerce clause protects interstate trade and not the profit-maximizing strategy of a particular business. *See, Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127

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<sup>6</sup> In *Costco v. Hoen*, 407 F.Supp. 2d 1247 (W.D. 2005), a case in which the district court rejected state laws permitting in-state wineries in one of the country’s largest wine-producing states, Washington, to self-distribute while prohibiting out-of-state ones from doing so, the Court noted that a number of out-of-state producers found their access to the Washington market to be severely limited. *Id.* at 1251.

(1978).

There is no evidence of any out-of-state brewer being barred from the market or being severely limited in its access to the market. In particular, AB's access to the market is in no way impaired. Indeed, this claim of "discrimination" is being asserted by the largest brewer in the world, in the United States, and in the State of Illinois. That two tiny Illinois breweries apparently – and without clear statutory authority to do so – self-distribute to an infinitesimal number of retail accounts hardly amounts to a "benefit" to in-state producers that constitutes a "burden" to global giant AB.

**4. Assuming arguendo that Illinois law is found to be unconstitutionally discriminatory, the appropriate remedy is to deny all brewers the right to distribute rather than permit all brewers to do so.**

Two provisions of the Illinois Liquor Control Act are relevant to the issue of remedy.

First, 235 ILCS 5/11-1 states as follows:

The articles, provisions and sections of this Act shall be deemed to be separable and the invalidity of any portion of this Act shall not affect the validity of the remainder.

Second, 235 ILCS 5/1-2 states as follows:

This Act shall be liberally construed, to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors.

Together, these sections require the Court to effectuate a remedy that best preserves the remainder of the Act, best protects the health, safety and welfare of the People of Illinois, best fosters temperance within the State, and best promotes "good and careful control and regulation of the manufacture, sale and distribution of alcoholic liquors." The only remedy that accomplishes these goals is nullification, i.e. denying all breweries the right to own distributors,

thereby preserving the regulatory benefits of the three-tier system, rather than permitting all brewers to vertically integrate by owning distributors.

When faced with an identical issue, other courts have wisely chosen to tighten, rather than relax, state liquor regulations. For instance, in *Beskind v. Easley*, 325 F.3d 506 (4th Cir. 2003), the Fourth Circuit concluded that North Carolina laws that permitted in-state wineries to ship direct to consumers but prohibited out-of-state wineries from doing so violated the dormant Commerce Clause. The *Beskind* court remedied the constitutional defect by prohibiting all wineries from selling directly to North Carolina consumers noting:

Finally, we can accept a presumption that North Carolina would want to uphold and preserve all of its ABC laws against constitutional challenges. Accordingly, when presented with the need to strike down one or more of those laws as unconstitutional, we can assume that North Carolina would wish us to take the course that least destroys the regulatory scheme that it has put into place pursuant to its powers under the Twenty-first Amendment. *See North Dakota*, 495 U.S. at 433, 100 S.Ct. 1986 (plurality opinion) (“Given the special protection afforded to state liquor control policies by the Twenty-first Amendment, they are supported by a strong presumption of validity and should not be set aside lightly”). And as a matter of comity and harmony, we are duly bound to give effect to such a policy, disturbing only as much of the State regulatory scheme as is necessary to enforce the U.S. Constitution. When applying this “minimum-damage” approach, we have little difficulty in concluding that it causes less disruption to North Carolina’s ABC laws to strike the single provision-added in 1981 and creating the local preference-as unconstitutional and thereby leave in place the three-tiered regulatory scheme that North Carolina has employed since 1937 and has given every indication that it wants to continue to employ.

*Id.* at 519; *See, e.g., McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 39-40 (1990) (discussing remedy options for an unconstitutional tax law); *Costco v. Hoen*, 407 F.Supp. 2d 1247 (W.D. Wash. 2005) (prohibiting in-state wineries from shipping direct to Washington consumers but staying entry of judgment until close of legislative session).

ABDI urges the Court to adopt a similar remedy if it concludes that Illinois law facially discriminates against out-of-state brewers without justification. Specifically, if all brewers are

denied the right to hold a distributor's license or self-distribute, the legislative intent embodied in 235 ILCS 5/1-2 is effectuated, the least intrusive remedy to Illinois' liquor regulatory scheme is chosen, and the primary goal of the "unquestionably legitimate"<sup>7</sup> three-tier system is preserved, namely the prevention of vertical integration within the liquor industry. Only two microbreweries that self-distribute to an infinitesimal number of retailers are impacted. On the other hand, this remedy would preclude the world's largest brewer, with a stated goal of driving one-half of its United States sales through brewery-owned branches, from vertically integrating the industry, thereby nullifying Illinois' efforts to sharpen its regulatory focus by emphasizing and protecting three-tier independence.

### **CONCLUSION**

For the foregoing reasons, ABDI joins the Illinois' Defendants in urging the Court to deny Plaintiffs' Summary Judgment motion in all respects.

Respectfully Submitted,

Dated: May 14, 2010

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<sup>7</sup> "We have previously recognized that the three-tier system itself is 'unquestionably legitimate.'" *Granholm*, 544 U.S. at 489 (quoting in part *North Dakota v. United States*, 495 U.S. 423, 432 (1986)).

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## ATTACHMENT 1

# Trade Practice Policies

These policies were subject to numerous comment periods and meetings with the industry and their representatives, as well as verbal and written comments and observations. Some of the suggestions received by the Commission were incorporated into the revision; others had to be rejected as contrary to the provisions of the Liquor Control Act; and others are still being reviewed for possible addition at a later date.

All comments, which were submitted to the Commission, have been reviewed and acted upon in one fashion or another. It should be understood generally that these revised policies express the Commission's best decision on questions presented to it, given the facts and circumstances involved and the state of prevailing law.

It should further be understood that ALL policies will remain under continuous review to better develop revisions responsive to new and changing circumstances.

TPP-1 "Of Value" Standards	TPP-21 ( <i>Reserved</i> )
TPP-2 Specific Items or Activities which have been reviewed by the Commission for "of value" violations	TPP-22 Happy Hour Law
TPP-3 Manufacturer, Non-Resident Dealer, Distributor, Importing Distributor and Foreign Importer sponsorship of events at Retail Premises	TPP-23 Transportation and Delivery of Alcohol
TPP-4 Donations of Product and Services to Organizations	TPP-24 ( <i>Reserved</i> )
TPP-5 Retailer Payments to Distributors, Importing Distributors and Foreign Importers	TPP-25 Stocking, Rotating and Re-Setting of Products
TPP-6 Cooperative Purchasing Agreements	TPP-26 Transfer of Alcohol
TPP-7 Point of Sale Materials - Manufacturer to Distributor	TPP-27 Special Event Retailer (Not-For-Profit) License
TPP-8 ( <i>Reserved</i> )	TPP-28 Employment/Ownership Arrangements between Classes of Licensees
TPP-9 Signage and other Advertising Materials	TPP-29 Retailers Making Excessive Purchases
TPP-10 Signage Dollar Limits (1997 to present)	TPP-30 Salvaged Alcoholic Liquors
TPP-11 Consumer Coupons and Rebates	TPP-31 Electronic Data Interchanges and Fund Transfers
TPP-12 Hotel/Motel Mini Bars	TPP-32 Breakage: Replacement of Damaged or Defective Product
TPP-13 Riverboat Gaming Operations	TPP-33 Brew on Premises
TPP-14 Standards for Approval of Test Marketing, Tastings and Product Sampling	TPP-34 Indirect Payments through Third Party Arrangements
TPP-15 Geographic Territories	TPP-35 Original Package: Refilling
TPP-16 Deposits on Bottles and Barrels for Beer	TPP-36 Consignment Sales
TPP-17 Non-Alcoholic Products	TPP-37 Importation of Alcohol into Illinois
TPP-18 Pre-Mixing of Alcoholic Products	TPP-38 Distributor Warehousing
TPP-19 Auction of Liquor	TPP-39 Multi-tier licensing arrangements
TPP-20 Brew Pubs	TPP-40 Introduction of new spirits producer
	TPP-41 Administrative Review Process (ARP) (New April 2003)

## TPP-1 “Of Value” Standards (“Tied House”)

### I. Purpose

To set the procedures of the Illinois Liquor Control Commission whereby the term “of value” (also referred to as “tied house”) shall be defined, and to determine what constitutes items “of value,” and not “of value,” under the Illinois Liquor Control Act, Rules and Regulations of the Commission, case authority, and prior interpretive opinions.

### II. Policy Statement

It is the policy of this Commission to enforce the provisions of the Liquor Control Act in relation to prohibiting manufacturers, distributors and importing distributors from giving anything “of value” to retailers, and simultaneously prohibiting retailers from accepting anything “of value” from manufacturers, distributors and importing distributors, unless such transactions are specifically allowable pursuant to Illinois Statute, Rule, Regulation, case law, or Trade Practice of this Commission.

### III. Precedent

#### A. Statutory History

The term “of value” originates in the Federal Tied House Laws (Federal Alcohol Administrative Act (FAAA), 27 U.S.C. 205 (a), (b) and (c)), which sections respectively refer to “Exclusive outlet,” “Tied house” and “Commercial bribery.” By granting gifts and loaning money to retailers, manufacturers, distributors and importing distributors had effectively “tied” themselves to retailers to the point of excluding competitors. This form of vertical integration between manufacturers, distributors and retailers allowed the distributors to exercise virtual control over the retailers. The federal Tied House Laws prohibited manufacturers and distributors from giving equipment, fixtures, signs, supplies, money, services, or other things “of value” to retailers. The federal Tied House Laws also prohibited manufacturers and distributors from inducing retailers to purchase alcoholic products from them only, to the exclusion of other suppliers. The Congressional objective sought by passage of the federal Tied House Laws, was the prevention of this wholesaler control of retailers. The concern was that the buying decisions of the retailers were in actuality being made by the wholesalers, or by retailers too strongly influenced by the wholesalers, so that no independent business decision was being made. Congress also intended that the Act would promote a competitive alcohol market. The underlying premise being a genuinely competitive market led to lower prices, and lower prices removed the incentives for the creation of a black market. This federal law was implemented by rules, found at 27 CFR 1, et seq., as well as Trade Practice Regulations.

The Illinois General Assembly enacted its own “tied house” provisions in 1934, with the enactment of Laws 1933-34, 2nd. Sp. Sess., p. 57, art. VI, subsec. 4; subsequently Ill. Rev. Stat., ch. 43, par. 122 and 123; now known as 235 ILCS 5/6-5 and 5/6-6. These statutes have been interpreted in single subject opinion letters and most recently by these Trade Practice Policies. Also directly related to this “tied house” concept, Sec. 5/6-4 of the Illinois Compiled Statutes deals with prohibited “Retail Sales by Distillers, Manufacturers, Subsidiaries or Affiliates -Prohibited Transactions and Interests - Exemptions,” which is dealt with elsewhere in these policies.

235 ILCS 5/6-5 states, in summary, that no retail licensee may accept, receive or borrow money, or anything else of value, or accept or receive credit for greater than 30 days, directly or indirectly, from any distributor or manufacturer. And, no distributor or manufacturer may give or lend money or anything of value, or

extend credit for greater than 30 days, directly or indirectly, to any retail licensee.

235 ILCS 5/6-6 states that no manufacturer or distributor shall, directly or indirectly:

- 1) sell, supply, furnish, give, pay for, or loan or lease any furnishing, fixture or equipment to a retail licensee;
- 2) pay for or advance, furnish, lend or give money to a licensee for payment of a license;
- 3) purchase or become owner of a note, mortgage or other indebtedness of a retail licensee;
- 4) be interested in the ownership, conduct or operation of a retail licensee;
- 5) be interested as the owner of a premises upon which a retail licensee is operating.

235 ILCS 5/6-6 does, however, allow manufacturers, distributors and importing distributors to supply retailers with designated types of signage and advertising materials, all such items being subject to additional statutorily prescribed dollar limitations.

[Note: Always consult the most recent version of these statutory provisions when examining individual transactions against the “of value” standard.]

#### B. Relationship Between Federal Laws and Regulations and Illinois Law and Regulations

Although the Tied House provisions were developed at the Federal level, the 21st Amendment to the U.S. Constitution granted each State the right to self-determination in regard to the transportation, importation and possession of intoxicating liquors. Therefore, Illinois statutory and regulatory provisions will generally override Federal law and regulation, especially in situations in which strictly intrastate transactions are involved. Where, however, there is no specific Illinois statutory or regulatory guidance regarding a specific issue in the area of “of value” transactions, this Commission will look to Federal law and regulation as a guide in interpreting Trade Practices under which Illinois licensees shall operate.

#### C. Commission discretion in determining trade practices under which Illinois licensees shall operate

Federal and State case laws clearly demonstrate that this Commission’s exercise of its “reasonable discretion” will be given “wide latitude” in its interpretation of the statutes and regulations which it is responsible to enforce. Courts give “substantial weight and deference” to interpretations of this Commission. Precedent indicates that this Commission will be granted such deference because of its considerable experience and expertise in administering and enforcing provisions of the Illinois Liquor Control Act. Case law indicates that courts will reverse decisions of this Commission only in the event the decision is “arbitrary and capricious” or if the sanction imposed is “overly harsh.”

#### D. Concept of “exclusion” of retail licensees as it applies to the “of value” provisions

*Case Law* In *National Distributing Co. v. United States Treasury Department*, 626 F.2d 997 (D.C. Cir., 1980), the Court of Appeals ruled that selling alcoholic product below cost was not something “of value” under the FAAA. Tied House provisions did not prohibit suppliers from cutting prices, even selling below cost, “so long as the price cut [was] not connected with an agreement or understanding to purchase products from one wholesaler to the exclusion of others.” The primary purpose of the “Tied House” sections of the FAAA was the prevention of a form of vertical

integration whereby wholesalers or producers might gain effective control of ostensibly independent retail outlets. Thus, price cuts did not violate the FAAA unless they were accompanied by an agreement or understanding to exclude other suppliers' wares, or by some reasonable prospect of domination or control of a retail outlet by the supplier.

The operative term in this analysis was "exclusion." While a change in purchasing habits of any retailer may certainly have the effect of "exclusion" without the proof of an agreement to exclude, the practice of selling below cost was found not to be a violation.

In **Sharpenter v. Illinois Liquor Control Commission**, 119 Ill.2d 169, 518 N.E.2d 128 (1988) the Illinois Supreme Court ruled that suppliers allowing differential price discounts between on-premises and off-premises retail establishments did not violate the "of value" provisions of 235 ILCS 5/6-5, if such discounts were not established to create a tied house, but only to increase the volume of alcohol sales. "Price cuts are prohibited by the Act only when they are coupled with an agreement or understanding that a retailer will buy other products of the wholesaler or producer to the exclusion of competitors, or when they lead to domination and control of a retail outlet by the wholesaler or producer." The Court held that Section 5/6-5 was not violated where the producer maintained such a preferential discount pricing policy only for the purpose of increasing the volume of sales. Please note that the term "exclusion" does not appear in the Illinois "of value" statutory provisions, so the Supreme Court heavily relied upon cases construing the federal standard of "exclusion."

In **Foremost Sales Promotions, Inc. v. Director, Bureau of Alcohol, Tobacco, and Firearms**, 880 F.2d 229 (7th Cir., 1988), the Seventh Circuit held that it was not a violation of the "of value" provisions of the FAAA for a wholesaler to advertise in a promotional newspaper distributed by a retail liquor chain. The Court believed that "inducing" a retailer to deal with a particular supplier, "to the exclusion in whole or part" of that supplier's competitors, as that language is used in the FAAA, must be construed to incorporate some threshold requirement. The Court found that transactions between suppliers and retailers did not induce the "exclusion in whole or part" of competing suppliers unless their purpose was to lead to supplier control over ostensibly independent purchasers. The "exclusion" did not occur merely because an inducement ultimately led to a participating retailer buying less of a competing product. Again, this case appears to have been decided as it was due to a lack of proof of any "bad intent" on the part of the wholesaler.

And finally, in **Fedway Associates, Inc. et al v. United States Treasury, Bureau of Alcohol, Tobacco and Firearms**, 976 F.2d 1416 (D.C.Cir., 1992), the Circuit Court of Appeals ruled that a distributor's promotion of giving away videos and televisions to retailers purchasing large quantities of its brands of liquor was allowable. The Court decided that the FAAA did not prohibit a distributor from giving such items to retailers as inducements to purchase quantities of the distributor's alcohol. The "exclusion" criterion had to give due credence to the significance of competitive wholesale promotions. Such promotional practices not only fostered the traditional benefits of competition in terms of lower prices and improved product quality, but also supported a competitive alcohol market thereby helping to deter the formation of a black market. Again, this case stands for the proposition that a violation of any of the federal "tied house" standards must be proven. This Court specifically noted that the BATF in zealously attempting to control inter-tier relationships neglected to actually

prove its case with competent evidence.

### **Federal Regulations**

In April 1995 the Bureau of Alcohol, Tobacco and Firearms (BATF) modified its "tied house" regulations. In making such revision, the BATF utilized the criterion promulgated under the Fedway decision to set the standard under which the "exclusion" of retail licensees would be found to exist. "Exclusion" was defined under a two-prong test of whether:

- (1) "a practice by a manufacturer or distributor, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the manufacturer or distributor and the retailer or by any means of manufacturer or distributor control over the retailer;" and,
  - (2) "the practice results in the retailer purchasing less than it would have of a competitor's product."
- (27 CFR, Subchapter A, Subpart E, Section 6.151(a)(1) & (2))

In determining whether "exclusion" has occurred, the regulatory body must determine whether:

- (a) the practice restricts or hampers the free economic choice of the retailer in deciding which products to purchase or the quantities in which to purchase same for resale;
  - (b) the manufacturer or distributor obligates the retailer to participate in the promotion to obtain the industry member's product;
  - (c) the retailer has a continuing obligation to purchase or otherwise promote the product of the manufacturer or distributor;
  - (d) the retailer has a commitment not to terminate its relationship with the manufacturer or distributor with respect to purchase of the manufacturer or distributor's products;
  - (e) the practice involves the industry manufacturer or distributor in the day-to-day operations of the retailer;
  - (f) the practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment
- (27 CFR, Subchapter A, Subpart E, Section 6.153)

## **IV. Procedures**

### **A. This Commission possesses broad discretion in making "of value" determinations**

Under both Federal and Illinois case law, this Commission possesses reasonable discretion and wide latitude in determining whether activities of licensees violate the "of value" provisions of the Illinois Liquor Control Act.

### **B. Absent specific Illinois statutory or regulatory language, this Commission will look to Federal law and regulation for guidance in making determinations regarding "of value" violations**

If there is an Illinois statute or regulation specifically determining whether a trade practice violates, or is allowed under, the "of value" provisions of the Illinois Liquor Control Act, this Commission enforces such provision as written. However, where the Illinois statutes and regulations are silent regarding a particular trade practice, this Commission will review federal law and regulation for guidance in making determinations whether a particular trade practice is a violation of the "of value" provisions of the Illinois Liquor Control Act.

### **C. Products and Services Presumed To Be "Of Value"**

Unless specifically enumerated as being allowable under the Illinois Liquor Control Act, the Rules and Regulations of this Commission, or Trade Practice enunciated by this Commission, products and

services provided by manufacturers, distributors and importing distributors to retailers, as well as such products and services being asked for or received by the retailer, shall be presumed to be “of value” and in violation of the Illinois Liquor Control Act. This Commission recognizes that there may be specific situations in which trade practices which provide something of value to retailers may nonetheless be allowable, and such practices shall be reviewed on a case-by-case basis. Practices which have not received prior determination as being allowable shall be presumed to be “of value,” and in violation. The Commission is attempting to expeditiously update this policy as such case-by-case determinations are made. [See TPP-2 for specific practices upon which the Commission has made determinations whether the practices violated state “tied house” provisions.]

#### **D. Trade Practices May Not Be Discriminatory**

Manufacturers, distributors and importing distributors cannot enter into transactions with retailers, or a class of retailers, which are discriminatory in favor of such retailers, or which allow a particular retailer, or class of retailers, a competitive advantage. However, this Commission recognizes the holding of the Sharpenter case which allowed quantity discount price differentials between on-premises and off-premises retailers, so long as such promotions did not lead to the exclusion of competitors and domination and control over retailers. This Commission will enforce the proposition that promotions which induce exclusion of products in whole or in part are not to be entered into.

#### **TPP-2 Specific Items Or Activities Which Have Been Reviewed By The Commission For “Of Value” Violations**

- 1) The following listing captures a large number of trade practices issues which have been submitted to the Commission for determination.

##### **“Consumer Specialties”**

Items commonly referred to as “consumer specialties” such as, for example, hats, t-shirts, jackets, sweat shirts, mugs, steins, key chains, sunglasses, lighters and the like, which are intended to be given to and received by the consumer, shall be distributed in person by the manufacturer, distributor, importing distributor or foreign importer licensee or by an employee of the manufacturer, non-resident dealer, distributor, importing distributor or foreign importer licensee so as to verify that the items are being received by the consumer.

Generally, a manufacturer, non-resident dealer, distributor, or importing distributor or foreign importer may not provide free items to a retailer, if such items inure to the benefit of the retailer, as such items would be considered something “of value”. A retailer may purchase consumer advertising specialties from a manufacturer, distributor or importing distributor. If the retailer pays for the consumer advertising specialties, such items may be retailer specific.

Consumer advertising specialties may be provided for free to a retailer if the retailer gives such items away to the ultimate consumer. If the retailer does not pay for the consumer advertising specialties, then such items may be brand or promotion specific only, but may not be retailer specific.

#### **2) Courtesy Wagons**

##### **Retail Licensees**

Pursuant to Reg. Sec. 100.210, a distributor or manufacturer may provide a courtesy wagon or coil boxes and pumps, free of charge,

one time per year, for a one day period, for picnics held by a retailer. The manufacturer or distributor, however, may not supply free beer, wine or spirits for such event. If the event is held off the retail licensee’s premise, the retail licensee must first obtain a special use permit pursuant to 235 ILCS 5/5-1(q).

##### **Special Event Retailers**

Pursuant to Trade Practice Policy TPP-4, a manufacturer or distributor may not supply product directly to a special event retailer licensee. Pursuant to 235 ILCS 5/1-3.17.1 a Special Event Retailer is an educational, fraternal, political, civic, religious or non-profit organization which sells or offers for sale beer or wine, or both, only for consumption at the location and on the date(s) designated on a special event retail license. Such organization must obtain a Special Event Retailer’s License pursuant to 235 ILCS 5/5-1(e). In addition, a manufacturer or distributor may supply, free of charge, coil boxes and pumps, to any special event licensee. Such services are not considered something “of value” under 235 ILCS 5/6-5 and 5/6-6.

#### **3) Meal and Entertainment Expenses**

Distributors, importing distributors and manufacturers may incur reasonable expenses related to meals and entertainment with retailers. This Commission considers reasonable business meal and entertainment expenses as a standard business practice and conduct not in violation of the intent of the “of value” provisions of 235 ILCS 5/6-5 or 5/6-6. The practice of paying for a retailer’s meal or entertainment expenses will be permitted so long as the inducement does not result in full or partial exclusion of products sold by other industry members. A manufacturer distributor or importing distributor may incur these expenses so long as it does not provide such meals and entertainment repeatedly to one retailer or a group of retailers, does not exclude other Illinois retailers, and does not violate the purpose or spirit of the federal Tied House Laws.

#### **4) Participation in Retail Association Activities**

This Commission shall allow distributors or manufacturers to participate in the following retail association activities:

- a) Display of their products at a convention or trade show;
- b) Rent display booth space, if the rental fee is not excessive and is the same as paid by all exhibitors;
- c) Provide hospitality, where it is done as a separate activity or in conjunction with a banquet or dinner;
- d) Purchase tickets to functions and pay registration fees, if the fees paid are not excessive and are the same as paid by all exhibitors;
- e) Make payments for advertisements in programs or brochures issued by a retailer or association at a convention or trade show, if the total payment for all such advertisements do not exceed \$300 per year for any retail association.

#### **5) Retailers Charging for Floor or Shelf Space**

The practice of a retailer charging a distributor or manufacturer for the floor or shelf space upon which its alcoholic beverage products sit is a violation of 235 ILCS 5/6-5 which forbids a retailer from accepting anything “of value” directly or indirectly from any manufacturer or distributor. Likewise, 5/6-5 prohibits any manufacturer or distributor from giving anything “of value” directly or indirectly to any retailer. Thus, both the payment for floor or shelf space and the receipt of such payment are violations of the statute by both the retailer and the supplier.

This Commission will investigate practices in which payment of space for non-alcoholic products is used to ensure placement of alcoholic products in a retailer’s premise. In addition, this Commission will consider it to be a violation by both the supplier and

retailer if a third-party promotion company is used to pass payment for prominent floor or shelf space from the supplier to the retailer. This Commission believes that an allowance for payment for floor and shelf space would result in "bidding wars" between suppliers, thereby resulting in the discriminatory exclusion of brands in retailer outlets.

**6) Assisting in Pricing and Providing Products To Retailers**  
Pursuant to 235 ILCS 5/6-5, manufacturers, distributors and importing distributors may not provide anything "of value" to a retailer, which includes services provided to a retailer. It is a violation for distributors and manufacturers to perform functions which are usually performed by the retailer in the normal operations of its business. Allowing manufacturers, distributors and importing distributors to perform such functions would be equivalent to the distributors or manufacturers performing employee functions for the retailer, and therefore will not be allowed. This Commission will review the such "services" provided to retailers on a case-by-case basis.

Manufacturers, distributors and importing distributors shall not affix prices to product on behalf of retailers. This prohibition maintains the historic division between manufacturers, distributors and retailers relative to the determination of prices of alcoholic liquor at the retail level. Additionally, this prohibition will avoid even the appearance of any attempt by manufacturers, distributors and importing distributors to obtain control over the operations of retailers. Pricing of product shall include distributors or manufacturers affixing price stickers directly to product or entering prices into retailer computer systems.

Manufacturers, distributors and importing distributors may however after stocking a shelf affix "shelf tags" which identify the product and price of the product; however, at no time shall a manufacturer, distributor or importing distributor delegate or contract this service to a third party. "Shelf tags" shall be considered advertising materials and are subject to the provisions of Section 6-6 of the Liquor Control Act. Therefore, manufacturer shall not directly or indirectly require the distributor or importing distributor to purchase "shelf tags" or directly or indirectly require the distributor or importing distributor to purchase any advertising materials from the manufacturer or the manufacturer's designated supplier. If the stocking involves movement and a change in the placement of the product on the shelf, the "shelf tags" may be moved to the new position of the product.

#### **7) "No Charge" Products**

Recently agents of the Commission have been finding invoices upon retailer premises which appear to be evidence of providing products without payment. These invoice items are usually designated as "N/C." As you know, Sec. 5/6-5 prohibits manufacturers, distributors and importing distributors from giving and retailers from receiving items "of value" within the meaning of the statute. Rule 100.280 provides that no licensee, shall give away any alcoholic liquor for commercial purposes.

The Commission agents regularly report to the Legal staff marketing practices upon which they observe during regular licensee inspections. Frequently the agents are given the explanation by the retailer and distributor that "this is the way business has always been done," however, Commission agents can only examine whatever documents are available at the retailer's premises when they perform their inspections and base their observations on those documents. If the distributor has advertised price promotions directly to its clients, or the price is based upon oral representations

by the distributor's sales personnel, etc., there is no information upon which an agent could come to the conclusion that the "N/C" alcohol represents a product-based price reduction. It is suggested that the confusion created in the minds of our agents is created by bare identifier "N/C" alcohol.

The Commission also understands that distributors usually assign an internal code number to each invoice item reflecting "no charge" merchandise, but such internal coding, without explanation of same to the agent is meaningless. The addition of a legend of "N/C" with a numeric identifier also provides no more information to the agents than does the bare reference to "N/C" alcohol. A legend, such as, for example, "product in lieu of price reduction," or words to that effect, would more properly allow the Commission's agents to prepare reports of their findings after reviewing invoices and other documents, upon which reports the Legal Staff could come to reasoned decisions concerning a particular promotion.

It may turn out that the product is being given "no charge" for a valid reason, i.e. replacement of product broken upon delivery, a product in lieu of a reduction in price, etc.; however, it is incumbent upon the retailer and distributor to advise the agent of the reason for the apparent delivery of product without charge.

#### **8) Retailer Warehousing**

It is the policy of the Commission that a retailer may not warehouse alcohol on unlicensed business premises.

The following statutory provisions have application to the question of whether retailers are permitted to warehouse products.

##### **A. Definitions**

#### **5/1-3.15. Distributor**

"Distributor" means any person, other than a manufacturer or non-resident dealer licensed under this Act, who is engaged in this State in purchasing, storing, possessing or warehousing any alcoholic liquors for resale or reselling at wholesale, whether within or without this State. (Source: P.A. 83-1254) (from Ch. 43, par. 95.15)

#### **5/1-3.17. Retailer**

"Retailer" means a person who sells, or offers for sale, alcoholic liquor for use or consumption and not for resale in any form. (Source: P.A. 82-783) (from Ch. 43, par. 95.17)

#### **5/5-1**

(d) A retailer's license shall allow the licensee to sell and offer for sale at retail, only in the premises specified in such license, alcoholic liquor for use or consumption, but not for resale in any form: Provided that any retail license issued to a manufacturer shall only permit such manufacturer to sell beer at retail on the premises actually occupied by such manufacturer.

After January 1, 1995, there shall be 2 classes of licenses issued under a retailers license:

- (1) "retailers on premise consumption license" shall allow the licensee to sell and offer for sale at retail, only on the premises specified in the license, alcoholic liquor for use or consumption on the premises or on and off the premises, but not for resale in any form.
- (2) An "off premise sale license" shall allow the licensee to sell, or offer for sale at retail, alcoholic liquor intended only for off premise consumption and not for resale in any form. Notwithstanding any other provision of this subsection (d), a retail licensee may sell alcoholic liquors to a special event retailer

licensee for resale to the extent permitted under subsection (e).

### **5/5-1. Licenses issued by Illinois Liquor Control Commission**

(b) A distributor's license shall allow the wholesale purchase and storage of alcoholic liquors and sale of alcoholic liquors to licensees in this State and to persons without the State, as may be permitted by law.

### **5/7A-1. Terms Defined**

For the purposes of this Article:

"Warehouse" means any room, house, structure, building, place, yard or protected enclosure wherein personal property belonging to another is stored for compensation.

"Warehouseman" means any person, firm, partnership, association or corporation owning, controlling, operating, managing or leasing any warehouse within this State. "For compensation" means any direct or indirect charge for storage. (Source: P.A. 82-783) (from Ch. 43, par. 157a)

### **5/7-A6. Violations**

Any person who violates any of the provisions of this Article or any of the rules and regulations of the Department[of Revenue] for the administration and enforcement of the provisions of this Article is guilty of a Class B misdemeanor. In case of a continuing violation each day's continuance thereof shall be a separate and distinct offense. (Source: P.A. 82-783) (from Ch. 43, par. 157f)

### **5/2.1 Scope of Act**

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this Act, . . ." The usual reason for warehousing by a retailer is to take advantage of volume discounts at the time of purchasing.

#### **5/2.1 Scope of Act**

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for Beverage purposes, except as specifically provided in this Act.

The contrary position, which is being espoused by the proponents of retailer warehousing, is that since the activity of "warehousing" is not a specifically prohibited activity of a retailer, it is allowed. This argument flies in the face of Sec. 5/2.1 above. This also flies in the face of the concept of returning control over the alcohol trade to the States by the adoption of the 21st Amendment. Since the 18th Amendment essentially made the alcohol business illegal and the 21<sup>st</sup> Amendment by repealing the 18th made the trade legal, and since the States were given the power to control the activity, the statutes which were enacted subsequent thereto, such as the Illinois Liquor Control Act, were making previously illegal activities legitimate.

To say that the enabling statute allows any activity not specifically prohibited does not comport with the "except as specifically provided in this Act, . . ." language. **People v. Select Specialties, Ltd.**, 317 Ill.App.3d 538, 740 N.E.2d 543, 251 Ill.Dec. 462 (4<sup>th</sup> District, 12/6/00)

The Act provides as follows:

"No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specially provided in this Act \*\*\*." 235 ILCS 5/2-1 (West 1996).

The cardinal rule in statutory construction is to give effect to legislative intent. **Solich v. George & Anna Portes Cancer**

**Prevention Center of Chicago, Inc.**, 158 Ill. 2d 76, 81, 630 N.E.2d 820, 822 (1994); **Central Illinois Public Service Co. v. Illinois Commerce Comm'n**, 268 Ill. App. 3d 471, 483, 644 N.E.2d 817, 825-26 (1994). The primary guide as to intent is the language of the statute. **Solich**, 158 Ill. 2d at 81, 630 N.E.2d at 822. Words in the statute should be given their popularly understood meaning. **International Bureau of Fraud Control, Ltd. v. Clayton**, 188 Ill. App. 3d 703, 710, 544 N.E.2d 416, 421 (1989), citing **Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund**, 95 Ill. 2d 211, 215, 447 N.E.2d 394, 396 (1983). Where the statutory language is unclear, a court may look beyond it, but where it is clear the court must give it effect. **Solich**, 158 Ill. 2d at 81, 630 N.E.2d at 822. When the language is unclear, a primary source for construing the statute is the purpose behind the law and the evils the law is designed to remedy. **Solich**, 158 Ill. 2d at 81, 630 N.E.2d at 822. Courts avoid interpretations that would render part of a statute meaningless or void. **Fraud Control**, 188 Ill. App. 3d at 710, 544 N.E.2d at 421, citing **Harris v. Manor Healthcare Corp.**, 111 Ill. 2d 350, 362-63, 489 N.E.2d 1374, 1379 (1986).

The Act is to be liberally construed toward protecting the public health, safety, and welfare and toward promotion of temperance in the consumption of alcohol by careful control and regulation of the manufacture, sale, and distribution of alcoholic liquor. 235 ILCS 5/1-2 (West 1996).

A strict or technical construction of any of its provisions detrimental to the public interest should be avoided. **Carrigan v. Liquor Control Comm'n**, 19 Ill. 2d 230, 236, 166 N.E.2d 574, 577-78 (1960). The business of selling liquor is not favored; no inherent right exists to carry it on and it may be entirely prohibited. **Daley v. Berzanskis**, 47 Ill. 2d 395, 398, 269 N.E.2d 716, 718 (1971). If the Act is to have any meaning, it must be interpreted as starting from a point of prohibition. The Act then provides exceptions where persons may conduct certain activities involving alcohol as long as they have a valid liquor license. 235 ILCS 5/2-1, 5-1 (West 1996). "The State argues the Act prohibits what it does not permit. The Act must expressly permit the actions of the defendants in this case or they are in violation of the Act. There is no express permission for their conduct, and we conclude they violated the Act." **People v. Select Specialties, Ltd.**, 317 Ill.App.3d 538, 740 N.E.2d 543, 251 Ill. Dec. 462 (4<sup>th</sup> District, 12/6/00)

### **9) "Buckets"**

The practice of distributors "providing" plastic buckets to retailers, which are used in serving multiple bottles of beer to a proper party, in accordance with Sec. 6-28(c)(6) of the Happy Hour law, is governed by the normal "of value" inquiry as well as reference to Sec. 6-6(iv), which provides that items, such as for example, "coasters, trays, napkins, glassware and cups shall not be deemed to be inside signs or advertising materials and may only be sold to retailers." Since these buckets fall within the general category of non-sign, non-advertising materials above, they may only be sold to retailers.

### **10) "Coolers"**

In 1998 a major brewery submitted a request for approval of the giving away of coolers to retailers. The Commission's response was that the proposed activity was a violation of the "of value" provisions of the Liquor Control Act. In 1999 a major trade association requested a position on the same or a very similar activity, and was advised of the existence of the 1998 opinion, which remained in effect until such time as the Commission had revisited the issue and announced a modification of its position.

The term “utilitarian” has been applied to these coolers. Illinois does not have an expressed position on the “utility” of “signage and advertising materials,” but it does expressly state that the providing of “any furnishing, fixture or equipment on the premises of a place of business of another licensee authorized under this Act to sell alcoholic liquor at retail” is prohibited activity.

Since these coolers have the attributes of both signage and a trade fixture (therefore equating them with “utility”), they are something of a hybrid, being neither totally signage nor fixture, but at the same time being both. Since signage and advertising materials may be given or sold to retailers, while fixtures may be neither given nor sold to retailers, the subject of these coolers was viewed with an eye toward allowing the advertising while upholding the prohibition against giving or selling equipment, furnishings and fixtures.

In an attempt to strike a balance between allowable activities and activities absolutely prohibited under 5/6-5 and 5/6-6, the Commission has come to the position that these coolers may be “provided” to retailers, however, they must be sold at fair market value. (The Commission is advised that the average fair market value of these coolers usually ranges from \$70-150.00, however the Commission will be receptive to additional cost information which will be factored into future discussions.)

Again, the Commission notes that once a program of providing coolers is undertaken, the manufacturer, distributor or importing distributor must stand ready to “provide” the items for all retail licensees who want to purchase them.

#### **II) Retailer storage on the licensed premises of wine purchased by a consumer**

The question has been posed whether a retailer of fine wines can store small quantities of wine, which are solely intended for consumption by the purchaser, and family, friends, etc., and not for any possible resale, in a temperature controlled environment, etc., upon the retailer’s licensed premises, for a consumer who has purchased the wine but does not have appropriate storage for it at his/her home.

The usual reasons for storing/warehousing by a retailer, i.e., to take advantage of volume discounts at the time of purchasing, such as we saw when the tax increase took effect on July 1, 1999, does not appear to be relevant to this inquiry. The other usual problems which are created by such warehousing, which include possible deliveries to non-licensed premises; possible sales of alcoholic beverages from such non-licensed premises; possible geographic boundary violations; additional work necessary by Commission agents to track such alcohol, also do not appear to be relevant here. Also, the usual inquiry into such transactions from the “of value” perspective does not apply since this transaction does not involve a relationship between the licensed tiers, but rather between the retail licensee and the ultimate consumer.

The statutory sections which apply to retailers, 5/1-3.17 and 5/5-1(d), and the general “Scope of the Act” section, 5/2-1, have been examined and no prohibition to the approval of this relationship has been found.

It is the Commission’s position, which has been pronounced in connection with the concept of distributor warehousing for retailers, that all “of value” activities between the tiers are prohibited unless specifically allowed, or excepted, and the subject inquiry has also been examined from this perspective to see if the requested activities are otherwise prohibited. We find no such prohibition.

There are potential problems which we may see in this transaction,

which involve the concept of consignment sale, which the Commission has found to be an improper transaction between the retailer and consumer, as well as raising possible commercial problems, such as loss or destruction of the property of another during this “bailment” arrangement. The Commission does not have statutory power to inquire into these commercial problems, and expects the parties to the proposed arrangement will adequately deal with them.

Therefore, as long as:

- (1) the sale of the product is complete before the storage arrangement is undertaken, and capable of objective documentation, which will negate the possibility of a prohibited consignment sale;
- (2) the consumer/purchaser has taken legal title to the property;
- (3) the product purchased is of a size which would be appropriate for a consumer, such as the two case limitation imposed upon reciprocal shipments of wine under sec. 5/6-29 of the Liquor Control Act, as opposed to a purchase of product which would be appropriate for resale; and
- (4) there is a documented payment from the consumer to the retailer for the “storage” fee, pre-paid or at regular intervals, the Commission does not see other prohibitions against the transaction.

**12)** The listing of retail liquor licensees carrying the products of a manufacturer or distributor, importing distributor or foreign importer on the manufacturer’s or distributor, importing distributor or foreign importer’s website.

The Commission has received requests from certain manufacturers and distributor, importing distributor or foreign importers of alcoholic liquors if the listing of the names and addresses of retail liquor licensees carrying the products of a manufacturer or distributor, importing distributor or foreign importer for sale on the manufacturer’s or distributor, importing distributor or foreign importer’s website is a violation of the “of value” provisions of the Liquor Control Act of 1934.

Sections 5/6-4, 5/6-5 and 5/6-6 of the Liquor Control Act, the so-called “of value” or “tied house” provisions generally prohibit ownership/licensing relationships, the extension of credit and the providing of various types of advertising materials unless excepted in the said sections.

It is the Commission’s considered opinion that the listing of the names and addresses of all retail liquor licensees who carry the products for sale of a manufacturer or distributor, importing distributor or foreign importer may be listed on the manufacturer’s and/or distributor, importing distributor or foreign importer’s websites, subject to the following conditions:

- 1) The retailer contacts the manufacturer, distributor or importing distributor or foreign importer to have its business information included in the retailer listing.
- 2) The retailer listing shall include only the business name, business address and telephone number. The inclusion of E-mail or website addresses is prohibited.
- 3) The retailer listing does not provide specific product information, but rather is a general statement that the retailers listed carry the products of the manufacturer or distributor, importing distributor or foreign importer.
- 4) The retailer listing shall include all retail licensees carrying the manufacturer’s or distributor, importing distributor or foreign importer’s products, which listing may be on a city, town or village basis, or zip codes, or by any system which assures that all retailers are listed.
- 5) The listing shall include no retailer information other than referenced in these subsections, and “sales” or “product promotions” or the like are strictly prohibited.

- 6) The inclusion of any and all retailers on the manufacturer's or distributor, importing distributor or foreign importer's website shall be at no direct or indirect cost to the retailer.
- 7) The manufacturer's or distributor, importing distributor or foreign importer's website may provide a "link" to a website of any retail licensee, provided such linking is made available to all retailers requesting it.

The Commission publishes this opinion with the express understanding that the purpose of such retailer listings is to provide truthful, accurate and up-to-date information to the ultimate consumer concerning the availability of alcoholic beverages.

### 13) "EOM", "EOY" etc. credits or rebates

Suppliers are paying EOM ("end of month") EOY ("end of year") or other variously identified credits ("rebates") for purchases at or in excess of agreed upon quantities. Is this an "of value" violation?

Traditionally, the Commission has not involved itself in the pricing of alcoholic beverages, nor has it unduly involved itself in the commercial relationships between manufacturers, distributors and importing distributors, and retailers, other than specifically provided for in Sec. 5/6-5. The use of product credits, such as end of month, quarter, year, etc., credits is viewed as an adjustment of the purchase price based upon volume purchasing, rather than a prohibited "of value" payment. So, the general treatment of such payments is that they are allowable, if broadly offered to similarly situated retailers.

Does the payment of the credit, which would otherwise be allowable, directly to the home office of a chain retailer cause this practice to become a violation? Since the multiple outlets of the chain retailer are all owned by the same corporation, there is a unity of owner and licensees, so payments to the corporation or the individual retail outlet has the same legal effect.

It is the opinion of the Legal Division that this practice is not a violation of Sec. 5/6-5.

### 14) Carbon Dioxide Filters

A Manufacturer, Importing Distributor, or Distributor may sell, supply, furnish, give or pay for, or otherwise provide to and install for a licensee authorized to sell alcoholic beverages at retail, carbon dioxide filters provided that the following applies:

1. The cost to the manufacturer importing distributor or distributor for such filters, including labor and installation costs, does not exceed Fifty Dollars (\$50.00).
2. The filters are installed in such a manner that it protects and cleans the CO<sub>2</sub> supply for all the draft beer in the retailer's delivery system and not just the products carried by the manufacturer, importing distributor or distributor supplying the filter.
3. The filters must be made available to all retailers that sell draft beer.
4. The manufacturer, importing distributor, or distributor may not limit the availability of the filter to only the retailers that carry the brands of the supplying manufacturer, importing distributor or distributor.

It is the determination of the Commission that CO<sub>2</sub> filters may provide consumer protection and aid in providing a safe and healthy product delivered to consumers. Therefore, the Commission has determined that providing such items under the above standards,

would not constitute a "thing of value" or otherwise be prohibited within the meaning of Section 5/6-4, 5/6-5 or 5/6-6, of the Illinois Liquor Control Act (235 ILCS 5/1 et seq.) This Trade Practice Policy shall expire and be repealed on October 1, 2006 unless readopted by the Illinois Liquor Control Commission.

## TPP-3 Manufacturer, Distributor And Importing Distributor Sponsorship Of Events At

### Retail Premises

#### I. Purpose

To set the policy of the Illinois Liquor Control Commission (ILCC) and establish the procedures whereby manufacturers, distributors and importing distributors may sponsor events at retail premises.

#### II. Policy

It is the policy of this Commission that manufacturers, non-resident dealers, distributors, and importing distributors or foreign importers may sponsor events at licensed retail premises under the following terms and conditions.

#### III. Background

Sections 5/6-4, 5/6-5 and 5/6-6 of the Illinois Liquor Control Act (235 ILCS 5/6-4, 5/6-5 & 5/6-6) deal with things "of value" in dealings between manufacturers, non-resident dealers, distributors, and importing distributors, or foreign importers and retailers. This Commission's Trade Practices concerning things "Of Value" (TPP-1) is incorporated herein by reference.

**Section 100.330**, titled "Advertising," provides:

1. Pursuant to Sections 6-4, 6-5, and 6-5 of the Act (235 ILCS 5/6-4, 6-5, and 6-6), no retail licensee or entity having more than a 5% interest in a retail licensee shall have any, direct or indirect, interest in or control of any advertising or promotional company which receives funds, directly or indirectly from, or for the account of, any manufacturer, non-resident dealer, broker, distributor, importing distributor or foreign importer of alcoholic beverages; nor shall any manufacturer, non-resident dealer, broker, distributor, importing distributor or foreign importer make any payment, direct or indirect, to any retailer or any other entity which provides advertising, promotional or display services for retailers in consideration of any advertising or promotional efforts of any kind not allowed under the Illinois Liquor Control Act or the rules and regulations of the Commission.

2. Nothing herein shall prohibit any manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer from sponsoring an event at a venue which sole purpose is to host live entertainment, provided that no indirect or direct payment is made to the retailer and that any reference to the retailer in any advertising is incidental to the event itself.

3. Subsections (1) and (2) above do not apply to a person holding a special event retailer's license. (Source: Amended at 20 Ill. Reg. 834, effective January 2, 1996)

#### IV. Procedure

Manufacturers, non-resident dealers, distributors, and importing distributors or foreign importers may sponsor events on behalf the premises of retailers under the following terms and conditions:

- A. The manufacturer, non-resident dealers, distributor, or importing distributor or foreign importers must provide all advertising and promotional items costs, without cost, or make payment directly to a third-party promoter (e.g., a non-licensed entity participating in the creation of the event.) provided any payment made to a third party promoter

shall be solely for advertising and promotional costs. A copy of the signed paid receipt itemizing the advertising and promotional costs shall be maintained by the manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer furnishing such advertising and promotional costs.

- B. Except as limited by Paragraph A above, the manufacturer, non-resident dealer, distributor, or importing distributor, foreign importer or third party promoter shall not give any financial remuneration directly or indirectly to the retailer;
- C. Third-party promoters cannot be affiliated with or under the control of, either directly or indirectly, the retailer, distributor or manufacturer, non-resident dealer, distributor, or importing distributor or foreign importer, in any manner;
- D. The focus of all advertising of the event must give primary emphasis to the event itself, the charitable, philanthropic reason therefore, etc., and therefore any reference to the retailer in any advertising materials must be strictly incidental to the event (e.g., stating the location of the event);
- E. The “sponsoring” retailer may not restrict the availability of any other alcoholic liquor, nor may it exclude or require the sale of any other manufacturer’s, non-resident dealer’s, or distributor’s, importing distributor’s or foreign importer’s product during the event; and
- F. Manufacturers, non-resident dealers, distributors, and importing distributors or foreign importers must make all reasonable attempts to conduct events only at retail locations which can accommodate such events (e.g. all venues that are geared to concert presentations must be given equal opportunities to host concerts).
- G. Manufacturers, non-resident dealers, distributors and importing distributors or foreign importers may not repeatedly sponsor events for one retailer or group of retailers to the exclusion of all other retailers.
- H. Manufacturers, distributors and importing distributors must, prior to the event, obtain from the third party promoter a signed affidavit containing the information requested in the form set forth hereafter. Such affidavit shall be filed with the Commission prior to the event and a copy retained by the manufacturer, distributor and importing distributor furnishing the advertising and promotional items in accordance with Section 5/6-10 (235 ILCS 5/6-10).

Prior to holding the event, the manufacturer, non-resident dealer, distributor, importing distributor or foreign importer furnishing the advertising or promotional costs or making payment to the Third Party Promoter shall receive from the retailer a sworn statement executed by the Third Party Promoter containing the information in the form provided hereafter. The Commission shall be furnished a copy of the sworn statement by the retailer and the Commission shall receive a copy of the sworn statement at least two (2) business days prior to the event. The retailer may furnish to the Commission a copy of the sworn statement by facsimile, delivery in person the Commission’s Office in Chicago or Springfield or by Certified Mail, postage prepaid.

**V. Third-Party Promotion Company Affidavit Statement**

All retail liquor licensees utilizing the services of a so-called “third-party promotion” company, shall file with the Commission, before any services are provided it by the third-party promotion company, an affidavit from the owner of the third-party promotion company and an affidavit from the retailer, in substantially the following formats:

**STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION**

In the Matter of:

Re: Nature of sponsored Event or Services provided by Third-Party Company:  
Date of event:  
Retailer:  
Supplier or Wholesaler:  
Third-party company:

**THIRD-PARTY COMPANY AFFIDAVIT  
[RETAILER LICENSEE FORM]**

The undersigned, being first duly sworn, on oath deposes and states:

- 1. I am the \_\_\_\_\_ (title/capacity) of the above Retailer licensee, located at
- 2. I have full legal capacity to execute this Affidavit on behalf of the retailer licensee.
- 3. The retailer licensee presently holds Illinois Retailer Liquor License No. \_\_\_\_\_, which expires on.
- 4. The retailer has retained the services of the above Third-party company in connection with the above specified sponsored event or services to be conducted on the retailers licensed premises.
- 5. That neither the retailer licensee, nor any officer, director, shareholder, employee or representative of the retail licensee has any interest, direct or indirect, in the third-party company.
- 6. That all funds paid to the third-party company shall represent the fair market value of such services rendered by it to or on behalf of the above supplier or wholesaler.
- 7. That no funds paid to the third-party company for services rendered to or on behalf of the above supplier or wholesaler will be paid to the retailer liquor licensee or any person affiliated with the retailer liquor licensee, including but not limited to payments for merchandising and promotional services, scan-backs, undocumented coupon redemptions, etc.
- 8. Complete the following subparagraphs which are applicable to the specific sponsored event or services:
  - a) The following is a detailed description of the “sponsored event” that will be held at the retailer licensees business premises:  
The cost of sponsorship shall be:  
(Dollars), covering the following expenses:
  - b) I hereby represent that the sole purpose of the venue where the event is to be held is to host live entertainment in conformity with Regulation 100.330(b).
  - c) The following is a detailed description of the merchandising and promotional services that will be furnished to or installed on the retailer licensed premises, including the name of the company which retained the third-party

company, the cost of each item furnished to the retailer licensee plus the normal and customary cost of labor, erection and installation, and the person to whom the payment shall be made.

Dated: Affiant:

State of Illinois )

County of )

)ss.

Title

Subscribed and sworn to before me this day of , 20

Notary Public (SEAL)

This completed form shall be filed with the Illinois Liquor Control Commission, 100 West Randolph Street, Suite 5-3 00, Chicago, Illinois 60601; fax 312-814-2241.

and:

**STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION**

In the Matter of:

Re: Nature of sponsored Event or Services provided by Third-Party Company:

Date of event:

Retailer:

Supplier:

or Wholesaler:

Third-party company:

**THIRD-PARTY COMPANY AFFIDAVIT**  
**[THIRD-PARTY COMPANY FORM]**

The undersigned, being first duly sworn, on oath deposes and states:

1. I am the \_\_\_\_\_ (title or capacity) of (hereafter referred to as A third-party company@).
2. I have full legal capacity to execute this Affidavit on behalf of the third-party company.
3. The above referenced retailer licensee has retained the services of the third-party company in connection with the above referenced sponsored event or services to be conducted on the retailer=s licensed premises.
4. That neither the retailer licensee, nor any officer, director, shareholder, employee or representative of the retail licensee has any interest, direct or indirect, in the third-party company.
5. That all funds paid to the third-party company shall represent

the fair market value of such sponsored event or services rendered by it to or on behalf of the above supplier or wholesaler.

6. That no funds paid to the third-party company for sponsorship or services rendered to or on behalf of the referenced supplier or wholesaler will be paid to the retailer liquor licensee or any person affiliated with the retailer liquor licensee, including but not limited to payments for merchandising and promotional services, scan-backs, undocumented coupon redemptions, etc.
7. Complete the following subparagraphs which are applicable to the specific sponsored event or services:
  - a) The following is a detailed description of the Asponsored event@ that will be held at the retailer licensee=s business premises:  
The cost of sponsorship shall be:  
(Dollars), covering the following expenses:
  - b) I hereby represent that the sole purpose of the venue where the event is to be held is to host live entertainment in conformity with Regulation 100.330(b).
  - c) The following is a detailed description of the merchandising and promotional services that will be furnished to or installed on the retailer licensed premises, including the name of the company which retained the third-party company, the cost of each item furnished to the retailer licensee plus the normal and customary cost of labor, erection and installation, and the person to whom the payment shall be made.

Dated:

Affiant:

Title:

State of Illinois )

County of )

)ss.

Subscribed and sworn to before me this day of , 20

Notary Public (SEAL)

This completed form shall be filed with the Illinois Liquor Control Commission, 100 West Randolph Street, Suite 5-3 00, Chicago, Illinois 60601; fax 312-814-2241.

I. In the event a manufacturer, non-resident dealer, distributor, importing distributor or foreign importer furnishes advertising and promotional costs or makes payment to the Third Party Promoter for such advertising and promotional costs in an amount in excess of \$500.00 for each location, such manufacturer, non-resident dealer, distributor, importing distributor or foreign importer shall secure prior approval from the Commission by identifying the proposed advertising and promotional costs, which total costs cannot exceed \$2,500.00 for each location associated therewith to be furnished to the Third

Party Promoter, such request to the Commission shall be furnished prior to scheduling the event at the location of the retail premises.

## **VI. Exceptions**

The limitations under Section V above do not apply to units of government holding retailer's liquor licenses; however, such limitation under Paragraph V will apply if the retail license is held in the name of a concessionaire which is not a public body.

## **TPP-4 DONATIONS OF PRODUCTS AND SERVICES TO ORGANIZATIONS**

### **I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby manufacturers, distributors, importing distributors, and retailers may make donations of cash, alcoholic and non-alcoholic products and services to not-for-profit organizations and Special Event Retailer Licensees.

### **II. Policy**

It is the policy of this Commission that donations of cash, non-alcoholic products and services only may be made by manufacturers, distributors and importing distributors to not-for-profit organizations and Special Event Retailer Licensees. Donations of alcoholic liquor products from a manufacturer, distributor or importing distributor may not be made for a commercial purpose. Donations of cash, alcoholic and non-alcoholic products, and services may be made by a retailer to not-for-profit organizations and Special Event Retailer Licensees. The proof of a donation not being made for a commercial purpose is on the manufacturer, distributor or importing distributor.

### **III. Background, Statute, Regulations**

235 ILCS 5/6-5 generally states that no retail liquor licensee may accept, receive or borrow money, or anything else of value, or accept or receive credit of greater than 30 days (for wine and spirits), directly or indirectly, from any manufacturer, distributor or importing distributor. Likewise, no manufacturer, distributor or importing distributor may give or lend money or anything of value, or extend credit for greater than 30 days (for wine and spirits), directly or indirectly to any retail liquor licensee.

235 ILCS 5/6-6 provides that no manufacturer, distributor or importing distributor shall, directly or indirectly: (a) sell, supply, furnish, give, pay for, or loan or lease any furnishing, fixture or equipment to a retail liquor licensee; (b) pay for or advance, furnish, lend or give money to a licensee for payment of a license; (c) purchase or become owner of a note, mortgage, or other indebtedness of a retail licensee; (d) be interested in the ownership, conduct, or operation of a retail licensee; (e) be interested as the owner of a premises upon which a retail licensee is operating.

Section 5/6-6 further generally allows manufacturers, distributors or importing distributors to supply retailers with one outside permanent and temporary sign, inside signage, and other advertising materials, all as enumerated in the statute, all within designated dollar limits.

Regulation 100.2 10 deals with courtesy wagon and/or coil box and pump limitations upon distributors supplying such items free of charge for picnics of retail liquor licensees. It generally states that the providing of free beer or wine to the retail licensee is not allowed (Subsection (b)). Courtesy wagons and/or coil boxes and pumps may be supplied by distributors for picnics, carnivals or social events that are given by or under the auspices or sponsorship of an

educational, fraternal, political, civic, religious, charitable, or non-profit organization, i.e., a Special Event Retailer Licensee. These regulations differentiate between retail licensees receiving Special Use Permits and the Special Event Retailer Licensee. Under Subsection (b), Special Use Permit licensees may receive donations of products only one time a year, while under Subsection (c) Special Event Retailer Licensees may receive donations of products at any time.

Regulation 100.280 provides that (a) no individual, partnership or corporation shall give away any alcoholic liquor for commercial purposes or in conjunction with the sale of non-alcoholic products or to promote the sale of non-alcoholic products; (b) no licensee shall give or offer to give away alcoholic liquor in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products; and (c) no individual, partnership, corporation, or licensee shall advertise or promote in any way, whether on or off premises, either of the practices under Subsection (a) or (b). The regulation further delineates the "giving away of alcohol" to be impermissible if done for "commercial purposes" or in connection with the "sale of non-alcoholic products or to promote the sale of non-alcoholic products."

The Special Event Retailer's License (Not-for-Profit), as defined in Section 5/5-1(e), allows such licensee to sell and offer for sale, at retail, alcoholic liquors for use or consumption, but not for resale in any form and only at the location and on the specific dates designated for the special event in the license. This Commission has taken the view that such a license is "special" since (a) the profits of such licensee inure to the benefit of a charitable, fraternal, etc., organization; and (b) the license is limited to a short term. This Commission believes that contributions to such organizations, made with a clear charitable or donative purpose, are in the best interest of the alcoholic liquor industry.

When Regulations 100.2 10 and 100.280 are read together, it is this Commission's position that the giving away of alcoholic product by a manufacturer, distributor or importing distributor may not be done for a commercial purpose or in connection with the sale of nonalcoholic products or to promote the sale of non-alcoholic products.

### **IV. Procedures**

#### **A. Manufacturers, Distributors and Importing Distributors**

Manufacturers, distributors and importing distributors may make contributions of cash, non-alcoholic product, services, equipment or signs to a not-for-profit organization, as defined in the Illinois Liquor Control Act, and a Special Event Retailer Licensee subject to the following:

- (1) Alcoholic products may not be given for a commercial purpose or in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products.
- (2) The Special Event Retailer must be allowed to sell other brands at its discretion. Although exclusivity agreements are generally considered to be a violation of the non-discrimination provisions of Trade Practice Policy 1, in order to allow Special Event Retailer Licensees to take advantage of potential contribution opportunities, this Commission shall allow Special Event Retailer Licensees to enter into exclusivity agreements which include the receipt of non-alcoholic product, services or cash from manufacturers, distributors or importing distributors.
- (3) Signage dollar limitations contained in Section 5/6-6 do not apply to signs donated to a Special Event Retailer Licensee.

#### **B. Retailers**

Retail licensees may make donations of cash, alcoholic and non-alcoholic product and services to not-for-profit organizations and

Special Event Retail Licensees.

## **TPP-5 Retailer Payments To Manufacturers, Importing Distributors And Distributors**

### **I. Purpose**

It is the purpose of this Policy to make the industry aware of the permissible methods of payment for alcoholic liquor between retailers and manufacturers, distributors and importing distributors.

### **II. Policy**

It is the policy of the State of Illinois to allow manufacturers, distributors and importing distributors to extend credit for no more than 30 days to retailers for the purchase of wine and spirits; to allow for various payment methods which are considered cash equivalents; and to allow for finance and banking charges which are standard in the course of business if such charges are properly disclosed to retailers.

### **III. Background, Statute, Regulation**

235 ILCS 5/6-5 provides in relevant part that a retail liquor licensee shall not accept or receive credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days) directly or indirectly from any manufacturer, importing distributor or distributor of alcoholic liquor, and any manufacturer, distributor or importing distributor may not loan or extend credit (except such merchandising credit) directly or

indirectly to any retail liquor licensee. Retail liquor licensees delinquent beyond the 30 day period specified in the Section shall not solicit, accept or receive credit, purchase or acquire alcoholic liquors, directly or indirectly from any other licensee, and no manufacturer, distributor or importing distributor shall knowingly grant or extend credit, sell, furnish or supply alcoholic liquors to any such delinquent retail liquor licensee. The Section also provides that the purchase price of all beer sold to a retail liquor licensee shall be paid by the retail liquor licensee in "cash" on or before delivery of the beer.

The 30 day merchandising credit period allowed by Section 5/6-5 commences the day immediately following the date of invoice and includes all successive days including Sundays and holidays to and including the 30th successive day (Regulation 100.90(b)). Note that the question of whether the invoice date or the actual date of delivery of the product is not addressed in the statute or rule. It is the opinion of the Commission that the date for computation of the credit period will be based upon the date of the invoice if that date and delivery are the same, and on the delivery date of the invoice is dated before the date of delivery.

Section 5/6-5 further provides that every manufacturer, importing distributor and distributor shall submit to this Commission, by Thursday of each week, a verified written list of the names and addresses of each retail liquor licensee purchasing spirits or wine from such entity which, on the first business day of that calendar week, was delinquent beyond the permissible merchandising credit period of 30 days. A verified written statement that no such retail liquor licensee was then delinquent beyond such permissible merchandising credit period should also be filed. Such entities shall also submit to the State Commission a verified written list of the names and respective addresses of each previously reported delinquent retail liquor licensee which has cured such delinquency by payment, not later than the second full business day following the day such delinquency was cured.

Such written reports shall be posted by the Commission in each of

its offices, available for public inspection, not later than the day following receipt, and such reports constitute notice to every manufacturer, importing distributor and distributor of the information contained therein. Actual notice to such entities of the information contained in the posted reports, shall also constitute notice of the information.

In addition to other methods allowed by law, payment by check during the period for which merchandising credit may be extended shall be considered payment. All checks received in payment for alcoholic liquor shall be promptly deposited for collection (Regulation 100.90(c)). A post-dated check or a check dishonored on presentation for payment is not deemed to be payment.

Regulation 100.90 further states in relevant part that:

- (e) where a bona fide dispute exists between the retailer and the wholesaler as to the fact of payment of a given sale, the sale itself shall not be sufficient grounds for considering the retailer delinquent;
- (f) where a retailer pays a salesman, or other agent of the wholesaler, such payment is effective upon receipt of the money or check by the salesman or agent;
- (g) even though a retailer is delinquent and not able to purchase any alcoholic liquors for cash, or otherwise, the retailer may purchase beer for cash;
- (h) payment from a delinquent retailer after the first business day of the week and before a verified written statement of delinquency has been submitted entitles the manufacturer, importing distributor or distributor submitting to delete that retailer's name from the list;
- (i) determinations of delinquency shall be made by the Chairman, Executive Director or any individual authorized by them on the basis of the verified report of delinquency and any affidavits or counter-affidavits submitted, and any licensee objecting to the determination may make a written request for a hearing at the next regularly scheduled meeting of the Commission; and
- (j) a copy of any verified written list of delinquencies shall be simultaneously forwarded to the licensees listed therein by the manufacturer, importing distributor or distributor submitting such list.

Regulation 100.240 deals with transactions involving the use of checks and their equivalent and specifically prohibits the selling or furnishing of alcoholic liquor at retail to any person on credit or on a passbook, or order on a store, or in exchange for any goods, wares or merchandise, or in payment for any services rendered. But the use of money orders, traveler's checks, drafts or checks or the equivalent of any of them not be considered the extension of credit so long as same are not postdated, and promptly deposited and collected in due course. "funds, provided the transfer is initiated by an irrevocable payment order on or before delivery of the alcoholic liquor.

## **IV. Procedures**

### **A. Extension Of Credit**

Distributors may extend credit to retailers for the purchase of alcoholic liquors for a period of time not to exceed 30 days, except that payment for beer purchases by the retailer be made in cash or its equivalent, on or before the delivery of the beer.

### **B. Methods Of Payment**

A retailer has not been discharged from its obligation to the distributor until the distributor has been paid in cash or its equivalent. The following are considered as cash equivalents:

- (1) Checks, including money orders, traveler's checks, drafts,

certified checks, cashier's checks or teller's checks so long as they are not post-dated, and if honored by the retailer's bank in the ordinary course of business. The distributor's obligation is to promptly deposit checks for collection.

(2) Electronic fund transfers provided the transfer of funds is initiated by an irrevocable payment order on or before delivery of the alcoholic liquor. In computing the 30-day period, if the funds are withdrawn from the retailer's account on the 30<sup>th</sup> day, the fact that the funds are not deposited into the distributor's account until the 31<sup>st</sup> day is immaterial.

(3) Credit cards may be used to purchase wine and spirit products. Any widely recognized credit card, including but not limited to Visa, MasterCard, American Express, Discovery and Diners Club, may be utilized. [Sec. 5/6-19, Sales on Credit – Exceptions as to Clubs and Motels, which controlled credit relationships between retailers and consumers was repealed by P.A. 90-432, eff. 1/1/98. The final sentence of Sec. 5/6-19 stated, "(T)hat nothing herein shall be construed to prevent payment by credit card or other credit device for the purchase of liquor in the original package or container for consumption off the premises.]

### C. Calculation of Payment Period

The first day of calculation begins with the day after the date of delivery (invoice date) and includes each successive date subsequent, including Sundays and holidays, to the 30 day limit. In the event that the delivery of the product is subsequent to the invoice date, the actual delivery date will be the first day for the purpose of calculation. The date of delinquency shall be the first day after the 30 day period, or the 31st day. Receipt of any cash equivalent by a salesman or other agent of the distributor, is considered as being effective immediately upon receipt. For purchases of wine and spirits, a post-dated check which is cleared prior to the end of the 30 day credit period, including any properly disclosed finance charges, is considered to be a valid payment. Also, an "NSF," void, or stop payment check, for purchases of wine and spirits, which is properly replaced with cash or cash equivalent before the end of the 30 day period, including any properly disclosed finance and bank charges, is considered to be valid payment.

### D. Additional Finance and Bank Charges

Finance charges on credit issued and bank charges for NSF, void, or stop-payment checks are considered to be standard business practices. Distributors may include finance charges, other usual and customary charges in the industry and bank charges provided:

(1) A statement is printed on the original invoice which is delivered to the retailer at the time the merchandise is received indicating such finance and bank charges shall be assessed, with a statement specifying the terms and amounts of charges imposed.

(2) Finance and bank charges must be within prescribed legal limits. Any such finance or bank charges which have been properly disclosed to the retailer are considered to be part of the cost of the merchandise as of the invoice date, and therefore the entire amount, including any finance or bank charges, must be paid before the retailer can be considered to be non-delinquent.

(3) If a distributor engages in the practice of adding a finance or bank charge, such charges must be added to all accounts, and may not be waived for any customer.

(4) All provisions of Section 5/6-5 remain effective whether or not the distributor chooses to impose finance or bank charges. A retailer making payments via electronic transfer of funds may not charge the distributor for the costs of such transfer, nor may a distributor charge the retailer for the distributor's bank charges for electronic transfer. Such transfers are considered to be for the benefit of each, and therefore as other acceptable payment methods are available, each party need not bear the other party's burden of such

transfers.

### E. Delinquency List

Section 5/6-5 of the Illinois Liquor Control Act and Regulation 100.90 provide for the existence and maintenance of the delinquency list. The general parameters of the list are stated above, and the Statute and Regulation should be consulted for additional information.

Although being listed as delinquent is not a violation of the Liquor Control Act, purchasing while delinquent is. For this reason, particular attention will be paid to those licensees who have been delinquent for an extended period of time, and the Commission will conduct investigations into licensees delinquent beyond the 30 days allowable on a case-by-case basis.

### F. Bona Fide Disputes

Any party to the transaction may request a dispute be determined to be "bona fide." This Commission shall, on a case-by-case basis, be the determiner of whether the circumstances surrounding a commercial transaction require the retailer be placed on the delinquent list (100.90(i)). This Commission, upon submission of the matter to it, in sufficient time to conduct its investigation before the expiration of the 30-day period, shall look at the facts surrounding the matter, including the retail liquor licensee's oral or written statements, oral or written statements of the distributor, documentation, etc., questioning the payments, or lack thereof. The Commission cautions all parties that an oral submission of a dispute may be a wholly insufficient basis for the Commission to make such a requested determination. Documentation is the suggested method of submission, which may include invoices, affidavits, or other written or tangible items. If the Commission initially determines

that a bona fide dispute does or does not exist, the licensee which continues to maintain the opposite position shall be entitled to a formal hearing, upon written request.

### G. "Common Ownership"

Rule 100.90 (a) states that licenses which are owned in "common ownership" will all be declared delinquent if one such license is declared delinquent. Neither the statute nor rule defines the concept of "common ownership."

The Commission has reviewed the following Illinois statutes which deal with joint or common forms of ownership:

35 ILCS 5/ Illinois Income Tax Act Illinois Compiled Statutes, Revenue, Illinois Income Tax Act

ARTICLE 15. DEFINITIONS AND RULES OF INTERPRETATION. (35 ILCS 5/1501

Common ownership in the case of corporations is the direct or indirect control or ownership of more than 50% of the outstanding voting stock of the persons carrying on unitary business activity.

30 ILCS 168/ Tobacco Product Manufacturers' Escrow Act Illinois Compiled Statutes, Finance, Tobacco Product Manufacturers' Escrow Act

"Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

625 ILCS 5/ Illinois Vehicle Code Illinois Compiled Statutes, Vehicles, Illinois Vehicle Code

ARTICLE I. DEALERS (625 ILCS 5/5-101) Sec. 5-101.

(b) An application for a motor vehicle financing affiliate's license must be filed with the Secretary of State, duly verified by oath, on a form prescribed by the Secretary of State and shall contain all of the following:

(3) A list of the business organization's officers, directors, members, and shareholders having a 10% or greater ownership interest in the business, providing the residential address for each person listed.

765 ILCS 1005/ Joint Tenancy Act Illinois Compiled Statutes, Property, Joint Tenancy Act

Sec. 2.(a) When a deposit in any bank or trust company transacting business in this State has been made or shall hereafter be made in the names of 2 or more persons payable to them when the account is opened or thereafter, the deposit or any part thereof or any interest or dividend thereon may be paid to any one of those persons whether the other or others be living or not, and when an agreement permitting such payment is signed by all those persons at the time the account is opened or thereafter the receipt or acquittance of the person so paid shall be valid and sufficient discharge from all parties to the bank for any payments so made. (b) When shares of stock, bonds or other evidences of indebtedness or of interest are or have been issued or registered by any corporation, association or other entity in the names of 2 or more persons as joint tenants with the right of survivorship, the corporation, association or other entity and their respective transfer agents may, upon the death of any one of the registered owners, transfer those shares of stock, bonds, or other evidences of indebtedness or of interest to or upon the order of the survivor or survivors of the registered owners, without inquiry into the existence, validity or effect of any will or other instrument in writing or the right of the survivor or survivors to receive the property, and without liability to any other person who might claim an interest in or a right to receive all or a portion of the property so transferred.

(765 ILCS 1005/3)

Sec. 3. Except as otherwise provided in this Act, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants. (Source: Laws 1919, p. 633.) (765 ILCS 1005/4) Sec. 4. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy or tenancy in common, the party aggrieved shall have his civil action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist. (Source: Laws 1935, p. 936.)

The Commission, having considered the foregoing statutory authority, and the ownership threshold established by the Liquor Control Act, concludes that for the purposes of determining whether licenses will be declared delinquent under Sec. 5/6-5 and Rule 100.90, that "common ownership" shall be any ownership interest of "more than 5%" of the total ownership interests in such licenses.

#### H. Bankruptcy of Retailer

In the event any bankruptcy proceeding is instituted by or against a retail liquor licensee, the "automatic stay" provision of federal bankruptcy law prohibits a change in the financial circumstance of that licensee. Simply stated, this means that the retailer shall not be reported "delinquent" under Sec. 5/6-5 of the Act; if the retailer has already been reported delinquent, that delinquency shall not be effective. The retailer shall not be required to pay any outstanding bill for alcoholic liquors, and no attempts to collect such a debt are

valid. (See In Re: **William Tell, Inc., Bankrupt**. William Tell II, Inc., Appellee, v. State of Illinois Liquor Control Commission, Appellant, United States District Court For The Northern District of Illinois, Eastern Division, 38 B.R. 327; 1983 U.S. Dist. LEXIS 16665; 11 Collier Bankr. Cas. 2d (MB) 235, May 26, 1983)

In order for the retailer to continue to purchase alcoholic liquors, the following steps are necessary:

- A) Filing of the Bankruptcy petition
- B) Filing of a Motion to Stay the application of Sec. 5/6-5
- C) Entry of an Order by the Bankruptcy Court directing:

- (1) That the application of Sec. 5/6-5 against the retailer is stayed.
- (2) That the retailer shall be allowed to purchase alcoholic liquors "for cash."
- (3) Service of Motion and Order upon the Commission and the Wine and Spirits Distributors of Illinois.

### TPP-6 Cooperative Purchasing Agreements

#### I. Purpose

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby unrelated retail licensees may enter into cooperative purchasing agreements.

#### II. Policy

It is the policy of this Commission to allow unrelated retailers to enter into cooperative purchasing agreements.

#### III. Background, Statutes, Regulations

235 ILCS 5/5-1(b) and 5/5-1(d) define the distributor and retailer licensee. The former is allowed to make wholesale purchase and store alcoholic liquors, and to sell same to licensees, as permitted by law. The latter is allowed to sell and offer for sale at retail, only on the premises specified in the license, alcoholic liquor for use or consumption, but not for resale.

Section 5/6-5 prohibits retailers from accepting or distributors from giving anything "of value." The general treatment of the "tied-house" and "of value" cases in Trade Practice Policy 1 is adopted herein. Section 5/6-5 and Regulation 100.90 deal with extending credit to retail licensees.

Section 5/6-8 requires manufacturers, importing distributors or foreign importers to keep accurate records of all alcoholic liquors manufactured, distributed, sold, used, or delivered in the State during each month, showing to whom sold, and shall furnish a copy thereof to this Commission. Regulation 100.130(d) further requires manufacturers, distributors, importing distributors and foreign importers, to keep records giving the name, license number and expiration date, and address of each purchaser of alcoholic liquors and information concerning each purchase, including invoice number, date and sale, amount of sale and date of payment thereof.

Pursuant to Section 5/6-9 manufacturers, non-resident dealers, distributors, importing distributors, or foreign importers owning or controlling trade marks, brands or names of any alcoholic liquor shall register same with this Commission, including the name of each person to whom such manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer grants the right to sell at wholesale, specifying the trade mark, brand or name of alcoholic liquor to which such right is granted, the geographical area(s) and the period(s) of time for which such right is granted. No person to whom such right is granted shall sell at wholesale outside the geographical area for which such person holds such right, nor sell such alcoholic liquor within such geographical area to a retail

licensee, if the premises specified in the retailer's license are located outside the geographical area. No manufacturer, importing distributor, distributor, non-resident dealer, foreign importer shall sell or deliver any alcoholic liquor manufactured or distributed for resale, unless the person to whom such package is sold or delivered is authorized by law to receive such package.

See also Regulation 100.60.

Section 5/7A-3 states that it is unlawful for any person to store any alcoholic liquors with or deliver any alcoholic liquors to any warehouseman who has not received a certificate of registration from the Department of Revenue.

Regulation 100.250, regarding transfer of alcohol, states that the holder of a license for the sale of alcoholic liquor at retail on the premises specified in the license, for use or consumption, is restricted to sell from the licensed premises only and is not permitted to sell, purchase or transfer such alcoholic liquor to any other licensed premises.

#### **IV. Procedures**

To enter into a cooperative purchasing agreement, retail licensees shall comply with the following guidelines:

1. All purchases must be invoiced and delivered to each individual retailer and each individual retailer must pay the distributor for its own merchandise.
2. Two or more retail vendors may agree, as evidenced by a memorandum in writing, that one or more of them, or another designated person, shall be the agent or agents of each of them for the purpose of ordering distilled spirits, wines or beer, from wholesalers.
3. The agreement shall provide that orders placed by the nominee shall be made in the capacity as agent for each of the parties.
4. The agreement shall provide that upon completion of the sale by the wholesaler, title to the merchandise shall vest in each party to the agreement, in accordance with the proportionate share of each in the order.
5. The agreement shall be signed and dated by each party to the agreement, including the nominee agent(s).
6. New or additional entities may become members of the venture by signing and dating the agreement; however such new or additional party may share in a cooperative order only in respect to orders placed subsequent to becoming a party to the agreement.
7. A record of disposition of products by wholesalers and receipts to each member retailer must be maintained.
8. All retailers must be located within the distributor's registered geographic territory.
9. Physical delivery of the alcoholic liquor purchased by the group must be made to each individual retailer's licensed premises, and not to a central location. Warehousing and transfer of alcoholic liquor are not allowed.
10. Although quantity discounts are permitted, a distributor is not required to offer such quantity discounts. However, if such discounts are offered by a distributor, they must be offered across the entire market which the distributor serves. A distributor cannot refuse to offer the same quantity discount to the cooperative group as offered to any individual retailers, unless proof of substantial increased cost of providing such discount (e.g. excess actual delivery costs) can be established by the distributor.
11. If the distributor makes sales under the 30 day credit rule, and any member of the cooperative purchasing group should become delinquent, the distributor may continue to make sales to the remaining members of the group as a whole and provide the non-delinquent members with quantity discounts.

#### **TPP-7 Point Of Sale Materials - Manufacturer To Distributor**

##### **I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby manufacturers may provide point-of-sale advertising and materials to distributors.

##### **II. Policy**

It is the policy of this Commission that manufacturers may provide point-of-sale materials to distributors free of charge. Distributors may also purchase point-of-sale materials from manufacturers, but any purchase by a distributor or importing distributor from a manufacturer or a manufacturer's designated supplier shall be voluntary and the manufacturer may not require the distributor or the importing distributor to purchase signs or advertising materials from the manufacturer or the manufacturer's designated supplier.

##### **III. Background**

"Point-of-sale" materials include, any signs, advertising materials and consumer advertising specialties.

Section 5/6-5 of the Illinois Liquor Control Act is concerned only with something "of value" being remitted to the retail licensee, therefore it has no application here.

##### **IV. Procedure**

It is the policy of this Commission that between manufacturers and distributors:

(a) Free point-of-sale materials may be provided by manufacturers to distributors, without limit on the amounts provided;

(b) Pursuant to Sec. 5/6-6, distributors may purchase inside and outside signs, except permanent outside signs, as well as advertising materials and consumer advertising specialties from manufacturers. Distributors are prohibited from providing retailers with any signs purchased from manufacturers, which is not in compliance with the mandates of Sec. 5/6-6.

(c) Distributor may purchase point-of-sale materials; such purchases shall be voluntary and the manufacturer may not require the distributor or the importing distributor to purchase signs or advertising materials from the manufacturer or the manufacturer's designated supplier; Point-of-sale materials purchased by distributors may be purchased at a value below the cost to manufacturers.

#### **TPP-8 Reserved**

#### **TPP-9 Signage And Other Advertising Materials**

##### **I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures regarding the nature, content, and displaying of signage and other advertising materials given to retailers by manufacturers, distributors and importing distributors and the usage of such signs and materials by the retailers.

##### **II. Policy**

It is the policy of this Commission to allow both inside and outside signs, permanent and temporary, and other advertising materials to be displayed in and about a retailer's licensed premises; subject to limitations set forth in Sec. 5/6-6 (P.A. 90-655, eff. 7-30-98.).

### III. Statute

This Commission's Trade Practice Policy TPP-1 on the "Of Value" Standard is incorporated herein by reference. The Statute provides in relevant part that a manufacturer, distributor, or importing distributor may furnish, give, lend or rent and erect, install, repair and maintain to or for any retail licensee, for use at any one time in or about or in connection with a retail establishment on which the products of the manufacturer, distributor or importing distributor are sold, the following signs and inside advertising materials as authorized in subparts (i), (ii), (iii), and (iv):

(i) Permanent outside signs shall be limited to one outside sign, per brand, in place and in use at any one time, costing not more than \$893, exclusive of erection, installation, repair and maintenance costs, and permit fees and shall bear only the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbols commonly associated with and generally used in identifying the product including, but not limited to, "cold beer," "on tap," "carry out," and "packaged liquor."

(ii) Temporary outside signs shall be limited to one temporary outside sign per brand. Examples of temporary outside signs are banners, flags, pennants, streamers, and other items of a temporary and non-permanent nature. Each temporary outside sign must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product. Temporary outside signs may also include, for example, the product, price, packaging, date or dates of a promotion and an announcement of a retail licensee's specific sponsored event if the temporary outside sign is intended to promote a product, and provided that the announcement of the retail licensee's event and the product promotion are held simultaneously. However, temporary outside signs may not include names, slogans, markings, or logos that relate to the retailer. Nothing in this subpart (ii) shall prohibit a distributor or importing distributor from bearing the cost of creating or printing a temporary outside sign for the retail licensee's specific sponsored event or from bearing the cost of creating or printing a temporary sign for a retail licensee containing, for example, community goodwill expressions, regional sporting event announcements, or seasonal messages, provided that the primary purpose of the temporary outside sign is to highlight, promote, or advertise the product. In addition, temporary outside signs provided by the manufacturer to the distributor or importing distributor may also include, for example, subject to the limitations of this Section, preprinted community goodwill expressions, sporting event announcements, seasonal messages, and manufacturer promotional announcements. However, a distributor or importing distributor shall not bear the cost of such manufacturer preprinted signs.

(iii) Permanent inside signs, whether visible from the outside or the inside of the premises, include, but are not limited to: alcohol lists and menus that may include names, slogans, markings, or logos that relate to the retailer; neons; illuminated signs; clocks; table lamps; mirrors; tap handles; decalcomanias; window painting; and window trim. All permanent inside signs in place and in use at any one time shall cost in the aggregate not more than \$2000 per manufacturer. A permanent inside sign must include the manufacturer's name, brand name, trade name, slogans, markings, trademark, or other symbol commonly associated with and generally used in identifying the product. However, permanent inside signs may not include names, slogans, markings, or logos that relate to the retailer. For the purpose of this subpart (iii), all permanent inside signs may be displayed in an adjacent courtyard or patio commonly referred to as a "beer garden" that is a part of the retailer's licensed premises.

(iv) Temporary inside signs shall include, but are not limited to, lighted chalk boards, acrylic table tent beverage or hors d'oeuvre list holders, banners, flags, pennants, streamers, and inside advertising materials such as posters, placards, bowling sheets, table tents, inserts for acrylic table tent beverage or hors d'oeuvre list holders, sports schedules, or similar printed or illustrated materials; however, such items, for example, as coasters, trays, napkins, glassware and cups shall not be deemed to be inside signs or advertising materials and may only be sold to retailers. All temporary inside signs and inside advertising materials in place and in use at any one time shall cost in the aggregate not more than \$325 per manufacturer. Nothing in this subpart (iv) prohibits a distributor or importing distributor from paying the cost of printing or creating any temporary inside banner or inserts for acrylic table tent beverage or hors d'oeuvre list holders for a retail licensee, provided that the primary purpose for the banner or insert is to highlight, promote, or advertise the product. For the purpose of this subpart (iv), all temporary inside signs and inside advertising materials may be displayed in an adjacent courtyard or patio commonly referred to as a "beer garden" that is a part of the retailer's licensed premises."

The restrictions contained in the section do not apply to signs, or promotional or advertising materials furnished by manufacturers, distributors or importing distributors to a government owned or operated facility holding a retailer's license, as described in Section 5/6-5, nor to airplane licenses.

### IV. Procedures

Retailers are allowed to have one permanent and one temporary sign per product brand displayed on the exterior of the licensed premises. Permanent signs are those made of wood, glass, metal, mirrors, neon, or other materials reasonably considered to be of a substantially permanent nature. Temporary signs include banners, flags, pennants, streamers, and other items of a temporary and non-permanent nature. Each sign must bear the logo, trademark, etc. of the manufacturer of the brand and be displayed on the exterior of the premises, such as on the building itself, on fences, in parking lots, or upon other structures reasonably considered to be a part of the realty upon which the licensed premises operates.

Signs painted on outside walls are considered exterior signs. Signs attached to the inside of a window but facing toward the outside are considered interior signs. Signs attached to the outside of a window are considered exterior signs. The concept of two signs per brand means that each brand can be represented by only one permanent and one temporary sign, however, there is no limit on how many times the brand name or brand logo can be contained on each sign. A permanently affixed two-sided banner is considered one sign. If a brand is contained on a permanent sign at least once, it can only appear on one other temporary banner, and vice-versa. Multi-logo signs count as one sign per brand for every brand depicted thereon. If such a sign is displayed, no brand name, trade name, etc., on the sign can be contained on any other exterior sign of similar type on the premises. A two sided banner, flag, pennant, poster, or streamer displaying the brand name on both sides is considered one outside temporary sign. A multiple sided or wrap around sign or signs affixed to a pole, fence, or other stationary object displaying the same brand name on both sides shall also be considered one outside temporary sign.

Signage on fences are considered outside signage. Umbrellas in beer gardens and on sidewalk cafes are considered inside signs and subject to the inside sign dollar limitations. Umbrellas in beer gardens do not affect the value limitations or one sign per brand limitations of outside signage.

Inflatable signs are allowable so long as they comply with the provisions and limitations of Section 5/6-6. Special event licensees may display inflatable signs, and there are no other restrictions on exterior signs displayed by a special event licensee, if the event is not held on a currently licensed retail premises.

If a location has been issued more than one license, it is allowed as many exterior signs per brand as it has accesses from the outside. Conversely, if none of the licensed premises has direct access from the outside, no exterior signs are permitted.

Temporary inside signs shall also include product displays such as display racks, bins, barrels or casts or similar items the primary function of which is to temporarily hold and display alcoholic beverages. All product displays must bear conspicuous and substantial advertising matter containing the brand, name of the manufacturer or manufacturers' logos, permanently inscribed or securely affixed. The cost of such product display shall be includable in the aggregate cost per manufacturer under dollar limitations for temporary inside signs. Temporary inside signs may include names, slogans, markings or logos that relate to the retailer.

**TPP-10 Signage Dollar Limits**  
(*eff. 01-01-03*)

Pursuant to P.A. 89-529, eff. 7-19-96, the language of Section 5/6-6 was amended to increase the so-called "signage dollar limits" to the levels reported hereafter. These dollar limits are to be adjusted annually by the Commission, using a "cost adjustment factor" to periodically update the dollar limitations prescribed in subparts (i), (iii) and (iv). The Commission establishes the adjusted dollar limitation on an annual basis beginning in January, 1997, and annually every year thereafter. The term "cost adjustment factor" means a percentage equal to the change in the Bureau of Labor Statistics Consumer Price Index or 5%, whichever is greater.

As of January 2004, the following limits apply to the cost of signs and other advertising materials, which manufacturers, distributors and importing distributors provide to retailers:

PERMANENT OUTSIDE SIGNS:	\$1,320
PERMANENT INSIDE SIGNS:	\$2,956
TEMPORARY INSIDE SIGNS AND OTHER ADVERTISING MATERIALS	\$ 4 8 3

These figures are exclusive of erection, installation, repair and maintenance costs, permit fees, wherever applicable.

SIGNAGE DOLLAR LIMITS (eff. 01-01-02)

PERMANENT OUTSIDE SIGNS:	\$1,197
PERMANENT INSIDE SIGNS:	\$2,681
TEMPORARY INSIDE SIGNS AND OTHER ADVERTISING MATERIALS	\$ 4 3 8

SIGNAGE DOLLAR LIMITS (eff. 01-01-01)

PERMANENT OUTSIDE SIGNS:	\$1,140
PERMANENT INSIDE SIGNS:	\$2,553
TEMPORARY INSIDE SIGNS AND OTHER ADVERTISING MATERIALS	\$ 4 1 5

SIGNAGE DOLLAR LIMITS (eff. 01-01-00)

PERMANENT OUTSIDE SIGNS:	\$1,086
PERMANENT INSIDE SIGNS:	\$2,431
TEMPORARY INSIDE SIGNS AND OTHER ADVERTISING MATERIALS	\$ 3 9 5

SIGNAGE DOLLAR LIMITS (eff. 01-01-99)

PERMANENT OUTSIDE SIGNS:	\$1,034
PERMANENT INSIDE SIGNS:	\$2,315
TEMPORARY INSIDE SIGNS AND OTHER ADVERTISING MATERIALS	\$ 3 7 6

SIGNAGE DOLLAR LIMITS (eff. 01-01-98)

PERMANENT OUTSIDE SIGNS:	\$985
PERMANENT INSIDE SIGNS:	\$2,205
TEMPORARY INSIDE SIGNS AND OTHER ADVERTISING MATERIALS	\$ 3 5 9

**TPP-11 Consumer Coupons and Rebates**

**I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby coupons/rebates may be provided by manufacturers, distributors and importing distributors to consumers through retail licensees.

**II. Policy**

It is the policy of this Commission that coupons/rebates may be given to consumers so long as such promotions are offered to similarly situated retailers offering off-premise sales in the manufacturer's, distributor's or importing distributor's geographical areas; on a non-discriminatory basis, in direct relation to the amount of product purchased.

**III. Background**

Section 5/6-5 of the Illinois Liquor Control Act and this Commission's Trade Practice Policy TP-1 on the "Of Value" Standard are incorporated herein by reference. The usual manner in which manufacturers, distributors, and importing distributors provide consumer rebates or refunds involves the use of coupons. There are two general types of coupons: "mail-in" coupons, also known as "rebate/redemption" coupons, and "cash register"

coupons, also known as “instant refund” coupons. To use the “mail-in” the consumer purchases the product for full price from the retailer and then mails the coupon to the manufacturer, distributor or importing distributor, with proof of purchase. The manufacturer, distributor, importing distributor or a designated third-party mails a rebate check directly to the consumer. To use the “cash register” coupon the consumer presents the coupon to the retailer and receives an immediate reduction in the purchase price from the retailer. The retailer forwards the coupon to the manufacturer, distributor or importing distributor, or its third-party agent, which directly reimburses the retailer for the value of the coupon.

Generally, the coupon is an acceptable method of brand promotion, however, such promotion must be done in such a manner so that unfair financial advantage is not given to any similarly situated retailer or group of retailers in a geographical area. Providing an unfair financial advantage or distributing the coupons in a discriminatory manner would allow the retailer using the coupons to receive something “of value” over retailers which had not been provided with the coupons, since customers would generally prefer to purchase an identical brand from the retailer with coupons, resulting in a price saving to the consumer. Manufacturers, distributors and importing distributors must provide similarly situated retailers purchasing product with coupons in relation to the quantity purchased. Thus, one retailer cannot receive a disproportionate number of coupons per case of product, while others receive fewer per case. The practice of unequal distribution shall be considered a discriminatory discounting program by this Commission. The Commission does recognize quantity pricing schemes as between on-and-off premise establishments, and such a distinction will be applied to retail coupon programs.

#### **IV. Procedure**

Due to the potential for abuse, including fraud, the redemption of coupons without actual purchase of product, and other “of value” situations, the use of the “point-of-sale instant refund” coupon is not allowed.

Manufacturers, distributors and importing distributors may conduct coupon programs as follows:

1. The program must be through the manufacturer, distributor, importing distributor or a third party, usually a clearinghouse; no retailer redemption shall be allowed.
2. “Mail-in” coupons shall require proof of purchase with a dated, retail-specific receipt.
3. “Instant” coupons shall be reimbursed to the retailer only with substantiation through documentation that there has been sufficient purchase of product to warrant the reimbursement.
4. Coupons cannot be retailer specific.
5. Coupons may be available in print media (newspapers, magazines etc.) but not by direct mail.
6. Coupons may be available only to adults 21 years of age or older.
7. No purchase requirements may be imposed.
8. Coupons must contain an expiration date.
9. Commission’s rules and regulations prohibiting the giving away of alcoholic liquor for a commercial purpose or in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products shall apply. (Regulation 100.280)
10. Coupons must be made available to all similarly situated retailers in similarly situated marketplaces in the distributors designated geographical area.

The Commission realizes that certain larger retailers may wish to

have a uniform coupon/rebate program which is regional, state-or-nation-wide. While the Commission does not wish to dictate whether such business practices are undertaken by any retail licensee, it recognizes that certain “of value” situations may come into play with such programs, and mandatory memberships, enrollments, or monthly fees may exclude some or all suppliers from participation (Section 5/6-5 and 5/6-6).

Coupon programs for a specific retail licensee are allowable on the following additional bases:

1. Manufacturer, distributor, and importing distributor coupons may appear in retailer-specific promotional advertisements, however, the coupons must be capable of being redeemed at any retailer.
2. The program may not be compulsory; if manufacturers, distributors or importing distributors wish to use the retailer system, or the system of the third-party’s with which the retailer has contracted, such participation must be on a voluntary basis.
3. Failure of a manufacturer, distributor or importing distributor to participate in the third-party’s retailer program shall not preclude such manufacturer, distributor or importing distributor from offering its own coupon program at said retailer’s premise.
4. Any booklets, leaflets, or other literature containing the manufacturer’s, distributor’s or importing distributor’s products, and describing or promoting the coupon/rebate program shall not be retailer specific. This requirement does not prohibit retailer specific advertisements, flyers or circulars which are paid for by the retailer, and which advertise, promote or contain the retailer’s coupon or rebate for a particular manufacturer’s, distributor’s or importing distributor’s alcoholic liquor products.
5. All checks in reimbursement for coupons shall not be retailer specific, nor shall any such checks which are sent to or to be used by consumers, be redeemable only at such retailer’s place of business.
6. Although coupons may combine the purchase of alcoholic products with other products, such programs may not require that the other items be individual retailers specific, so that the purchase of an alcoholic product which would entitle the purchaser to a specific non-alcoholic items involves items found only at one retailer would operate as an exclusion of other retailers, and would be the giving of something “of value” to such retailer.

Section 5/6-5 and 5/6-6 of the Liquor Control Act should be consulted for additional “of value” signage and inside advertising material limitations.

#### **TPP-12 Hotel/Motel Mini Bars**

##### **I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby hotels and motels possessing retail liquor licenses may sell alcoholic beverages from “mini bars.”

##### **II. Policy**

It is the policy of this Commission to allow hotels and motels possessing retail liquor licenses to sell alcoholic beverages from “mini bars.”

##### **III. Procedures**

To sell alcoholic beverages from mini bars in hotels and motels, a

retail liquor licensee must comply with the following:

1. The licensee must possess valid local and state retail liquor licenses.
2. The licensee's management must be responsible for determining the eligibility of guests to purchase alcoholic liquor.
3. The licensee's management must be responsible for establishing a method of control to prevent the use of the machine when it is unlawful to sell or dispense alcoholic liquor as established by local ordinance.
4. The licensee's management must assist an agent of the Commission to examine or have access to the mini bars at any reasonable time.
5. The operation of the mini bar must comply with all provisions of both the Illinois Liquor Control Act, the Rules and Regulations of the Commission, and local liquor control ordinances.
6. Failure to implement or maintain the processes and procedures required herein shall result in the withdrawal of permission to operate the mini bar.

### **TPP-13 Riverboat Gaming Operations**

#### **I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby alcoholic liquor dispensing aspects of riverboat gaming operations may be regulated.

#### **II. Policy**

It is the policy of this Commission, and that of the Illinois Gaming Board, that the alcoholic liquor dispensing aspects of riverboat gaming operations shall be regulated by this Commission.

#### **III. Background**

The principal business function of a riverboat gaming operation is gaming; however, alcohol sales are a tangential business function of such gaming operations (Gaming Regulation 9000.100). The Illinois Liquor Control Commission has exclusive jurisdiction over all aspects of liquor licensing of riverboat premises, with the exception of the determination of hours of operation (235 ILCS 5/6-30; Gaming Regulations 3000.900 & 3000.930). Riverboat gaming operations are subject to the "Happy Hour" limitations (235 ILCS 5/6-28; Regulation 100.280).

5/6-30. Riverboat Gambling Excursions - Sale and Consumption of Alcoholic Liquor

Notwithstanding any other provision of this Act, the Illinois Gaming Board shall have exclusive authority to establish the hours for sale and consumption of alcoholic liquor on board a riverboat during riverboat gambling excursions conducted in accordance with the Riverboat Gambling Act.

235 ILCS 5/5-1(g) states the parameters of a boat liquor license "to allow the sale of alcoholic liquor in individual drinks, on any passenger boat regularly operated as a common carrier on navigable waters in this State, which boat maintains a public dining room or restaurant thereon."

A recent amendment to the Riverboat Gambling Act states:  
230 ILCS 10/5 Sec. 5. Gaming Board.

(b) The Board shall have general responsibility for the implementation of this Act. Its duties include, without limitation, the following:

(18) To authorize a licensee to sell or serve alcoholic liquors, wine or beer as defined in the Liquor Control Act of 1934 on board a riverboat and to have exclusive authority to establish the hours for

sale and consumption of alcoholic liquor on board a riverboat, notwithstanding any provision of the Liquor Control Act of 1934 or any local ordinance, and *regardless of whether the riverboat makes excursions*. The establishment of the hours for sale and consumption of alcoholic liquor on board a riverboat is an exclusive power and function of the State. A home rule unit may not establish the hours for sale and consumption of alcoholic liquor on board a *riverboat*. This amendatory Act of 1991 is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

(19) After consultation with the U.S. Army Corps of Engineers, to establish binding emergency orders upon the concurrence of a majority of the members of the Board regarding the navigability of *water, relative to excursions*, in the event of extreme weather conditions, acts of God or other extreme circumstances.

This statutory change has created something of a dichotomy since the State liquor license allows service of alcohol only during navigation, while the State gambling law does not require riverboats which have liquor licenses to navigate.

This dichotomy was resolved with the passage of H.B.4462, which was signed into law as P.A. 92-0672, (235 ILCS 5/5-1(g)) which provides:

(g) A boat license shall allow the sale of alcoholic liquor in individual drinks, on any passenger boat regularly operated as a common carrier on navigable waters in this State or on any riverboat operated under the Riverboat Gambling Act, which boat or riverboat maintains a public dining room or restaurant thereon.

- 1) Riverboat gaming operations may not provide free alcoholic beverages to patrons, nor promote activities which encourage over consumption;
- 2) Private functions must be paid for at full market value by a "bona fide" third party which is not directly or indirectly related to or associated with the riverboat gaming operation licensee;
- 3) Meal package promotions are allowable on the land based operations associated with the riverboat gaming operation as long as the service of alcoholic liquor is part of the meal package and the meal package is purchased at a reasonable price by the patron.
- 4) Riverboat gaming operations fulfill the requirement of having a public dining room if such operations include a land based dining facility (235 ILCS 5/5-1(g)).

### **TPP-14 Standards For Approval Of Test Marketing; Tastings And Product Sampling**

#### **I. Purpose**

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby the test marketing, tasting and product sampling of alcoholic liquor products may be conducted.

#### **II. Policy**

It is the policy of this Commission that test marketing, tasting and product sampling of products shall be permitted, subject to the following procedures.

#### **III. Background** Section 100.280 Giving Away of Alcoholic Liquors

a) No licensee, individual, partnership or corporation shall give away any alcoholic liquor for commercial purposes or in connection with the sale of non-alcoholic products or to promote

the sale of non-alcoholic products.

b) No licensee, individual, partnership, or corporation shall advertise or promote in any way, whether on or off-licensed premises, any of the practices prohibited under subsection (a) above. This includes, but is not limited to, advertisements using the words “free” or “complimentary” with alcoholic liquor.

c) Subsection (a) above shall not apply to test marketing or tasting.

(Source: Amended at 21 Ill. Reg. 5542, effective May 1, 1997)

#### Section 100.10 Definitions

The following words or phrases are defined as follows:

“Tasting” means a supervised presentation of alcoholic products to the public at an off-premise licensed retailer for the purpose of disseminating product information and education, with consumption of alcoholic products being an incidental part thereof. Only products registered with the Commission may be tasted in the following amounts: Distilled Spirits 1/4 oz., Wine 1 oz., and Beer 2 oz.; notice of the tasting may be given. Tasting must be done by a licensee and/or registered tasting representative in accordance with Section 100.40.

“Test Marketing” means to test new products or products unfamiliar to the sampler through a marketing firm or the like.

#### Section 100.40 Registration of Tasting Representatives

a) Any non-licensee wishing to conduct a tasting as defined in Section 100.10 must register with the Commission. A registered tasting representative acts as the agent of the licensee.

b) Registration is fulfilled by submitting a form including the name of the person, address, licensee representing, if applicable, and any other questions deemed appropriate and necessary, and a \$100.00 administrative fee payable annually to the Commission.

c) The registration identification, or a copy thereof, must be available for inspection during any tasting.

d) Any applicant must meet all eligibility requirements as stated in 235 ILCS 5/6-2.

(Source: Amended at 23 Ill. Reg. 3787, effective March 15, 1999)

#### 5/6-31. Product Sampling.

(a) Retailer, distributor, importing distributor, manufacturer and nonresident dealer licensees may conduct product sampling for consumption at a licensed retail location. Up to 3 samples, consisting of no more than (i) 1/4 ounce of distilled spirits, (ii) one ounce of wine, or (iii) 2 ounces of beer may be served to a consumer in one day. (Source: P.A. 90-432, eff. 1/1/98; 90-626, eff. 1-1-99) From the general prohibition against the giving away of alcoholic liquors, it is the Commission’s position that “test marketing” and tasting of products, including those of an alcoholic nature, are valuable research tools in the development, production and ultimate marketing of products. With the creation of the “tasting” it became apparent that there were individuals and companies which were providing services to the liquor industry who were dispensing alcoholic beverages to the public without being licensed themselves, or being direct employees or agents of licensees. It was to deal with this situation that the “Tasting Representative” was created.

#### IV. Procedures

Please note that the regulatory “sampling” has been removed from this trade practice policy. With the passage of P.A. 90-432, and the creation of the statutory “product sampling” the “sampling” activities authorized by rule were made moot. The “sampling” section of Regulation 100.10 was thereafter repealed. There is both

statutory and regulatory authority for the commercial consumption of alcohol for which payment by the consumer has not been made. The major distinction between these types of consumption is the nature of the premises upon which the activity may be conducted: the “tasting” may be conducted upon “off-premises” licensed retail premises, while the “product sampling” may be conducted upon any retail licensed premises.

From the general prohibition against the giving away of alcoholic liquors for commercial purposes, it is the Commission’s position that product sampling and tasting of alcoholic liquor products are valuable research tools in the marketing of products and the creation of brand loyalty. This Commission will grant approval to the test marketing of alcoholic products, on a case-by-case basis, only upon written request, stating with specificity the parameters of the testing, and to include at a minimum the following information.

Test marketing requirements:

Manufacturers, Distributors and Importing Distributors:

1. The name and address of the marketing firm conducting the test marketing.
2. The location where the testing will be conducted.
3. The number of participants involved.
4. Representation that the age of the participants is 21 years of age or older.
5. The duration of the test.
6. The total amount of liquor involved in the testing and the total amount to be given each participant.

Tasting and Product Sampling requirements are simply set forth in the statute and rules. An important point to remember is that both the rules tasting and the statutory product sampling must be performed upon licensed retail liquor premises. No tasting or product sampling can legally be conducted on a non-licensed premises, i.e., “in-home tastings,” or product samplings at a flower shop.

A manufacturer, distributor and importing distributor may furnish, free of charge to the retail liquor licensee, cups and napkins in conjunction with tastings, test marketings and product samplings.

If the retailer has previously purchased the product to be tasted or tested, the manufacturer, distributor or importing distributor may pay for such product at the retailer’s original cost. If the manufacturer, distributor or importing distributor supplies the product, the product remaining after the tasting or testing must be returned to the manufacturer, distributor or importing distributor (variations from these provisions will be considered consignment sales pursuant to Federal Regulations and the “Of Value” provisions of 235 ILCS 5/6-5).

#### TPP-15 Geographic Territories

##### I. Purpose

To set the policy of the Illinois Liquor Control Commission and establish the guidelines which shall control the relationship between Manufacturers and Distributors in the following areas:

- A. Geographic Territories
- B. Registration of Brands
- C. Sales Outside of Geographic Territory
- D. Sub-distributor Exception
- E. Withdrawal of Registered Distributor
  - a. Registration of Products and Distributors
  - b. “Secondary” alcohol marketplace

## II. Policy

It is the policy of this Commission that manufacturers shall designate distributors for the sale and distribution of their brands within specified geographic territories, and that retail licensees must purchase alcoholic beverages from distributors authorized to sell in such designated geographic territories. Distributors shall regularly service all retail licensees within their geographic territories without prejudice in accordance with State statute (235 ILCS 5/6-17.1); and shall make available to all retail licensees any products for which they have distribution rights.

## III. Background, Statutes, Regulations

235 ILCS 5/6-9 of the Liquor Control Act (235 ILCS 5/1, et seq.) and 815 ILCS 720/5(8) of the Beer Industry Fair Dealing Act (815 ILCS 720/1, et seq.) provide the guidelines for the sale of alcoholic liquors within geographic territories.

Section 100.60 of the Rules and Regulations of the ILCC also apply. 815 ILCS 720/3 and 4 provide the guidelines for cancelling an agreement between the brewer and the wholesaler-distributor. For the purposes of this policy, a “manufacturer” shall include any manufacturer, importing distributor, distributor, non-resident dealer or foreign importer who owns or controls a trade mark, brand or name of alcoholic liquor.

## IV. Procedures

### A. Restricted Geographic Territories

Each manufacturer shall designate a distributor(s) for the sale of its product(s) to retailers within a designated geographic territory (235 ILCS 5/5-1(a-1) and 5/6-9).

1. The manufacturer of an alcoholic product other than beer may designate more than one distributor within a geographic territory (235 ILCS 5/6-9).

2. A beer manufacturer may designate only one distributor within a geographic territory (815 ILCS 720/5(8)).

### B. Registration of Brands

1. Every manufacturer must register the name of each distributor to whom such manufacturer has granted the right to sell its product with the ILCC (235 ILCS 5/6-9).

2. The registration statement must specify:

- the particular brands of alcoholic liquor each distributor has been granted;
- the geographical area for which such right is granted;

and

c. the period of time for which such right is granted

3. Such registration shall be made only by the person who owns or controls the trademark, brand or name of any alcoholic liquor (Section 100.60(b)).

4. Such registration shall be fulfilled by submitting the form to the Commission (235 ILCS 5/5-1(a-1)).

### C. No Sales Outside of Geographic Territory

1. A distributor may not sell alcoholic liquor outside its designated geographic territory. Nor may a distributor sell alcoholic liquor to a retail licensee whose premises are located outside of such geographic territory (235 ILCS 5/6-9).

2. A retailer may not purchase alcoholic liquor from a distributor who does not bear distributing rights in the geographic territory in which the retailer’s place of business is situated (Section 100.60(d)).

### D. Sub-distributor Exception

In 1979, the narrow “Sub-distributor” exception to 235 ILCS 5/6-9 has been carved out for certain distributors who qualify as “sub-

distributors.” These sub-distributors, to whom the manufacturer has not granted the right to sell a brand of alcoholic liquor, may nevertheless purchase such brand from a duly appointed distributor and sell at wholesale. However, the following restrictions apply:

1. The sub-distributor must be a licensed Illinois distributor who has been engaged in the purchase of a brand for resale for a period of two years prior to November 8, 1979;

2. The sub-distributor must properly notify the Commission in writing of the brands it wishes to purchase and resell;

3. The sub-distributor’s business address must be within the geographical area of his distributor; and

4. The sub-distributor may only make sales within the geographical area of its distributor.

This subsection was amended in 1998 to add language which mandated that the sub-distributor sales could only be made to retail licensees whose licensed premises were located within the geographical area for which the licensed Illinois distributor from whom the sub-distributor purchased were made. And the 1998 amendment also added to the paragraph following the above, that any licensed Illinois distributor who had not been granted the right to sell any alcoholic liquor at wholesale and was purchasing alcoholic liquor from a person who had been granted the right to sell at wholesale may sell and deliver only to retail licensees whose licensed premises were within the same geographical area as the person who had been granted the right to sell at wholesale.

### E. Withdrawal of Registered Distributor

#### 1. Beer

a. When a brewer terminates an agreement granting a wholesaler the right to sell a particular brand, that brewer must file a “Withdrawal of Registration” form with the ILCC. A copy of this “Withdrawal of Registration” shall be sent registered or certified mail to all those listed thereon to serve as notice of the contents (Reg. 100.60).

b. A brewer may terminate an agreement without furnishing any prior notification for the following reasons:

- Wholesaler’s failure to pay any account when due, upon demand by the brewer for such payment, in accordance with agreed payment terms.
- Wholesaler’s assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of such party’s business.
- Insolvency of wholesaler, or the institution of voluntary or involuntary proceedings in bankruptcy involving the wholesaler.
- Dissolution or liquidation of the wholesaler.
- Any attempted transfer of business assets, voting stock

c. For all other reasons, the brewer or wholesaler must provide written notice not less than ninety (90) days prior to the date upon which a termination of any such agreement is sought.

The notice shall contain the following:

- a statement of intention to cancel, refusal to renew, or termination for other specified reasons;
- a complete statement of reasons, including all data and documentation necessary to apprise the wholesaler of the reasons for the action; and
- the date on which the action shall take effect (815 ILCS 720/3(2)).

d. The brewer and wholesaler must make reasonable good faith efforts to resolve any disagreements. If, within 90 days after receiving notification of an intent to terminate, the affected party rectifies or otherwise eliminates the specified cause of the disagreement, the party serving notice to

cancel, refusal to renew, or otherwise terminate, may not do so (815 ILCS 720/4).

## 2. Alcoholic Liquors Other Than Beer

a. There is no 90 day notification provision governing the termination of an agreement between a manufacturer and a distributor for the sale and distribution of alcoholic liquors other than beer.

b. However, upon termination of an agreement, the manufacturer must file a "Withdrawal of Registration" form.

c. The party terminating the agreement shall send via certified or registered mail a copy of the "Withdrawal of

d. Registration" to all those listed thereon to serve as notice of the contents.

e. Since such terminations involve private, contractual disputes, the Commission does not become involved in same, other than in response to a petition filed by the party owning the brand name, trademark, etc. to direct the terminated distributor to cease distribution of the subject products.

## F. Registration of Products and Distributors

It has come to the attention of the Commission that certain licensees responsible for the registration of distributors/importing distributors/foreign importers (wholesalers) and products in the State of Illinois have failed to comply with one or more of the Illinois statutory and regulatory requirements.

Wholesaler/product registrations may be filed with the Commission at any time, but must be received by the Commission before the particular wholesaler(s) can initiate product sales. To assist in such filing the Commission has added both the Registration Statement and the Withdrawal of Registration (in PDF format) to its website ( Only original documents with necessary information and authorized signatures will be filed. Duplicate copies will be file stamped and returned, if requested. The failure of any responsible licensees to act in conformity with the statute and rule may subject such licensees to disciplinary action.

See also, P.A. 92-0 105 which provides that Foreign Importers are subject to all the filing requirements of Sec. 5/6-9, and that wholesalers may file "substitute" registration statements in the event they are not provided copies by the party filing same with the Commission.

### Sec. 5/5-1

(k) A foreign importer's license shall permit such licensee to purchase alcoholic liquor from Illinois licensed non-resident dealers only, and to import alcoholic liquor other than in bulk from any point outside the United States and to sell such alcoholic liquor to Illinois licensed importing distributors and to no one else in Illinois; provided that the foreign importer registers with the State Commission every brand of alcoholic liquor that it proposes to sell to Illinois licensees during the license period and provided further that the foreign importer complies with all of the provisions of Section 6-9 of this Act with respect to registration of such Illinois licensees as may be granted the right to sell such brands at wholesale.

### Sec. 6-9

Each manufacturer, non-resident dealer, distributor or importing distributor, or foreign importer who is required to register under this Section must furnish a copy of the registration statement at the time of appointment to the person who has been granted the right to sell alcoholic liquor at wholesale. However, if a person who has been appointed the right to sell alcoholic liquor at wholesale does not receive a copy of the registration statement as

required under this Section, such person may file a registration statement with the State Commission, provided that the person furnishes a copy of that registration statement to the manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer within 30 days of filing the registration statement.

The registration statement shall state:

(1) the name of the person appointed;

(2) the name of the manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer from whom the person received the right to sell alcoholic liquor;

(3) the particular trade mark, brand, or name of alcoholic liquor as to which the right to sell at wholesale is granted; and

(4) the geographical areas for which the right to sell at wholesale is granted.

In every instance in which an Illinois distributor seeks to file a registration statement under P.A.-0 105, the party seeking such filing shall provide the Commission written documentation evidencing that party's right to make such a filing, including but not limited to copies of contracts between the distributor and the party appointing, a letter of authority, or other authoritative documentation. Any party seeking to file such registration statement without a legal basis for same shall be subject to discipline for such violation.

## G. "Secondary" Alcohol Marketplace

The "secondary" alcohol marketplace concerns the acquisition of usually rare, or "vintage," alcoholic beverages from sources such as estates, auctions, wholesaler stock, foreign producers and the like, which beverages have traveled through the three-tier system prior to the time of such acquisition, all applicable taxes having been properly collected and remitted. These products, usually wines, but both malt beverages and distilled spirits may also be subject to such acquisition, have been acquired by a licensee, usually a non-resident dealer, who seeks to reintroduce the product into the stream of commerce.

Where such rare or vintage alcoholic beverages are acquired by a licensed non-resident dealer, and the original producer of such products has not filed a written objection with the Commission, the non-resident dealer may register the product and appoint licensed Illinois wholesalers to distribute the product, as may be provided by law.

The non-resident dealer, prior to any sale of such product to any Illinois wholesalers shall file with the Commission a Registration Statement, substantially following the form which follows this policy. Any change in the appointment of Illinois wholesaler to handle these products will be accomplished as provided in Sec. 5/6-9, with a "Withdrawal of Registration" and the filing of a new registration form.

The filing of a Registration Statement shall initiate the process, which shall be reviewed on a case-by-case basis by the Commission to determine the propriety of the request for registration.

## TPP-16 Deposits On Bottles And Barrels

### I. Purpose

This policy establishes guidelines as to how much and when beer manufacturers ("brewers") and distributors must charge for barrel deposits.

## II. Policy

It is the policy of the Illinois Liquor Control Commission (ILCC) that a brewer or distributor must treat all retail accounts the same when charging for barrel deposits.

## III. Background

235 ILCS 5/6-5 provides the requirements for the deposits on bottles and barrels for beer.

## IV. Procedure

### A. Bottles And Cases

1. Retailer
  - a. Unless the purchase price expressly includes a charge for the bottles and cases, the retailer must pay the distributor a cash deposit.
  - b. The cash deposit must be paid on or before the delivery of such beer.
  - c. The retailer must pay a deposit amount not less than that charged a distributor by the brewer. However, in no instance shall this deposit be less than the following:
    - i. 50 cents for each case of beer in pint or smaller bottles, and
    - ii. 60 cents for each case of beer in quart or half-gallon bottles.
  - d. The deposit shall be credited or refunded to the retailer upon return of the bottles or cases.
2. Distributor
  - a. Unless the purchase price expressly includes a charge for the bottles and cases, the distributor must pay the brewer a cash deposit.
  - b. A distributor has fifteen (15) days (Sundays and holidays excepted) after delivery to pay the cash deposit for the bottles and cases of beer.
  - c. The distributor must pay a deposit amount not less than the following:
    - i. 50 cents for each case of beer in pint or smaller bottles, and
    - ii. 60 cents for each case of beer in quart or half-gallon bottles.
  - d. The deposit shall be credited or refunded to the distributor upon return of the bottles and cases.

### B. Barrels

There is no requirement of a deposit charge for barrels. However, if one distributor or retailer is charged, then all must be charged.

## TPP-17 Non-Alcoholic Products

### I. Purpose

To establish the policy of the Illinois Liquor Control Commission regarding the regulation of non-alcoholic products; i.e., “non-alcoholic” beer, confectionary products, or other products using alcohol as a flavoring agent.

### II. Policy

It is the policy of this Commission not to regulate any liquid or solid containing one-half of one percent or less of alcohol by volume.

### III. Definitions

The Illinois Liquor Control Act, Section 5/1-3.05, defines “alcoholic

liquor” to include: “alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being. The provisions of this Act shall not apply to alcohol used in the manufacture of denatured alcohol produced in accordance with Acts of Congress and regulations promulgated thereunder, nor to any liquid or solid containing one-half of one per cent, or less, of alcohol by volume.”

The Beer Industry Fair Dealing Act, 815 ILCS, at Section 720/1.1(1) defines “beer” as: “a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like.”

## IV. Procedure

### A. PRODUCTS, OTHER THAN BEER, WITH .5% OR LESS OF ALCOHOL BY VOLUME

1. The provisions of the Liquor Control Act do not apply to this category of products. Consequently, this Commission does not regulate such products.
2. A distributor is free to refuse sale of products which fall under this category.

### B. BEER WITH .5% OR LESS OF ALCOHOL BY VOLUME

1. The provisions of the Liquor Control Act do not apply to this category of products. Consequently, this Commission does not regulate such products.
2. The provisions of the Beer Industry Fair Dealing Act do apply to any products which fall under the definition of “beer.”
3. Since non-alcoholic beer is subject to the Beer Industry Fair Dealing Act, Regulation 100.30 vests this Commission with the jurisdiction to revoke or suspend any of its licensees for the violation of any of the provisions of the Beer Industry Fair Dealing Act.

### C. TAXATION OF PRODUCTS WITH .5% OR LESS OF ALCOHOL BY VOLUME

Since this Commission does not regulate any liquid or solid containing one-half of one percent or less of alcohol by volume, this Commission does not have the authority to rule on whether the State’s Retailer’s Occupation Tax applies to products with one-half of one percent or less of alcohol by volume.

### D. Other

1. Sorbet which contain a small quantity of alcohol. While this products may contain alcohol in excess of the one-half of one percent potentially allowing it to be regulated by the Commission, the product appears to fall within the general exclusion of not being a “beverage.” Since the product falls outside the regulation of the Illinois Liquor Control Act, the Commission does not take a position on its authority to regulate the product.
2. Confectionary products. The above rationale applies to confectionary products as well. The producer of these products should be aware that the Illinois Food, Drug and Cosmetics Act (410 ILCS 620/10(c) states that: “If it is confectionery and it bears or contains any alcohol; however, this subsection shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol.”

## TPP-18 Pre-Mixing Of Alcoholic Products

### I. Purpose

To set the policy of the Illinois Liquor Control Commission and establish the procedures governing the serving and storage of pre-

## II. Policy

It is the policy of this Commission to allow retailers to use pre-mixed alcoholic beverages and dispensing systems.

## III. Background

Pursuant to 235 ILCS 5/6-22, “no person except a manufacturer or distributor, or importing distributor, shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor, and it shall be unlawful for any person to have in his possession for sale at retail any bottles, casks or other containers containing alcoholic liquor, except in original packages.”

Reg. Sec. 100.290 states in relevant part that “no retail licensee shall offer for sale or possess on said licensed premises:

- a) Any original package of alcoholic liquor which contains any kind or quality of alcoholic liquor other than that which has been sealed and labeled by the manufacturer or nonresident dealer of alcoholic liquor, to contain and to convey said alcoholic liquor.
- b) Any original package of alcoholic liquor to which there has been added any water or other substance . . .” (Source: Amended at 20 Ill. Reg. 834, effective January 2, 1996).

Notwithstanding the foregoing, this Commission, via regulation, has made provision for certain alcoholic beverages to be served in pre-mixed form. Sec. 100.160(e) requires that: “Pre-mixed alcoholic beverages and their containers must comply with all sanitation requirements as found in this Section, along with all prohibitions against refilling as found in Section 100.290(c). All pre-mix dispensing containers or systems must be drained, contents disposed of, and thoroughly cleaned at least once every week. For mechanical systems a record shall be kept on the premises as to the dates the cleaning was done, signed by the person who actually performed the cleaning.”

## IV. Procedures

1. Pre-mixed beverages may be brand specific.
2. Mechanical pre-mixing systems may be brand specific. Any advertisement or promotional materials placed on top of or around such systems shall not be deceptive in describing the brand of alcoholic liquor served.
3. Pre-mixed beverages shall be disposed of weekly.
4. Containers used for pre-mixing must comply with all sanitation requirements of Section 100.160, and prohibitions against refilling of Section 100.290.
5. Mechanical pre-mixing dispensing systems must be drained and thoroughly cleaned at least once every week.
6. Records of the cleaning must be kept on the premises, reflecting the date(s) on which such cleaning was done, and bearing the signature of the individual performing the cleaning.

### TPP-19 Auction Of Liquor

#### I. Purpose

This policy defines the procedures for the sale of alcoholic beverages by auction.

#### II. Policy

It is the policy of the Illinois Liquor Control Commission (ILCC) to regulate all alcoholic beverages sold by auction.

## IV. Procedures

A. A person wishing to apply for an auction liquor license must first become licensed pursuant to the Illinois Auction License Act (225 ILCS 407/5-1, et seq.).

B. A person wishing to sell alcoholic beverages by auction must obtain an auction liquor license. An auction liquor license shall only be issued to a person. A non-licensed person may not sell alcoholic beverages.

C. A person wishing to sell by auction must obtain written approval from the ILCC. An auction liquor license must be obtained at least fourteen (14) days in advance of the auction date.

D. An auction liquor license allows the licensee to do the following:

1. sell and offer for sale wine and spirits for use or consumption,
2. sell and offer for sale wine and spirits for resale by an Illinois liquor licensee,
3. hold the auction on a specified date,
4. hold the auction anywhere in the State of Illinois.

E. Approved sales

1. private sale
2. out-of-state sale
3. sale to ultimate consumer
4. sale to distributor or retailer for resale

F. Nothing in this policy shall be construed to allow a retailer outside the context of a validly licensed

G. Auction to purchase from anyone other than a distributor in violation of 235 ILCS 5/5-1. Other than

as stated in this policy a retailer is required to make regular purchases in the ordinary course of business from a licensed distributor, or be in violation of 235 ILCS 5/5-1.

H. Sales on consignment are prohibited.

### TPP-20 Brew Pubs

#### I. Purpose

This policy defines the procedures which must be followed in order for a retailer to manufacture and sell its own beer.

**II. Policy** It is the policy of the Illinois Liquor Control Commission to allow retailers to brew their own beer on their retail premises for sale to the public.

#### III. Background

The alcoholic industry operates on a three tier system: manufacturers, distributors and retailers. In order to prevent the prohibited practice of a “tied house,” members of one tier are prohibited from owning any interest in another tier. Thus, the holder of a manufacturer’s license is not generally allowed to hold a retailer’s license.

However, in response to the growing development of micro-breweries, the Illinois Legislature, in 1993, amended the Statute to provide for a Brew Pub license. The Brew Pub license essentially carves out a narrow exception to the general rule that a manufacturer cannot also be a retailer.

#### IV. Definitions

##### A. 235 ILCS 5/1-3.08. Manufacturer

“Manufacturer” means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package, whether for himself or for another, and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors.

##### B. 235 ILCS 5/1-3.17. Retailer

“Retailer” means a person who sells, or offers for sale, alcoholic liquor for use or consumption and not for resale in any form.

##### C. 235 ILCS 5/5-1(n) Brew Pub

A brew pub license shall allow the licensee to manufacture beer only on the premises specified on the license, to make sales of the beer manufactured on the premises to importing distributors, distributors and to non-licensees for use and consumption, to store the beer upon the premises, and to sell and offer for sale at retail.

##### D. 235 ILCS 5/1-3.13. Manufacture

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with an alcoholic liquor, whether for oneself or for another, and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in this Act to serve drinks for consumption on the premises where sold. All containers or packages of blended alcoholic liquors shall have affixed thereto a label setting forth and stating clearly the names of all ingredients which the blended alcoholic liquors offered for sale shall contain.

#### V. Procedures

##### A. Brewing on Premises for Sale at Retail

1. Pursuant to 235 ILCS 5/5-1(n), a brew pub license requires and permits the following:
  - a. the licensee must manufacture the beer on the licensed premises;
  - b. the licensee must store and sell the beer from the licensed premises;
  - c. the licensee may sell the beer to distributors and importing distributors for resale;
  - d. the licensee may sell and offer for sale the beer at retail for consumption only on the licensed premises, and
  - e. the licensee may sell and offer for sale other alcoholic beverages at retail.

B. The ILCC views a Brew Pub as a retailer which manufactures its own beer. All retailer statutes and regulations apply. A Brew Pub licensee may not obtain a distributor’s license.

C. The Commission has received recent inquiries about activities which may be taking place upon the premises of “brew pubs.” Prior to the enactment of the “Brew Pub” statute (235 ILCS 5/1-3.3 3; 5/5-1(n)) entities seeking to conduct business under the umbrella of a “brew pub” were required to secure both a retailer and a brewer license. Local approval/licensing was also required of the “retailer” aspects of such a business.

When the General Assembly enacted the amendments to the Illinois Liquor Control Act, referenced above, the “brew pub” was as defined as follows:

5/1-3.33. “Brew Pub” means a person who manufactures beer only at a designated premises to make sales to importing distributors, distributors, and to non-licensees for use and consumption only, who stores beer at the designated premises, and who is allowed to

sell at retail. (Source: P.A. 88-91)” The licensing description of a “brew pub” is as follows: “A brew pub license shall allow the licensee to manufacture beer only on the premises specified in the license, to make sales of the beer manufactured on the premises to importing distributors, distributors, and to non-licensees for use and consumption, to store the beer upon the premises, and to sell and offer for sale at retail.”

Some confusion may have arisen from a reading of the portion of the statute which dealt with the right of a manufacturer to secure one retailer license, which predated the foregoing “brew pub” legislation. Section 5/6-4(e) provided that the manufacturer which had received a retailer’s license was permitted to sell “beer only.”

The omission of a similar limitation on the brew pub license was intended to not restrict the brew pub licensee to such “sale of beer only” upon the licensed premises. It was the intent of the legislation, and it is the position of this Commission, that a brew pub licensee may sell wine and distilled spirits, in addition to, beer only for consumption upon its licensed premises. This therefore allows brew pub licensees to purchase for resale whatever alcoholic liquors all other retail liquor licensees can, subject only to the type of license the entity has secured from the local liquor control commissioner. Further, the question has been posed whether a brew pub can bottle its product for sale to retail consumers for “off-premises” consumption. Notwithstanding the nature of the local license issued the business, i.e., combination, on- and off-premises, the Illinois Liquor Control Act does allow sales for “off-premises” consumption. A brew pub which wants its product to be able to be sold for such “off-premises” consumption, would have to act as any other brewer and register a distributor, which will handle the product for retail purchase.

#### TPP-21 Reserved

#### TPP-22 HAPPY HOUR LAW

##### I. Purpose

This Policy statement establishes this Commission’s policy as to various licensee promotions, and defines the general procedure used by this Commission to enforce the Happy Hour Law (235 ILCS 5/6-28).

##### II. Policy

It is the policy of this Commission to define the types of promotions and activities allowed under the Happy Hour Law, to monitor and verify compliance with those defined promotions and activities, and to enforce this policy as provided by law.

##### III. Definitions

###### A. MEAL PACKAGE

Any food, excluding snacks and other so-called “finger food,” that is served on the licensed premises, which includes the service of alcoholic beverages as part of such package.

###### B. DAY

The period of time beginning from the opening of business to the close of business, not exceeding twenty-four hours.

###### C. DRINKS

The term shall also include more than one container of an alcoholic beverage or a pitcher of an alcoholic beverage.

##### IV. Procedure

The Happy Hour Law, effective 8/31/89, was passed in order to eliminate the over consumption of alcoholic liquor and was intended

to eliminate promotions that would encourage such over consumption.

The Happy Hour Law states in relevant part:

(b) No retail licensee or employee or agent of such licensee shall:

- (1) serve 2 or more drinks of alcoholic liquor at one time to one person for consumption by that one person, except selling or delivering wine by the bottle or carafe;
- (2) sell, offer to sell or serve to any person an unlimited number of drinks of alcoholic liquor during any set period of time for a fixed price, except at private functions not open to the general public;
- (3) sell, offer to sell or serve any drink of alcoholic liquor to any person on any date at a reduced price other than that charged other purchasers of drinks on that day where such reduced price is a promotion to encourage consumption of alcoholic liquor...;
- (4) increase the volume of alcoholic liquor contained in a drink, or the size of a drink of alcoholic liquor, without increasing proportionately the price regularly charged for the drink on that day;
- (5) encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or awarding of drinks of alcoholic liquor as prizes for such game or contest on the licensed premises; or
- (6) advertise or promote in any way, whether on or off the licensed premises, any practices prohibited under paragraphs (1) through (5)."

(c) Nothing in subsection (b) shall be construed to prohibit a licensee from:

- (1) offering free food or entertainment at any time;
- (2) including drinks of alcoholic liquor as part of a meal package;
- (3) including drinks of alcoholic liquor as part of a hotel package;
- (4) negotiating drinks of alcoholic liquor as part of a contract between hotel or multi-use establishments and another group for the holding of any function, meeting, convention or trade show;
- (5) providing room service to persons renting rooms at a hotel;
- (6) selling pitchers (or the equivalent, including but not limited to buckets), carafes, or bottles of alcoholic liquor which are customarily sold in such manner and delivered to 2 or more persons at one time; or
- (7) increasing prices of drinks of alcoholic liquor in lieu of, in whole or in part, a cover charge to offset the cost of special entertainment not regularly scheduled."

In addition, Regulation 100.280 of this Commission states as follows:

a) No individual, partnership or corporation shall give away any alcoholic liquor for commercial purposes or in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products.

b) No licensee shall give or offer to give away alcoholic liquor in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products.

c) No individual, partnership, corporation or licensee shall advertise or promote in any way, whether on or off licensed premises, any of the practices prohibited under subsections (a) or (b) above."

A. The Happy Hour Law prohibits:

1. Serving two or more drinks to one person for consumption by that person. This requires that individuals be served only one drink at a time. Also prohibited are promotions such as A2 for 1" drinks, or any type of promotion which discounts drinks at a 2 for 1 or

greater (3-1) price. A "shot and a beer" (boilermaker) promotion is allowable as such is considered one drink under this provision.

2. Serving an unlimited amount of drinks during a set period of time for a fixed price. This prohibits the practice of charging a flat fee for "all you can drink" all day or during a set period of time. However, an exception is made for private functions not open to the general public, but this requires that the number of participants at the event must be limited by the licensee either through the issuance of tickets, invitations or set number of participants at the activity. Specifically excepted are weddings, private parties, fund-raising functions, etc., at which the emphasis is on the participants, event itself or beneficent purpose, and not on the consumption of alcohol.

3. Reducing prices of drinks during a specified period during the day or to a specified group of individuals. This is the provision that prohibits the euphemistic "Happy Hour" and "Ladies Night" during which all patrons or only a specific group is given a promotion encouraging consumption. Prices for any specific product may not change during the business day. All customers must be charged the same price for the same alcoholic liquor. A multi-use establishment may charge different prices in different rooms, provided such prices remain the same all day, and separate price schedules are kept for each room. Regulation 100.280 forbids retailers from giving away alcoholic liquor, however, the practice of a bartender buying a drink for a customer is allowable if such practice is not advertised, if such drink is purchased as a "reward" for patronage or loyalty, and is not done to encourage consumption.

4. Increasing the volume of alcoholic liquor contained in a drink but must be capable of being used for any type of purchase at the licensed premises (e.g. food, soft drinks, promotional items). without proportionately increasing the price regularly charged for that drink on that given day. This requires that the price of a drink be increased by the proportionate increase of the alcohol in the drink. The price of a "double" must therefore be twice the price of a regular, one-shot drink.

5. A licensee from encouraging or permitting, on its premises, games or contests which involve drinking alcoholic liquor or awarding drinks as prizes. Although a licensee may sponsor games and contests at its premises, alcoholic product may not be a prize for winning such contests, and the drinking of alcohol may not be part of the contest (e.g. chugging contest). A licensee may offer coupons for winning such contest; however, the coupons may not be used solely for alcohol (e.g. drink coupons)

6. Advertising, in any way, any practice prohibited by the Happy Hour Law. The act of advertising a promotion which violates the Happy Hour Law is, in itself, a violation. This Commission takes the position that using the word "free" (or any form thereof) in any advertising promotion regarding alcoholic liquor (e.g. "buy a case, get a six-pack free") is a violation of both 5/6-28 and Regulation 100.280. Such promotions encourage the over consumption of alcoholic liquor.

7. Serving traditionally "individual" drinks in carafes, pitchers, etc., is considered by the Commission to be a violation of "Happy Hour."

B. The Happy Hour Law permits:

1. Offering free food or entertainment. The Happy Hour Law was intended to control only the sale of alcoholic liquor, thus promotions which offer free products, including entertainment, to attract customers, are not prohibited. Nothing in this Practice or in the Act prohibits a licensee from discriminating between classes of customers in areas other than the sale of alcohol. Therefore, it is the position of this Commission that free or reduced prices for food, cover charges and other non-alcohol related items are not controlled by the Happy Hour Law.

2. Including drinks with a meal or hotel package. The emphasis of

such promotion must be the meal or hotel package itself, and not unlimited consumption of alcohol. A meal package is defined above, and must not be of the general hors d'oeuvres variety. Meal package promotions must be confined to a restricted area of the licensed premises and customers not partaking of the meal package may not be allowed to mingle with the patrons participating in the meal package.

3. Selling pitchers, carafes or bottles of alcoholic liquor customarily sold in that manner and delivered to two (2) or more persons. Promotions such as "buckets" are allowable, as long as such promotions comply with all the other stated provisions of the Happy Hour Law.

4. Increasing drink prices in lieu of a cover charge if special entertainment, which is not regularly scheduled, is at the licensed premises. This provision allows a licensee to increase drink prices, in lieu of a cover charge, to defray the cost of non-regularly scheduled entertainment. However, this practice is not allowed for entertainment which is of the "house band" variety. If an establishment has various entertainment acts scheduled on a regular basis, this will also be considered to be of the "house band" variety. Nothing in this practice, or in the Act, prohibits the licensed establishment from discriminating between classes of customers in other area, not involving the sale of alcohol. Therefore it is the position of this Commission that free or reduced prices for cover charges is not controlled by the Happy Hour Law.

## **TPP-23 Transportation And Delivery Of Alcohol**

### **I. Purpose**

This policy establishes guidelines for the transportation and delivery of alcohol within the State of Illinois.

### **II. Policy**

It is the policy of the Illinois Liquor Control Commission (ILCC) to allow the transportation and delivery of alcohol under specified circumstances.

### **III. Background**

235 ILCS 5/2-1 provides that no person shall transport or deliver any alcoholic liquor for beverage purposes, except as specifically provided by the Liquor Control Act ("Act"). However, the Act does not prevent the transportation of alcoholic liquor for the personal use of the possessor, his family or guests.

235 ILCS 5/6-7 provides that any package containing alcoholic liquor shall have affixed to it all cancelled revenue stamps which may be provided by Federal law and shall bear a clear and legible label containing certain specified information. Additionally, the package shall be securely sealed so that the contents cannot be removed without breaking the manufacturer's seal.

235 ILCS 5/6-8 provides the procedure for the transportation and delivery of alcohol into Illinois.

235 ILCS 5/6-29, the Interstate Reciprocal Wine Shipments provision, limits the shipping of wine for personal use to not more than two (2) cases per year per adult resident of Illinois. Each case may contain not more than nine (9) liters.

235 ILCS 5/6-29.1, Direct shipments of alcoholic liquor.

Pursuant to the Twenty-First Amendment to the United States Constitution allowing the states to regulate the distribution and sale of alcoholic liquor and pursuant to the federal Webb-Kenyon Act declaring that alcoholic liquor shipped in interstate commerce must comply with state laws, the General Assembly hereby finds and declares that selling alcoholic liquor from a point outside this State through various direct marketing means, such as catalogs, newspapers, mailers, and the Internet, directly to residents of this

State poses a serious threat to the State's efforts to prevent youths from accessing alcoholic liquor; to State revenue collections; and to the economy of this State.

Any person manufacturing, distributing, or selling alcoholic liquor who knowingly ships or transports or causes the shipping or transportation of any alcoholic liquor from a point outside this State to a person in this State who does not hold a manufacturer's, distributor's, importing distributor's, or non-resident dealer's license issued by the Liquor Control Commission, other than a shipment of sacramental wine to a bona fide religious organization, a shipment authorized by Section 6-29, or any other shipment authorized by this Act, is in violation of this Act.

The Commission, upon determining, after investigation, that a person has violated this Section, shall give notice to the person by certified mail to cease and desist all shipments of alcoholic liquor into this State and to withdraw from this State within 5 working days after receipt of the notice all shipments of alcoholic liquor then in transit.

Whenever the Commission has reason to believe that a person has failed to comply with the Commission notice under this Section, it shall notify the Department of Revenue and file a complaint with the State's Attorney of the county where the alcoholic liquor was delivered or with appropriate law enforcement officials.

Failure to comply with the notice issued by the Commission under this Section constitutes a business offense for which the person shall be fined not more than \$1,000 for a first offense, not more than \$5,000 for a second offense, and not more than \$10,000 for a third or subsequent offense. Each shipment of alcoholic liquor delivered in violation of the cease and desist notice shall constitute a separate offense.

235 ILCS 5/8-12 and Section 420.100 of the Revenue Regulations provide that every person or carrier transporting alcoholic liquors into the State of Illinois shall keep a record of any deliveries and file a monthly report with the Department of Revenue.

235 ILCS 5/8-1 and Section 420.30 of the Revenue Regulations provide for the gallonage tax liability for the sale and transportation of alcohol.

### **IV. Procedures**

A. All alcoholic liquor imported into Illinois must be off-loaded from the common carrier, vehicle or mode of transportation by which the alcoholic liquor was delivered into Illinois.

B. All alcoholic liquor imported into Illinois must be delivered to an importing distributor.

C. A distributor or importing distributor, upon application to the ILCC, may secure permission to deliver beer directly to a retail licensee holding or otherwise participating in a special event.

D. Any manufacturer, distributor, importing distributor or foreign importer may only sell or deliver packages containing alcoholic liquor which have affixed to them the following:

1. all cancelled revenue stamps which may be provided by Federal law,
2. a clear and legible label containing
  - a. the name and address of the manufacturer,
  - b. the kind of alcoholic liquor contained therein, and
  - c. in the case of alcoholic liquor (other than beer, imported Scotch whiskey and brandy 4 years old or more) the date when manufactured and the minimum alcoholic content thereof.

E. No package shall be delivered by any manufacturer, distributor, importing distributor or

foreign importer unless the same shall be securely sealed so that the contents thereof cannot be removed without breaking the seal so placed thereon by the manufacturer.

F. Any person or party who brings, carries or transports alcoholic liquors into the State of Illinois for delivery in Illinois must

prepare and file with the Department of Revenue for each month, not later than the fifteenth day of the month following that for which it is made, a report stating the following information:

1. the name of the person or party making the report,
2. the address in Illinois at which the records supporting such report are kept and open to inspection,
3. the period of time covered by the report,
4. the name and business address of each consignor,
5. the name and business address of each consignee,
6. the kind and quantity of alcoholic liquors delivered to each consignee, and
7. the date(s) of delivery.

G. The books and records supporting such report shall be kept and preserved for a period of three (3) years, unless their destruction sooner is authorized in writing by the Director of the Department of Revenue.

H. All applicable taxes must be paid to the Department of Revenue (see 235 ILCS 5/8-1 and Section 420.30 of the Revenue Regulations).

I. The Liquor Control Act does not prevent the possession and transportation of alcoholic liquor for the personal use of the possessor, his family and guests.

A. Each adult may receive up to two (2) cases of wine per year. Each case may contain not more than nine (9) liters.

## V. Exceptions

There are situations in which the shipping into the State of Illinois of unregistered alcoholic beverages is permissible notwithstanding the above prohibitions and conditions.

A. Test Marketing of product in accordance with TPP-14.

B. Shipment of limited quantities to writers or reviewers in the alcoholic beverage industry, to whom shipments are made for the purpose of consumption, evaluation and critical comment. The quantities allowable are usually one bottle per product type, but in no event should the quantity be sufficient to be considered "re-sellable."

C. Other situations will be evaluated on a case-by-case submission.

## TPP-24 Reserved

## TPP-25 Stocking, Rotating And Re-Setting Of Products

### I. Purpose

This Policy statement defines procedures regarding manufacturers and distributors stocking, rotating and re-setting their products at retail establishments.

### II. Policy

It is the policy of this Commission that manufacturers and distributors may stock and rotate their product at retail establishments as long as such activities are done in conjunction with and incidental to delivery of such product in the normal course of business or at the time of a sales call to the retailer. However, such services must be done voluntarily by the manufacturer, distributor and importing distributor, and may not be required to be performed by the retailer. This policy allows distributors to take part in retailer prompted resets up to four times per year, as long as all distributors are notified of the reset. This policy prohibits

manufacturers and distributors from acting as the employee of the retailer, from pricing the retailer's products and, generally, from handling any other supplier's products.

### III. Background

Pursuant to 235 ILCS 5/6-5, it is illegal "for any person having a retailer's license or any officer, associate, member, representative or agent of such licensee to accept or receive ... anything...of value...directly or indirectly from any manufacturer, importing distributor or distributor of alcoholic liquor." Similarly, 235 ILCS 5/6-5 makes it "unlawful for any manufacturer or distributor or importing distributor to give or lend...anything...of value...directly or indirectly to any retail licensee or to the manager, representative, agent, officer or director of such licensee". Thus, distributors and manufacturers may not give or lend anything of value to retailers, and retailers may not accept or receive anything of value from distributors or manufacturers.

Pursuant to Policy TPP-1, "Of-Value Standards", this Commission will determine on a case-by-case basis whether services may be provided by manufacturer and distributors to retailers. Unless such services are specifically allowed under statute, regulation or trade practice policy, services provided by manufacturers, distributors and importing distributors to retailers will be presumed to be in violation of the "of value" provisions of 235 ILCS 5/6-5.

### IV. Procedures

This policy defines the limits on what manufacturers and distributors may legally do for retailers and not risk Commission intervention.

#### A. General

Under no circumstances may manufacturers, distributors and importing distributors affix prices to product on behalf of retailers. They may not clean or dust shelves, coolers, or products which are on display at the retailer's location. Generally, they may not touch, move, alter, or disturb the product of a competitor.

Employees of manufacturers, distributors and importing distributors may not be treated as employees of retailers, nor may they work free of charge to the retailer.

#### B. Stocking

At their discretion, manufacturers, distributors and importing distributors may stock only their own products at a retail establishment. This shall be done during the course of the regular sales call or delivery to the retailer, however, such services must be done voluntarily by the manufacturer, distributor and importing distributor, and may not be required to be performed by the retailer. Nothing in this Trade Practice Policy shall prohibit the exchange of product that is near or beyond the manufacturer's expiration or 'code' date. If stocking is performed with any greater frequency, it will be viewed as more than minimal provision of free labor to the retailer. Stocking is defined as any placing of product where it is to be stored or offered for sale on a retailer's premises (e.g. on shelves, in coolers, against walls, in displays or in storage areas). Manufacturers, distributors and importing distributors may place product at any of the aforementioned locations on the theory that stocking is a service incidental to a sales call or a delivery in the ordinary course of business.

However, with respect to special promotions and displays constructed in connection therewith, manufacturers, distributors and importing distributors may assemble or construct displays for retailers, may place or position the display at the retail premises, and may stock or replenish the display at any time during the course of the special promotion. In this circumstance there is no "normal sales call or delivery" limitation as it is often necessary to

perform such service on a daily basis.

### **C. Rotation**

At their discretion, manufacturers, distributors and importing distributors may rotate only their own products at a retail establishment, during the normal course of a sales call or a delivery. In the beer industry this practice is required to ensure compliance with freshness dates. However, such services must be done voluntarily by the distributor, and may not be required to be performed by the retailer. This shall be done during the normal course of a sales call or a delivery, and if done with any greater frequency, it will be viewed as more than minimal provision of free labor to the retailer. Rotation shall include the moving of newer, fresher product from a storage area to an area where it is offered for sale. Permissible rotation also includes the moving of older product to the front of a point-of-sale location and replenishing of the location with fresh product. Rotation may be performed at any location in the retail premises. Manufacturers, distributors and importing distributors may rotate product on the theory that such rotation is a service incidental to the sales call or delivery of product in the ordinary course of business. However, with respect to special promotions and displays constructed in connection therewith, manufacturers and distributors may assemble or construct the display for retailers, may place or position the display at the retail premises, and may stock or replenish the display at any time. In this circumstance there is no "normal sales call or delivery" limitation as it is often necessary to perform such service on a daily basis. Note that the cost of the display must be in compliance with the dollar limitation provisions of 235 ILCS 5/6-6.

### **D. Resetting**

Manufacturers, distributors and importing distributors are permitted to participate in resets conducted at retail establishments no more than four (4) times per calendar year per licensed premises. Resets called by retailers more often than four (4) times a year will be considered to be an unfair burden on the provider of the goods to the retailers.

Whether initiated by the manufacturer, distributor, importing distributor or retailer, where a reset is called it shall be the duty of the retailer to notify in writing all affected manufacturers, distributors and importing distributors of the reset no less than two (2) weeks prior to the date scheduled for the reset. The retailer must make all reasonable efforts to schedule the reset for a time most convenient for the majority of manufacturers, distributors and importing distributors involved. During the reset, participants are limited to the movement of their own goods only, unless another supplier which has been properly notified is not attending. In such case, the participants may assist the retailer in moving the goods of the non-attending supplier. The point is that the retailer can reset the product, on his own, whenever he wants, and a distributor can reset its product so long as it does not touch a competitor's. Manufacturers, distributors and importing distributors may provide diagrams to retailers, which suggest the most beneficial location within the store for the presentation and sale of product to the consumer. If the retailer decides to follow the location suggestion, manufacturers, distributors and importing distributors may reset only their product within the store in accordance with the diagrams, or any modifications thereof, and a formal reset date is not required to be arranged. However, in this circumstance, the party performing the reset may move only its product.

## **TPP-26 Transfer Of Alcohol**

### **I. Purpose**

It is policy to establish guidelines in determining when a licensed Illinois retailer may transfer alcohol from its premises to that of another premises or retailer.

### **II. Policy**

It is the policy of the Illinois Liquor Control Commission (ILCC) to allow a transfer of alcohol from one retail premises to another retail premises only in exceptional situations.

### **III. Background**

Section 100.250 of the Rules and Regulations of the ILCC prohibits a retail licensee to transfer alcohol off its licensed premises to another retail licensed premises. However, the ILCC believes that a licensee may transfer alcohol in certain situations. These situations relate to business transactions which occur outside the ordinary course of a licensee's business.

#### **Section 100.250 Transfer of Alcohol**

The holder of a retail license for the privilege of selling alcoholic liquors at retail on the premises specified in the license, for use or consumption, is hereby restricted to such sale from the licensed premises only and is not permitted to sell to, purchase from or transfer such alcoholic liquor to any other retail licensee or licensed premises. This Section does not apply to transactions not in the ordinary course of business, such as a business closure, if prior approval is given by the Commission. (*Source: Amended at 23 Ill. Reg. 3787, effective March 15, 1999*)

### **IV. Procedures**

A. Permissible transfers include the following:

1. the licensee either sells or closes his or her business and wishes to transfer any remaining liquor inventory; or
2. miscellaneous circumstances in which a transfer is authorized by the ILCC.

B. Before a licensee may enter into a permissible transfer, the licensee must inform the ILCC in writing of the following:

1. the seller's licensed premises location;
2. the seller's license number;
3. the buyer's licensed premises location;
4. the buyer's license number; and
5. the inventory being purchased, including type of liquor and quantity of items.

C. All transfers must be approved by the Executive Director or appropriate designee.

D. The buyer must keep a copy of the written document sent to the ILCC on his or her licensed premises in order to show where the liquor was purchased.

E. The buyer must keep a copy of the written document sent to the ILCC on his or her licensed premises for a period of ninety (90) days.

### **V. Other**

Approval of "alternate delivery sites" for retail licensees.

The question of the power of the Commission to approve alternate delivery sites for retail licensees must be answered by reference to the Liquor Control Act, Rules and Regulations, and then the Commission's inherent power to manage an orderly system of alcoholic beverage manufacture, delivery and sale. This issue was raised legislatively with H.B.137, introduced 1/12/99, which sought to amend the Liquor Control Act to provide for minimum delivery

intervals and purchase amounts, and to establish “alternative delivery” sites.

The bill, as originally presented, contained the following language: “If a retailer does not wish to accept delivery at its retail establishment, the retailer may designate an alternate site within the distributor’s geographic area to which the distributor must make delivery if that site has been approved in advance by the State Commission.”

Senate Amendment No. 1. deleted the above provision authorizing a retailer to designate an alternative delivery site and substituted the county-based system which ultimately became law.

The law as passed and signed by the Governor failed to contain any reference to the “alternate delivery site.”

Since it is for the legislature and the courts to state the public policy of the State of Illinois, the public policy in the area of “alternative delivery sites” is that they are not allowed. It is neither within the designated, or inherent, powers of the Liquor Control Commission to set public policy. Since an administrative agency is a creature of statute, any power or authority claimed by the agency must find its source within the provisions of the statute by which it is created.

**Granite City Division of National Steel Co. v. Illinois Pollution Control Board**, 155 Ill. 2d 149, 171, 613 N.E.2d 719, 729 (1993). Agency interpretations of statutes are not binding on the courts, and we must overturn any agency action that is

inconsistent with the statute. **Carson Pirie Scott & Co. v. State of Illinois Department of Employment Security**, 131 Ill. 2d 23, 34, 544 N.E.2d 772, 777 (1989).

The fundamental principle of statutory construction is to ascertain and give effect to the intent of the legislature. **Bowne of Chicago, Inc. v. Human Rights Comm’n**, 301 Ill. App. 3d 116, 119, 703 N.E.2d 443, 446 (1998). The most reliable indicator of legislative intent is the statute’s language, which must be given its plain and ordinary meaning. **Boaden v. Department of Law Enforcement**, 171 Ill. 2d 230, 237, 664 N.E.2d 61, 65 (1996).

In **Gilchrist v. Human Rights Commission**, No. 1-99-1054, 1st District, March 27, 2000, the Appellate Court held that Section 8A-102 of the Human rights Act did not confer upon the Commission the authority to allow an Administrative Law Judge, other than the presiding ALJ, to author the findings and recommended order merely because the parties agree by stipulation to such action. To the extent that the Commission determined that the parties’ agreement alone satisfied the requirements of the statute, that determination was erroneous. An erroneous construction of a statute by an administrative agency is not binding on a reviewing court, and even a reviewing court’s deference to administrative expertise does not serve to license a governmental agency to expand the operation of a statute. **Boaden**, supra.

The Court further held that the Commission exceeded its authority in deciding the case in the manner it did, and therefore the cause was remanded so that the matter may be reset for another full hearing. The Court was not unmindful of the fact that its decision prolonged the ultimate resolution of the Petitioner’s case, but, even in instances where an administrative body has discretion in its decision, whenever it must choose between justice and speed, it must pick the side of justice. **Six-Brothers King Drive Supermarket, Inc. v. Department of Revenue**, 192 Ill. App. 3d 976, 984, 549 N.E.2d 586, 591 (1989).

## TPP-27 Special Event Retailers (Not-For-Profit) License

### I. Purpose

To set the policy of the Illinois Liquor Control Commission and establish the procedures whereby Special Event Retailers (Not-For-Profit) shall be licensed and operate within the State.

## II. Policy

It is the policy of this Commission that Special Event Retailers shall be licensed and allowed to purchase alcoholic beverages at “special events” in accordance with the applicable provisions of the Illinois Liquor Control Act and Rules and Regulations of this Commission.

## III. Statutory And Regulatory Bases

Sec. 1-3.17.1 of the Liquor Control Act (235 ILCS 5/1-3.17.1) defines the “Special Event Retailer” as “an educational, fraternal, political, civic, religious or non-profit organization which sells or offers for sale beer or wine, or both, only for consumption at the location and on the dates designated by a special event retail license.”

Sec. 5-1(e) of the Liquor Control Act (235 ILCS 5/5-1(e)) delineates the permission granted by the “Special Event Retailer’s (Not-For-Profit) license” to “permit the licensee to purchase alcoholic liquors from an Illinois licensed distributor (unless the licensee purchases less than \$500 of alcoholic liquors for the special event, in which case the licensee may purchase the alcoholic liquors from a licensed retailer) and shall allow the licensee to sell and offer for sale, at retail, alcoholic liquors for use or consumption, but not for resale in any form and only at the location and on the specific dates designated for the special event in the license. An applicant for a Special Event Retailer license must also submit with the application proof satisfactory to the State Commission that the applicant will provide dram shop liability insurance in the maximum limits and have local authority approval.”

Regulation 100.330, designated “Advertising” provides:

(a) Pursuant to Sections 6-4, 6-5, and 6-5 of the Act (235 ILCS 5/6-4, 6-5, and 6-6), no retail licensee or entity having more than a 5% interest in a retail licensee shall have any, direct or indirect, interest in or control of any advertising or promotional company which receives funds, directly or indirectly from, or for the account of, any manufacturer, non-resident dealer, broker, distributor, importing distributor or foreign importer of alcoholic beverages; nor shall any manufacturer, non-resident dealer, broker, distributor, importing distributor or foreign importer make any payment, direct or indirect, to any retailer or any other entity which provides advertising, promotional or display services for retailers in consideration of any advertising or promotional efforts of any kind not allowed under the Illinois Liquor Control Act or the rules and regulations of the Commission.

(b) Nothing herein shall prohibit any manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer from sponsoring an event at a venue which sole purpose is to host live entertainment, provided that no indirect or direct payment is made to the retailer and that any reference to the retailer in any advertising is incidental to the event itself.

(c) Subsections (a) and (b) above do not apply to a person holding a Special Event Retailer’s license.

## IV. Additional Terms And Definitions

The following additional terms and definitions shall be applicable to “Special Event Retailers (Not-For-Profit)”:

“Special event” shall mean “an occurrence having the same theme, the duration of which shall not exceed fifteen (15) consecutive calendar days.”

“Theme” shall mean “a recurring, unifying subject or idea,” such as is embodied in the concept of “Friday Night Fish Fry,” “Thursday Night Spaghetti Dinner,” or the like.

## V. Procedures For Licensure

A. Secure State of Illinois Special Event Retailer’s Liquor License Application and Application Instructions.

B. If the locality in which the special event is to be held issues a “Local Special Event License,” documents necessary to secure the issuance of such a license prior to presenting the State Application to this Commission must be completed. If the locality does not issue an actual license, determine what method of approval it utilizes and secure such approval; i.e., letter from Local Liquor Commissioner or Commission indicating approval of the event. In the City of Chicago, the completed State Application must be presented to the Mayor’s License Commission which will review same and stamp the State Application with its approval.

C. Secure Dram Shop insurance coverage for the special event, which coverage must be in amounts sufficient to satisfy the Local Liquor Commissioner, and must underwrite the premises upon which the event is to be held and all periods of time encompassing the event.

D. Secure and bring either the documents of incorporation of the applicant, or the letter of exemption from the Illinois Department of Revenue.

E. Bring all items referred to in A. through D. above to the Illinois Liquor Control Commission, with appropriate application fee check(s).

## **VI. Procedures To Be Followed At The “Special Event”**

### **A. License Posted**

All licensees must post the Special Event Retailer (Not-For-Profit) license in plain view at the event.

B. Beer Taps must be Clean and Sanitary  
Beer taps must be clean and sanitary. The taps must be inspected to ensure they are clean and sanitary. In cases where the distributor provides the beer taps, the distributor will be responsible for providing clean beer taps.

C. Proper Display of the “Alcohol Pregnancy Warning” Sign  
An Alcohol Pregnancy Warning Sign is provided to each licensee. This sign must be posted at all sites where the alcoholic beverages are sold and must be visible to all patrons. It is the duty of the licensee to request more signs as needed.

D. Pre-Mix Alcoholic Beverage Requirements  
If the licensee is selling any pre-mixed alcoholic beverages, all containers of the pre-mixed alcoholic beverages must be cleaned weekly and pre-mix destroyed weekly. Containers should be covered to prevent outside contaminants from entering. Note: All alcoholic beverages, except pre-mix, must be kept in their original containers (i.e. bottles).

E. Requirements Prohibiting “Happy Hours” Must Be Followed  
The Happy Hour provisions of the Illinois Liquor Control Act (235 ILCS 5/6-28) apply to Special Event Retailers.

### **F. Schedule of Drink Prices**

A schedule of drink prices must be available at the site of the event.

G. Liquor Invoices Available at the Event Premises  
The invoices for liquor purchased must be available for inspection at the site of the event, not at the office or any other location. All purchases of alcoholic liquor may be made from a licensed distributor, except that purchases of up to \$500 can be made from licensed retailers.

### **H. Uphold Minimum Age Law**

It is a criminal offense to serve or sell alcoholic beverages to anyone under the age of 21 years. It is also against the law for a person under 21 years of age to purchase and consume alcoholic beverages. The licensee must take steps to prevent the illegal sale of alcohol to persons under 21 years of age. Preventative measures include, but are not limited to, the checking of all identification for age, identity and authenticity, and the posting of warning signs for minors (included in the information package given to each approved Special Event license. Please note that local laws may establish a minimum age to sell or serve alcoholic beverages. The licensee may find out

about local restriction by contacting the local authorities where the event is to be held.

I. Prohibited service or sale to an intoxicated person. It is against the law to serve or sell an intoxicated person alcoholic beverages.

## **TPP-28 Employment/Ownership Arrangements Between Classes Of Licensees**

### **I. Purpose**

This policy defines two issues:

A. whether employees of one class of license (manufacturer, distributor and retailer) may work for another class of license (e.g. distributor’s employees working for a retail licensee), and

B. whether a person may own interest in different classes of licensees.

### **II. Policy**

It is the policy of the Illinois Liquor Control Commission (ILCC) to prevent any employment or ownership arrangements between different classes of licensees which violate the “of value” provisions of 235 ILCS 5/6-5.

### **III. Background**

The applicable statutes are 235 ILCS 5/6-4, which prohibits certain transactions and interests between different classes of licensees, and 235 ILCS 5/6-5, which prohibits the giving away “of value.”

### **IV. Procedure**

#### **A. Employment Arrangements**

Employees of one class of licensee may not work for another class of licensee. For instance, a distributor’s employee may not work for a retail licensee.

Secs. 5/6-4 clearly prohibits relations where an officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares seeks a license, or to be affiliated with a licensee on another tier.

But actually the inquiry depends on the status and duties of the employee. While an owner, shareholder, manager, etc., on one tier can’t be employed on another tier, an hourly employee for one tier may be employed as an hourly employee on another.

Again, allowance of such employment relations is dealt with on a case-by-case basis.

#### **B. Ownership Arrangements**

1. GENERAL RULE - No distiller or wine manufacturer (or any affiliate, agent or shareholder owning more than 5% interest) may be licensed as a distributor or a retailer. No distributor or retailer (or any affiliate, agent or shareholder owning more than 5% interest) may be licensed as a distiller or wine manufacturer (235 ILCS 5/6-4(a)).

#### **2. EXCEPTIONS**

a. Beer Distributor exception. A distributor, which on January 1, 1985, was owned by a brewer (or any affiliate, agent or shareholder owning more than 5% interest) may own or acquire an ownership interest of more than 5% in a wine manufacturer and be issued a wine manufacturer’s license (235 ILCS 5/6-4(a)).

b. Grandfather Clause exception. There is a grandfather clause for certain entities licensed prior to June 30, 1947. See 235 ILCS 5.6-4 (b)(c)&(d).

c. Brew Pub Exception. A brewer may receive one retailer’s license for the premises in which he actually conducts the manufacturing business. Such retailer’s license shall permit the sale of beer only on such premises.

## II. Policy

It is the policy of the Illinois Liquor Control Commission (ILCC) to prevent a retailer from purchasing more alcoholic liquor than it can possibly sell for use or consumption.

## III. Background

According to 235 ILCS 5/5-1(d), a retailer's license allows the licensee to sell or offer for sale alcoholic liquor only for use or consumption and not for resale in any form. The retailer may warehouse liquor. Thus, when a retailer purchases excessive amounts of alcoholic liquor, the presumption may arise that the retailer intends to sell or offer for sale alcoholic liquor for resale.

Regulation 100.30 provides that no licensee shall violate any federal, state, or Illinois law. The violation of any such law is sufficient cause for revocation or suspension of any license issued by the ILCC.

## IV. Procedure

A. When a distributor reasonably believes a retailer is making excessive purchases in accordance with this policy, the distributor shall immediately notify the Commission. The distributor shall continue to supply products to the retailer until such time as he is notified by the ILCC that the retailer's actions were in violation of law. In the event it is preliminarily determined by the ILCC that a violation occurred, the retailer and distributor will be notified and the matter shall proceed through the normal disciplinary channels.

B. The distributor may make his own independent determination of this situation by examining the retailer's previous purchase patterns for a particular product and comparing them with current behavior. The distributor shall not unilaterally cease to supply products to the retailer, but shall do so only on direction from the ILCC.

C. The distributor must notify the ILCC immediately of such practice.

D. Failure to do so could subject the distributor's license to suspension or revocation pursuant to Regulation 100.30.

## TPP-30 Salvaged Alcoholic Liquors

### I. Purpose

This policy establishes guidelines for the sale of salvaged alcoholic liquors which have been damaged as a result of flood, wreck, fire or similar occurrence.

### II. Policy

It is the policy of the Illinois Liquor Control Commission (ILCC) to allow the resale of salvaged alcohol by an insurance company, a common carrier, or the duly authorized representative of either, after a determination has been made that proper procedures and safeguards have been followed and approval and release by the Commission.

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

The power given in Sec. 5/3-12 is implemented through the Rules and Regulations of the Commission:

Section 100.150 of the ILCC Rules and Regulations (Regulations) which provides:

a) Insurance companies or their duly authorized representatives may take possession of alcoholic beverages insured by such companies and damaged as a result of flood, wreck, fire or similar occurrence, for which insurance was provided.

b) Common carriers or their duly authorized representatives may take possession of alcoholic beverages transported by such carrier and damaged in transit.

c) Alcoholic beverages salvaged as in paragraphs (a) and (b) may be sold to retail licensees provided the conditions enumerated below shall have been complied with. Alcoholic beverages so salvaged shall be referred to as "distressed merchandise."

d) Each container of alcoholic beverages sold pursuant to this rule shall be labeled to identify such goods as distressed merchandise. The letters on the label shall be no smaller than pica type, bold faced, not less than 12 point. The label shall be no less than two inches long and one inch wide, and shall be affixed diagonally over the regular label on each container prior to delivery to any retail licensee. The label once applied shall not be capable of removal without damaging the said label or causing damage to the underlying product label. The following statement shall be printed on the label: "The alcoholic beverages contained herein have been designated distressed merchandise by the Illinois Liquor Control Commission. This container has been salvaged from a fire, flood, wreck or similar catastrophe. This label is not affixed by the manufacturer. Do not remove this label."

e) Any insurance company, common carrier or representative of either, seeking to sell distressed merchandise shall first obtain a distributor's license from the Illinois Liquor Control Commission. The application shall provide, "The applicant seeks to sell distressed merchandise in Illinois." Retailer's licenses may also be applied for, if the insurance company, common carrier or representative of either seeks to sell alcoholic liquors to consumers in Illinois.

f) Alcoholic beverages so salvaged outside of Illinois may not be imported into Illinois for purposes of sale pursuant to this rule. Prior to release of distressed merchandise for sale in Illinois, an affidavit by the insurance company's or common carrier's authorized representative must be presented to the Commission stating first-hand knowledge that the distressed merchandise was salvaged from a fire, flood, wreck or similar catastrophe which occurred within the State of Illinois, stating with particularity the time, place and nature of the occurrence, and a complete inventory of the items so salvaged as the quantity, brand names and container sizes.

g) In the event the tax provided under Sections 8-1 through 8-14 of the Act [235 ILCS 5/8-1 through 8-14] is unpaid on the distressed merchandise, the applicant shall make payment of the tax on such merchandise to the Department of Revenue, and evidence of payment must be presented to the Commission prior to release of such distressed merchandise for sale in Illinois.

h) It shall also indicate on its letter of application to sell such distressed merchandise in Illinois, whether the sale shall be by auction or to a designated licensee. If the sale shall be by auction, the time and place of the auction and the name of the auctioneer or other person authorized to sell such distressed merchandise shall be listed. If the sale is to be made directly to a given licensee or licensees, the name and address of the licensee or licensees, together with the current State retail liquor license number of such licensee or licensees shall be listed. No sale may be made by auction to any person, firm or corporation not licensed under the provisions of the Act.

i) Written approval and release for sale made hereunder must first be obtained from the Commission. Approval and release as aforesaid shall not be issued until a physical inspection has been made of the merchandise by an authorized representative of the Commission in order to determine that compliance has been had with the provisions of this Rule. After any sale of distressed merchandise shall have been completed, the insurance company, common carrier or their representative shall report in writing to the Commission the name of the licensee or licensees who have purchased the distressed merchandise, the quantities and brand names of such distressed merchandise.

j) In the event that the insurance company, common carrier by this sale, disposed of less than the entire inventory of distressed merchandise, the written report shall list the remaining inventory, indicating the quantity, container sizes and brand names, the place where such inventory is stored, and the person in control of possession of such inventory.

k) No distressed merchandise shall be sold in Illinois where the original packages shall have been so damaged as to render the label thereon illegible, or when the substantive labeling requirements under Section 6-7 of the Act [235 ILCS 5/6-7] and under Section 100.70 are not complied with as a result of the damage to the container. (Source: Amended at 18 Ill. Reg. 4811, effective March 9, 1994)

The Attorney General of the State of Illinois in Opinion No. 26, dated November 16, 1956, states that: (a) Section 7a of Article VI of the Liquor Control Act ("Warehouses") is not applicable to a salvage company serving numerous insurance companies; and (b) brand names or trade marked liquor which shall become the property of an insurance company as a result of salvage and which is turned over to a salvage company for distribution does not create an ownership interest in the trade mark or brand name in a salvage company which would require registration with the Illinois Liquor Control Commission under Sec. 5/6-9 of the Liquor Control Act, and also require the designation of the geographical area in which salvage company has been granted a right of resale.

And, finally, the Beer Industry Fair Dealing Act (815 ILCS 720/1, et seq.) provides in Sec. 5. "Prohibited conduct," that "No brewer shall: (7) Require a wholesaler to assent to any requirement prohibiting the wholesaler from disposing, after notice to the brewer, of a product which has been deemed salvageable by a local or State health authority. Nothing herein shall prohibit the brewer from having the first right to purchase the salvageable product from the wholesaler at a price not to exceed the original cost of the product or to subsequently repurchase the product from the insurance company or salvage company."

This granting to a brewery the first option to repurchase salvageable products is a self-executing, contractual provision.

## IV. Procedures

### A. Who May Salvage

Only persons who are authorized by statute or rule shall be allowed to salvage and conduct sales of distressed alcoholic liquors, namely:

1. Insurance companies or their duly authorized representatives may take possession of alcoholic beverages insured by such companies and damaged as a result of flood, wreck, fire or similar occurrence, for which insurance was provided.
2. Common carriers or their duly authorized representatives may take possession of alcoholic beverages transported by such carrier and damaged in transit.

### B. Request for Approval and Release

The process of securing approval and release shall begin with written notification sent or delivered to the Commission Investigations Division. Such notification shall include the following information:

1. Name, address and professional capacity of the person, firm or representative making the request.
2. The date, time and place of the casualty which has resulted in the distressed merchandise.
3. A complete inventory of all distressed merchandise, including the quantity, brand names and container sizes.
4. A statement of the place and date after the distressed merchandise may be inspected by an agent of the Commission.

### C. Inspection and Cleaning of the Distressed Merchandise

Permission is granted with the understanding that each container was cleaned and then affixed with a salvage label appropriately placed in an irregular position so that it can be easily determined that the product is not of first quality.

### D. Labeling

1. Each container (can, bottle, or other original package as defined in the Liquor Control Act) of alcoholic beverage to be sold shall be labeled to identify such goods as distressed merchandise.
2. The letters on the label shall be no smaller than 12 point and shall be bold faced.
3. The label shall be no less than two inches long and one inch wide, and shall be affixed diagonally over the regular label on each container prior to delivery to any retail licensee.

4. The label shall read:

THE ALCOHOLIC BEVERAGES CONTAINED HEREIN HAVE BEEN DESIGNATED DISTRESSED MERCHANDISE BY THE ILLINOIS LIQUOR CONTROL COMMISSION. THIS CONTAINER HAS BEEN SALVAGED FROM A FIRE, FLOOD, WRECK OR SIMILAR CATASTROPHE. THIS LABEL IS NOT AFFIXED BY THE MANUFACTURER. DO NOT REMOVE THIS LABEL.

### E. Licensing Procedure

1. An insurance company, common carrier or their representative, seeking to sell distressed merchandise to retail licensees shall first obtain a distributor's license from the Commission.
2. An insurance company, common carrier, or their representative, seeking to sell distressed merchandise to consumers in Illinois, shall first obtain a retailer's license from the Commission.
3. Application filed with the Commission shall provide that, "the applicant seeks to sell distressed merchandise in Illinois."
4. An affidavit executed by an agent or employee of the insurance company, common carrier, or representative, with first hand knowledge of the content of the affidavit, must be accompany the license application, and shall contain the following:
  - a. that the distressed merchandise was salvaged from a fire, flood, wreck or similar catastrophe which occurred within the State

of Illinois;

- b. the time, place and nature of the occurrence;
- c. a complete inventory of the items so salvaged, including the quantity, brand names and container sizes.
- d. indicate whether the sale shall be by public auction or private sale to a designated licensee.

(1) if the sale shall be by auction, the time and place of the auction and the name of the auctioneer or other person authorized to sell such alcohol shall be listed.

(2) if the sale is private, the date of the sale, the name and address of the purchases, and if a retail liquor licensee, the current State retail liquor license number, shall be listed.

5. Written approval and release for sale must be obtained from the Commission prior to sale. Before such approval and release shall be given, an authorized agent of the Commission will conduct a physical inspection of the salvaged alcoholic beverages.

6. No sale may be made by auction to any person, firm or corporation not licensed under the provisions of the Act.

#### **F. Written Report after Sale**

1. After any sale of salvaged alcoholic beverages, the insurance company, common carrier, or representative shall report in writing to the ILCC:

- a. the name and address of any licensee, and/or any consumer, who made purchases.
- b. quantity, brand names and container sizes purchased.

2. In the event that the insurance company, common carrier, or representative has disposed of less than the entire inventory of salvaged alcoholic beverages, the written report shall list:

- a. the remaining inventory, indicating the quantity, brand names and container sizes which remain.
- b. the place where such inventory is stored, and
- c. the name and address of the person in possession or custody of such remaining inventory.

#### **G. Taxes**

In the event the tax provided under Sections 8-1 through 8-14 of the Act [235 ILCS 5/8-1 through 8-14] is unpaid on the distressed merchandise, the applicant shall make payment of the tax on such merchandise to the Department of Revenue, and evidence of payment must be presented to the Commission prior to release of such distressed merchandise for sale in Illinois.

#### **H. Prohibited Sales**

1. No alcoholic beverages which has been salvaged outside the State of Illinois may be imported into this state for the purpose of sale of salvaged alcohol.

2. No salvaged alcoholic beverages may be sold if the original packages has been damaged so as to render the label illegible, or where the substantive labeling requirements under 235 ILCS 5/6-7 and Section 100.70 of the Regulations are not complied with.

#### **I. Format of Approval and Release**

(Date)

(Insurance companies, common carrier or their duly authorized representatives)

(Address)

Dear (name):

The Commission has completed its inspection of the following lot(s) of distressed alcoholic beverages as requested, and those products may be sold or disposed of as salvaged merchandise.

(Identify Lot(s), identify address where lot is located)

If the sale is to be made to a retail licensee or licensees, the licensee's name, address, and current state retail liquor license number shall be provided to the Commission with the total inventory of products so sold. If the sale is by auction, the time, place, and the name of the auctioneer or other person authorized to sell such distressed merchandise shall be submitted to the Commission.

Reports of sale shall be filed with the Commission within a reasonable period of time after the sale. Reports of distressed merchandise not sold shall likewise be filed with the Commission which report shall contain a full inventory of the remaining merchandise, indicating the quantity, brand names and container sizes which remain; the place where such inventory is stored; and the name and address of the person in possession or custody of such remaining inventory.

Sincerely,

#### **TPP-31 Electronic Data Interchanges And Fund Transfers**

##### **I. Purpose**

To set the procedures of the Illinois Liquor Control Commission whereby product information, pricing, promotions, purchasing, invoicing, and sales data information may be maintained via electronic data interchanges (EDI) and the payment of invoices for alcoholic liquors may be made by electronic fund transfers (EFT).

##### **II. Policy Statement**

It is the policy of this Commission that the product information, pricing, promotions, purchasing, invoicing, and sales data information may be maintained via electronic data interchanges (EDI) and the payment of invoices for alcoholic liquors may be made by electronic fund transfers (EFT).

##### **III. Background**

The Illinois Liquor Control Act presently provides for the maintenance of business records via an electronic medium, 235 ILCS 5/6-10, and the Rules of the Commission, 100.240, recognize the electronic payment of invoices, as a "cash" transaction. [Section 100.240 Transactions Involving Use of Checks and Their Equivalent (Source: Repealed at 23 Ill. Reg. 3787, effective March 15, 1999); Subsection (c) was transferred to Section 100.90(k).]

Further, prudent business practice dictates that the implementation and expansion of electronic data interchanges can facilitate communication and reduce delays.

##### **IV. Procedures**

The following procedures shall be applicable to the use of EDI systems in the alcoholic beverage industry:

1. The use of the system must be available, but cannot be mandated as a requirement for conducting business, to all wholesalers and retailers.
2. 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.
3. The users of the system must continue to maintain all required records of alcoholic beverage purchases and sales.
4. The Commission shall have access, upon reasonable notice, to the systems for the purpose of inspection and review.

The use of electronic fund transfers (EFT) 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, which is supported by appropriate documentation.

## **TPP-32 Breakage; Replacement Of Damaged Or Defective Products**

### **I. Purpose**

To set the policy of the ILCC and establish the procedures by which distributors may replace damaged or defective product for a retailer.

### **II. Policy**

It is the policy of the ILCC that unless there is a bona fide business reason for replacement of damaged or defective product when delivered, the product may not be replaced free of charge to the retailer. The Commission follows the federal guidelines on acceptable reasons for replacement.

If the product is damaged while in the retailer's possession in most instances it will be considered to be something "of value" and a violation of Sections 5/6-4, 5/6-5 and 5/6-6 for the distributor when replacing the product without charge.

### **III. Background**

The provisions of Section 5(d) of the Federal Alcohol Administration Act and Sections 11.31 through 11.39, 11.45 and 11.46 of the Federal Alcohol Administration Act Regulations prohibit the sale of alcoholic liquor products with the privilege of return for any reason other than for ordinary and customary commercial reasons.

The provisions of the federal regulations permitting alcoholic liquor to be exchanged and returned for ordinary and usual commercial reasons are as follows:

Subpart D--Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

Sec. 11.31 General. (a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privilege of return for any reason, other than those considered to be "ordinary and usual commercial reasons" arising after the product has been sold. Sections 11.32 through 11.39 specify what are considered "ordinary and usual commercial reasons" for the return of products, and outline the conditions and limitations for such returns.

(b) An industry member is under no obligation to accept the return of products for the reasons listed in Secs. 11.32 through 11.39. Exchanges and Returns for Ordinary and Usual Commercial Reasons

Sec. 11.32 Defective products. Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

Sec. 11.33 Error in products delivered. Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

Sec. 11.34 Products which may no longer be lawfully sold. Products which may no longer be lawfully sold may be returned

for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

Sec. 11.35 Termination of business. Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see Sec. 11.39).

Sec. 11.36 Termination of franchise.

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

Sec. 11.37 Change in product.

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to Sec. 11.46) may be exchanged for equal quantities of the new version of that product.

Sec. 11.38 Discontinued products.

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

Sec. 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

Exchanges and Returns for Reasons Not Considered Ordinary and Usual

Sec. 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

Sec. 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons."

## **IV. Procedures**

A. Distributors may not accept the return of alcoholic liquor products as "breakage" if the product was damaged after delivery and while in the possession of the retailer. The distributor may replace damaged cartons or packaging at any time.

B. Under no circumstances may product or other compensation be furnished to a retailer for product breakage which occurs as a result of handling by the retailer, its agents, employees, or its customers. Retailers are prohibited from holding product damaged after delivery with the intent to exchange it after the expiration or code date.

C. If the product has been damaged prior to or at the time of actual delivery, the product may only be exchanged for an equal quantity of identical product or returned for cash or credit. If identical product is unavailable, the exchange will be permissible for similar type product.

D. If the product has been damaged prior to or at the time of actual delivery, the product may only be exchanged within a

reasonable time after delivery. It is the Commission's position that fifteen (15) days is a reasonable time, from the date of delivery, within which such time the retailer shall notify the distributor of the damage and request the return of the product.

E. A distributor is under no obligation to accept a return or make an exchange for any product. A distributor who elects to make an exchange of product or return of product for case or credit in accordance with the policy does so at its sole discretion.

F. Nothing in this Trade Practice Policy shall prohibit the exchange of deteriorated product that includes product near or beyond the manufacturer's expiration or 'code' date. Such exchanges must be made on a non-discriminatory basis for an equivalent volume and product. All exchanges of deteriorated product must be clearly documented on distributor invoices.

### **TPP-33 Brew On Premises**

#### **I. Purpose**

The purpose of this policy is to set the procedures whereby a person may be licensed to operate within the State of Illinois, to provide to individuals over the age of 21 years, for a fee, the facilities, equipment, component grains and hops, ingredients, water, instruction, reference materials, and other products and services necessary to brew, ferment or bottle beer upon his premises, for personal use and consumption by the person(s) performing the brewing tasks, and not for re-sale.

#### **II. Policy**

It is the policy of this Commission to allow person(s) to be licensed to operate within the State of Illinois, to provide for a fee, the facilities, equipment, component grains and hops, water, instruction, reference materials, and other products and services necessary to brew beer upon its premises, for consumption off the premises by the person(s) performing the brewing tasks.

#### **III. Background**

Section 5/2-1 of the Liquor Control Act (235 ILCS 5/2-1), entitled "Scope of Act" provides in relevant part:

"No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this Act, provided, however, nothing herein contained shall prevent the possession and transportation of alcoholic liquor for the personal use of the possessor, his family and guests, nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the products thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his family and his guests; . . ."

Federal law allows the production of one hundred (100) gallons of beer per person, per household, per year, to a maximum of two hundred (200) gallons if the household had two or more adults, without payment of federal taxes.

#### **IV. Procedures**

##### **A. Brew On Premises as a Business**

Individuals wishing to conduct a business which shall provide to individuals over the age of 21 years, for a fee, the facilities, equipment, component grains and hops, ingredients, water, instruction, reference materials, and other products and services necessary to brew, ferment or bottle beer upon his premises, for personal use and consumption by the person(s) performing the brewing tasks, and not for re-sale shall comply with the following:

1. Secure a local retail liquor license, the type to be determined by local ordinance.

2. Secure a State retail liquor license.
3. Possess no manufacturer, distributor or importing distributor license
4. Allow no employee, agent or servant to manufacture beer.
5. Neither sell nor allow sales on premises of the beer manufacture thereon.
6. Allow no consumption of beer or other alcoholic products on the premises.
7. Verify the beer produced on premises is for personal or family use and may not be resold or produced in violation of other State or local laws.
8. All vessels or receptacles sold to customers to contain the premises-made beer shall exhibit, or have attached labels stating, the words "Bottled at: (Insert the name of the licensee and the premises address)" and shall be capped or otherwise sealed before being removed from the licensed premises.
9. Maintain records relating to individuals using the facility, i.e. name, address, number of adults in individual's household; a running total of quantity of beer (gallage) produced per visit and calendar year, which records shall be available for inspection by agents of the Commission, in addition to records kept pursuant to Regulation 100.260.
10. Verify that no individuals less than 21 years of age be allowed to manufacture beer on the licensed premises.

##### **B. Brewing Beer for Personal Use**

1. Individuals may brew up to 100 gallons per year per person, or 200 gallons per year per household if two or more adults live in the household (27 CFR 25.205(b)).
2. Beer must be solely for the use of the brewer, his family or his guests (235 ILCS 5/2-1)).
3. Brewing may be done off premises.
4. No license shall be needed for an individual to manufacture beer for personal use.

### **TPP-34 Indirect Payments Through Third Party Arrangements**

#### **I. Purpose**

A practice has occurred whereby third party promotion companies are receiving among other things "of value" advertising, money, and services from manufacturers, distributors and importing distributors, and in turn the third party promotion companies are directing such benefits to retailers. The purpose of this policy is to set the policy of the Illinois Liquor Control Commission (ILCC) with respect to manufacturers, distributors and importing distributors indirectly furnishing such things "of value" to a third party where the benefits flow to the retailer. Manufacturer, distributor and importing distributor may not indirectly furnish a thing "of value" except as specifically provided in the Illinois Liquor Control Act, or as previously determined by the ILCC to be permissible.

#### **II. Policy**

It is the policy of the ILCC that indirectly furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services, including but not limited to display and pricing services or other things "of value" by a manufacturer, distributor and importing distributor to a third party, where the resulting benefits from such indirect thing "of value" flow to retailers, is the furnishing of things "of value" in violation of Sections 5/6-5, 5/6-5 and 5/6-6 of the Illinois Liquor Control Act (235 ILCS 5/6-4, 5/6-5, 5/6-6).

### III. Background

Sections 5/6-5, 5/6-5 and 5/6-6 of the Illinois Liquor Control Act (235 ILCS 5/6-4, 5.6-5, 5/6-6) prohibit the furnishing, directly or indirectly, of things “of value” by manufacturers, distributors and importing distributors to retailers, and the reciprocal receiving of such things “of value” by retailers from manufacturers, distributors and importing distributors. Trade Practice Policy No. 1 (TPP-1) is incorporated by reference as though fully set forth herein.

#### IV. Exceptions

A. An indirect furnishing of things “of value” will not arise with respect to advertising as provided in Section 100.330 of the Rules of the Commission and furnished in accordance with Trade Practice Policy concerning “Sponsorship of Events at Retail Premises (TPP-3).

B. Nothing herein shall prohibit manufacturers, distributors and importing distributors from selling alcoholic beverages through the use of quantity or promotional price discounts.

C. Nothing herein shall prohibit third party arrangements, if the holder of the license is a public body.

D. Nothing herein shall prohibit third party arrangements for the benefit of special events, provided a special event retailer license has been issued by the Commission.

### TPP-35 Original Package; Refilling

#### I. Purpose

The purpose of this policy is to set the definition of “original package” and procedures licensees may refill those original packages.

#### II. Background

Two sections of the Liquor Control Act must be examined, namely:

A. What is an original package?

#### 5/1-3.06. Original Package

“Original package” means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container, whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

#### 5/6-22. Refilling Original Packages – Retail Sales from Original Packages

No person except a manufacturer or distributor, or importing distributor, shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor, and it shall be unlawful for any person to have in his possession for sale at retail any bottles, casks or other containers containing alcoholic liquor, except in original packages. (Source: P.A. 82-783) (from Ch. 43, par. 137)

Sec. 1-3.06 indicates that the package is the vessel into which the alcoholic liquor is put by the manufacturer, or other, which is then sealed and labeled.

For purposes of considering what is the original package, we can also look to the guidelines of the Bureau of Alcohol, Tobacco and Firearms. The Application for and Certification/Exemption of Label/Bottle Approval form which is required for all alcoholic products sold in the United States makes reference to the Brand, Class and Type, and Net Contents, and requires the affixing of a complete product label. It appears settled that the vessel with approved label constitutes the “original package” for all purposes.

Neither the shipping container (such as flats for beer) nor cardboard cases (such as for distilled spirits and wine) nor the printed packaging (such as the open six-pack or the 12- or 24-pack) are original packages for any purpose herein.

Predicated upon the foregoing, it is the bottle, can, etc., into which the alcoholic liquor is put by the manufacturer, and not the packaging associated with the vessels.

#### B. Who may refill an original package?

The following statutory and rules sections are applicable:

#### 5/1-3.06. Original Package

“Original package” means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container, whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. (Source: P.A. 82-783) (from Ch. 43, par. 95.06)

#### 5/1-3.07. Distiller

“Distiller” means a person who distills, ferments, brews, makes, mixes, concocts, processes, blends, bottles or fills an original package with any alcoholic liquor.

The above definition for a distiller includes a manufacturer of wine, but does not include a manufacturer of beer or bottler of wine. (Source: P.A. 82-783) (from Ch. 43, par. 95.07)

#### 5/1-3.08. Manufacturer

“Manufacturer” means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package, whether for himself or for another, and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquors as above defined. (Source: P.A. 82-783) (from Ch. 43, par. 95.08)

#### 5/1-3.13. Manufacture

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with an alcoholic liquor, whether for oneself or for another, and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in this Act to serve drinks for consumption on the premises where sold. All containers or packages of blended alcoholic liquors shall have affixed thereto a label setting forth and stating clearly the names of all ingredients which the blended alcoholic liquors offered for sale shall contain. (Source: P.A. 82-783) (from Ch. 43, par. 95.13)

#### 5/1-3.14. Rectifier

“Rectifier,” means any person who rectifies, ferments, brews, makes, mixes, concocts, processes, blends, bottles or fills an original package with any alcoholic liquor, other than by original or continuous distillation. (Source: P.A. 82-783) (from Ch. 43, par. 95.14)

#### 5/6-22. Refilling Original Packages – Retail Sales from Original Packages

No person except a manufacturer or distributor, or importing distributor, shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor, and it shall be unlawful for any person to have in his possession for sale at retail any bottles, casks or other containers containing alcoholic liquor, except in original packages. (Source: P.A. 82-783) (from Ch. 43, par. 137)

### 5/6-7. Affixing Stamps – Labeling – Sealing

No manufacturer or distributor or importing distributor or foreign importer shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him unless the same shall have affixed thereto all cancelled revenue stamps which may be provided by Federal law, and shall also bear thereon a clear and legible label containing the name and address of the manufacturer, the kind of alcoholic liquor contained therein, and in the case of alcoholic liquor (other than beer and imported Scotch whiskey and brandy 4 years old or more) the date when manufactured and the minimum alcoholic content thereof. No person or persons, corporation, partnership or firm shall label alcoholic liquor as “whiskey” or “gin” or shall

import for sale or shall sell in this State alcoholic liquor labeled as “whiskey” or “gin” unless the entire alcoholic content thereof, except flavoring materials, is a distillate of fermented mash of grain or mixture of grains. Alcoholic liquor of the type of whiskey or gin not conforming to this requirement must be labeled “imitation whiskey” or “imitation gin” (as the case may be). No spirits shall contain any substance, compound or ingredient which is injurious to health or deleterious for human consumption. No package shall be delivered by any manufacturer or distributor or importing distributor or foreign importer unless the same shall be securely sealed so that the contents thereof cannot be removed without breaking the seal so placed thereon by said manufacturer, and no other licensee shall sell, have in his possession, or use any package or container which does not comply with this Section or does not bear evidence that said package, when delivered to him, complied herewith. (Source: P.A. 82-783) (from Ch. 43, par. 124)

### Section 100.70 Labels

a) No manufacturer, nonresident dealer, distributor or importing distributor shall sell or deliver any package or container containing alcoholic liquor manufactured or delivered by such person unless the same is labeled in conformity with this Section.

b) General requirements and Restrictions:

**1) Federal Alcohol Administration Regulations Nos. 4, 5 and 7 relating to the labeling of wine, distilled spirits and malt beverages (27 C.F.R. Section 4, 5, and 7, April 1997, not including any later amendments or editions), are hereby adopted and made a part of this Section for labeling every package or container of wine, distilled spirits and malt beverages, with the following exceptions:**

A) Wine includes all products as defined in Section 1-3.03 of the Act [235 ILCS 5/1 3.03] and Section 100.10(h) of this Part.

B) Alcoholic content must be stated on all wine labels.

2) The aforesaid regulations shall apply to wine, distilled spirits and malt beverages packaged purely for intrastate commerce within the State of Illinois to the same extent as though intended for interstate or foreign shipment.

3) No manufacturer, nonresident dealer, distributor or importing distributor shall affix any label to any package or container containing alcoholic liquor for sale or delivery in the State of Illinois until such label has been submitted to and approved by the federal government. Such manufacturer, nonresident dealer, distributor or importing distributor shall submit to the Illinois Liquor Control Commission a photostatic copy of the federal label approval.

4) No package or container containing alcoholic liquor labeled as “whiskey” or “gin” may be imported into, delivered or sold in the State of Illinois unless the entire alcoholic content thereof, except flavoring materials, is a distillate of fermented mash of grain or mixtures of grains. Packages or containers of alcoholic liquor of the type of whiskey or gin not conforming to the requirement must be labeled “imitation whiskey” or “imitation gin”, as the case may be.

### 5) Wine Labels

A) Wine labels must contain the name and address of the manufacturer or the bottler of the product.

B) For the purpose of this Section, the use of an assumed trade name which has been registered with the Clerk of the County in which the manufacturer or bottler is located, is acceptable.

### 6) Malt Beverage Labels

A) Malt beverage labels must contain the name and address of the brewery which manufactured or canned or bottled the product.

B) For the purpose of this Section, the use of an assumed trade name which has been registered with the Clerk of the County in which the manufacturer or bottler is located, is acceptable.

### 7) Distilled Spirits Labels

A) Labels of all alcoholic liquors other than wine and malt beverages must contain either the phrase “Bottled By” or “Distilled By” (or other descriptive identification of the manufacturer of the product) followed by the name and address of the bottler or manufacturer, as the case may be.

B) For the purpose of this Section, the use of an assumed trade name which has been registered with the Clerk of the County in which the manufacturer or bottler is located, is acceptable.

8) No statement of age shall be made with respect to gins, cordials, liqueurs or specialties.

9) The Commission shall withhold approval of any label if it has reasonable cause to believe that the wording or design contained on the label may, in any manner, tend to deceive the purchaser as to the true nature of such alcoholic liquor. (Source: Amended at 21 Ill. Reg. 5542, effective May 1, 1997)

### Section 100.290 Refilling

No retail licensee shall offer for sale or possess on said licensed premises:

a) Any original package of alcoholic liquor which contains any kind or quality of alcoholic liquor other than that which has been sealed and labeled by the manufacturer or nonresident dealer of alcoholic liquor, to contain and to convey said alcoholic liquor.

b) Any original package of alcoholic liquor to which there has been added any water or other substance.

c) Any bottles, casks, or other containers containing alcoholic liquor which contain any deleterious, contaminated, filthy, putrid substance or insects. (Source: Amended at 20 Ill. Reg. 834, effective January 2, 1996)

### Section 100.10 Definitions

The following words or phrases are defined as follows:

“Manufacturer” shall include every person who, in the process of filling or refilling an original package with alcoholic liquors purchased by such person, changes the degree or quality of such alcoholic liquors by any manner or means whatsoever.

### III. Conclusion

The only conclusion which can be reached after review of the foregoing is that a retailer cannot refill. And by way of extension of the foregoing, a retailer may not under the foregoing authority “pre-fill” containers with alcoholic liquors.

### TPP-36 Consignment Sales

1) The following sections of the Liquor Control Act relate to definitions of “sale” and “to sell” and on the power of retail

licensees to sell their products.

The term “consignment” does not appear anywhere in the Act.

### **5/5-1. Licenses issued by Illinois Liquor Control Commission**

Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(d) A retailer’s license shall allow the licensee to sell and offer for sale at retail, only in the premises specified in such license, alcoholic liquor for use or consumption, but not for resale in any form: Provided that any retail license issued to a manufacturer shall only permit such manufacturer to sell beer at retail on the premises actually occupied by such manufacturer. After January 1, 1995, there shall be 2 classes of licenses issued under a retailers license:

(1) A “retailers on premise consumption license” shall allow the licensee to sell and offer for sale at retail, only on the premises specified in the license, alcoholic liquor for use or consumption on the premises or on and off the premises, but not for resale in any form.

(2) An “off premise sale license” shall allow the licensee to sell, or offer for sale at retail, alcoholic liquor intended only for off premise consumption and not for resale in any form. Notwithstanding any other provision of this subsection (d), a retail licensee may sell alcoholic liquors to a special event retailer licensee for resale to the extent permitted under subsection (e).

#### **5/1-3.17. Retailer**

“Retailer” means a person who sells, or offers for sale, alcoholic liquor for use or consumption and not for resale in any form.

(Source: P.A. 82-783) (from Ch. 43, par. 95.17)

#### **5/1-3.18. Sell at retail**

“Sell at retail” and “sale at retail” refer to and mean sales for use or consumption and not for resale in any form. (Source: P.A. 82-783) (from Ch. 43, par. 95.18)

#### **5/1-3.21. Sale**

“Sale” means any transfer, exchange or barter in any manner, or by any means whatsoever, including the transfer of alcoholic liquors by and through the transfer or negotiation of warehouse receipts or certificates, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee. The term “sale” includes any transfer of alcoholic liquor from a foreign importer’s license to an importing distributor’s license even if both licenses are held by the same person.

(Source: P.A. 82-783) (from Ch. 43, par. 95.21)

#### **5/1-3.22. To sell**

“To sell” includes to keep or expose for sale and to keep with intent to sell. (Source: P.A. 82-783) (from Ch. 43, par. 95.22)

### **5/6-5. Receiving Money or Credit from Manufacturer or Distributor B Report of Delinquent Retail Licenses B Cure of Delinquency B Revocation of License**

Except as otherwise provided in this Section, it is unlawful for any person having a retailer’s license or any officer, associate, member, representative or agent of such licensee to accept, receive or borrow money, or anything else of value, or accept or receive credit (other than merchandising credit in the ordinary course of business for a period not to exceed 30 days) directly or indirectly from any manufacturer, importing distributor or distributor of alcoholic liquor, or from any person connected with or in any way representing, or from any member of the family of, such man-

ufacturer, importing distributor, distributor or wholesaler, or from any stockholders in any corporation engaged in manufacturing, distributing or wholesaling of such liquor, or from any officer, manager, agent or representative of said manufacturer. Except as provided below, it is unlawful for any manufacturer or distributor or importing distributor to give or lend money or anything of value, or otherwise loan or extend credit (except such merchandising credit) directly or indirectly to any retail licensee or to the manager, representative, agent, officer or director of such licensee. A manufacturer, distributor or importing distributor may furnish free advertising, posters, signs, brochures, hand-outs, or other promotional devices or materials to any unit of government owning or operating any auditorium, exhibition hall, recreation facility or other similar facility holding a retailer’s license, provided that the primary purpose of such promotional devices or materials is to promote public events being held at such facility. A unit of government owning or operating such a facility holding a retailer’s license may accept such promotional devices or materials designed primarily to promote public events held at the facility. No retail licensee delinquent beyond the 30 day period specified in this Section shall solicit, accept or receive credit, purchase or acquire alcoholic liquors, directly or indirectly from any other licensee, and no manufacturer, distributor or importing distributor shall knowingly grant or extend credit, sell, furnish or supply alcoholic liquors to any such delinquent retail licensee; provided that the purchase price of all beer sold to a retail licensee shall be paid by the retail licensee in cash on or before delivery of the beer, and unless the purchase price payable by a retail licensee for beer sold to him in returnable bottles shall expressly include a charge for the bottles and cases, the retail licensee shall, on or before delivery of such beer, pay the seller in cash a deposit in an amount not less than the deposit required to be paid by the distributor to the brewer; but where the brewer sells direct to the retailer, the deposit shall be an amount no less than that required by the brewer from his own distributors; and provided further, that in no instance shall this deposit be less than 50 cents for each case of beer in pint or smaller bottles and 60 cents for each case of beer in quart or half-gallon bottles; and provided further, that the purchase price of all beer sold to an importing distributor or distributor shall be paid by such importing distributor or distributor in cash on or before the 15th day (Sundays and holidays excepted) after delivery of such beer to such purchaser; and unless the purchase price payable by such importing distributor or distributor for beer sold in returnable bottles and cases shall expressly include a charge for the bottles and cases, such importing distributor or distributor shall, on or before the 15th day (Sundays and holidays excepted) after delivery of such beer to such purchaser, pay the seller in cash a required amount as a deposit to assure the return of such bottles and cases. Nothing herein contained shall prohibit any licensee from crediting or refunding to a purchaser the actual amount of money paid for bottles, cases, kegs or barrels returned by the purchaser to the seller or paid by the purchaser as a deposit on bottles, cases, kegs or barrels, when such containers or packages are returned to the seller. Nothing herein contained shall prohibit any manufacturer, importing distributor or distributor from extending usual and customary credit for alcoholic liquor sold to customers or purchasers who live in or maintain places of business outside of this State when such alcoholic liquor is actually transported and delivered to such points outside of this State.

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

Every manufacturer, importing distributor and distributor shall submit or cause to be submitted, to the State Commission, in triplicate, not later than Thursday of each calendar week, a verified written list of the names and respective addresses of each retail

licensee purchasing spirits or wine from such manufacturer, importing distributor or distributor who, on the first business day of that calendar week, was delinquent beyond the above mentioned permissible merchandising credit period of 30 days; or, if such is the fact, a verified written statement that no retail licensee purchasing spirits or wine was then delinquent beyond such permissible merchandising credit period of 30 days.

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

Such written verified reports required to be submitted by this Section shall be posted by the State Commission in each of its offices in places available for public inspection not later than the day following receipt thereof by the Commission. The reports so posted shall constitute notice to every manufacturer, importing distributor and distributor of the information contained therein. Actual notice to manufacturers, importing distributors and distributors of the information contained in any such posted reports, however received, shall also constitute notice of such information.

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

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

A retail licensee shall not be deemed to be delinquent in payment for any alleged sale to him of alcoholic liquor when there exists a bona fide dispute between such retailer and a manufacturer, importing distributor or distributor with respect to the amount of indebtedness existing because of such alleged sale.

A delinquent retail licensee who engages in the retail liquor business at 2 or more locations shall be deemed to be delinquent with respect to each such location. The license of any person who violates any provision of this Section shall be subject to suspension or revocation in the manner provided by this Act.

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

2) Since we do not find direct reference to "consignment sales" in our Act, we look to other sources of authority. The Code of Federal Regulations makes reference to "consignments" in the following section:

[Code of Federal Regulations]  
[Title 27, Volume 1, Parts 1 to 199]  
[Revised as of April 1, 1999]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 27CFR1 1]  
[Page 226-23 0]

## TITLE 27--ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

### CHAPTER I--BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

#### PART 11--CONSIGNMENT SALES

##### Subpart A--Scope of Regulations

###### Sec.

- 111 General.
- 112 Territorial extent.
- 113 Application.
- 114 Jurisdictional limits.
- 115 Administrative provisions.

##### Subpart B--Definitions

- 11.11 Meaning of terms.

##### Subpart C--Unlawful Sales Arrangements

- 11.21 General.
- 11.22 Consignment sales.
- 11.23 Sales conditioned on the acquisition of other products.
- 11.24 Other than a bona fide sale.

##### Subpart D--Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

- 11.31 General. Exchanges and Returns for Ordinary and Usual Commercial Reasons
- 11.32 Defective products.
- 11.33 Error in products delivered.
- 11.34 Products which may no longer be lawfully sold.
- 11.35 Termination of business.
- 11.36 Termination of franchise.
- 11.37 Change in product.
- 11.38 Discontinued products.
- 11.39 Seasonal dealers. Exchanges and Returns for Reasons Not Considered Ordinary and Usual
- 11.45 Overstocked and slow-moving products.
- 11.46 Seasonal products.

Authority: 15 U.S.C. 49-50; 27 U.S.C. 202 and 205.  
Source: T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

##### Subpart A--Scope of Regulations

###### Sec. 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are consignment sales under section 105(d) of the Act and contain guidelines concerning return of distilled spirits, wine and malt beverages from a trade buyer. This part does not attempt to enumerate all of the practices prohibited by section 105(d) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

###### Sec. 11.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

###### Sec. 11.3 Application.

(a) General. The regulations in this part apply to

transactions between industry members and trade buyers.  
(b) Transactions involving State agencies. The regulations in this part apply to transactions involving State agencies operating as retailers or wholesalers.

#### Sec. 11.4 Jurisdictional limits.

(a) General. The regulations in this part apply where:

(1) The industry member sells, offers for sale, or contracts to sell to a trade buyer engaged in the sale of distilled spirits, wines, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis other than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or the agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages; and,

(2) If:

(i) The sale, purchase, offer or contract is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in using the practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) The direct effect of the sale, purchase, offer or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce.

(b) Malt beverages. In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(d) of the Federal Alcohol Administration Act (27 U.S.C. 205(d)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

#### Sec. 11.5 Administrative provisions.

(a) General. The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act.

(b) Examination and subpoena. The Director or any authorized ATF officers shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Director shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing that the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

#### Subpart B--Definitions

##### Sec. 11.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

*Act.* The Federal Alcohol Administration Act.

*ATF officer.* An officer or employee of the Bureau of

Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

*Exchange.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

*Industry member.* Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

*Product.* Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

*Retailer.* Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

*Return.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

*Trade buyer.* Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

Subpart C--Unlawful Sales Arrangements

Sec. 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

##### Sec. 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

[[Page 229]]

##### Sec. 11.23 Sales conditioned on the acquisition of other products.

(a) General. A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) Exchange. The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

##### Sec. 11.24 Other than a bona fide sale.

"Other than a bona fide sale" includes, but is not limited to, sales in connection with which the industry member purchases or

rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer. [T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

#### Subpart D--Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

##### Sec. 11.31 General.

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privileges of return for any reason, other than those considered to be "ordinary and usual commercial reasons" arising after the product has been sold.

Sections 11.32 through 11.39 specify what are considered "ordinary and usual commercial reasons" for the return of products, and outline the conditions and limitations for such returns.

(b) An industry member is under no obligation to accept the return of products for the reasons listed in Secs. 11.32 through 11.39.

#### Exchanges and Returns for Ordinary and Usual Commercial Reasons

##### Sec. 11.32 Defective products.

Products which are unmarketable because of product deterioration, leaking containers, damaged labels or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding

indebtedness.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

##### Sec. 11.33 Error in products delivered.

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

Sec. 11.34 Products which may no longer be lawfully sold. Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in regulation or administrative procedure over which the trade buyer or an affiliate of the trade buyer has no control, a particular size or brand is no longer permitted to be sold.

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

##### Sec. 11.35 Termination of business.

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see Sec. 11.39).

[T.D. ATF-364, 60 FR 20428, Apr. 26, 1995]

##### Sec. 11.36 Termination of franchise.

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

[[Page 230]]

##### Sec. 11.37 Change in product.

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to Sec. 11.46) may be exchanged for equal quantities of the new version of that

product.

##### Sec. 11.38 Discontinued products.

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

##### Sec. 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

#### Exchanges and Returns for Reasons Not Considered Ordinary and Usual

##### Sec. 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

##### Sec. 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons."

[This was last updated on September 17, 1999]

## TPP-37 Importation of Alcohol into Illinois

### Personal Importation of Alcoholic Beverages

The Bureau of Alcohol, Tobacco and Firearms (ATF) regulates the importation of alcoholic beverages into the United States for commercial use. Under the Federal Alcohol Administration Act and the Internal Revenue Code of 1986, any person engaged in the business of importing alcoholic beverages into the United States for commercial use must have an importer's basic permit and obtain a certificate of label approval.

When a person, or business, imports alcoholic beverages into the United States on a one-time basis for personal use, the above requirements do not apply. In some cases, individuals who import alcoholic beverages for personal use on a repetitive or continuous basis, may be required to obtain an importer's basic permit and possess a certificate of label approval for these imported shipments. ATF and the U.S. Customs Service have concurrent jurisdiction in the area of personal use importations of alcoholic beverages. As a practical matter, it is usually the U.S. Customs Service and the district director at the port of entry who decide whether or not a particular importation is, in fact, for personal use only. In certain unusual circumstances, ATF may exercise joint jurisdiction with Customs in making this determination.

If U.S. Customs and/or ATF decide that imported alcohol is for personal use, an importer's basic permit is not required nor is it necessary to obtain the certificate of label approval, however, all federal, state and local taxes must be paid. In addition, other State, local or U.S. Customs requirements may apply. It should be noted that some States prohibited the direct shipment of alcoholic beverages to individuals. Anyone interested in importing alcohol for personal use should contact their State liquor control agency. A list of State Liquor Control Boards is available on this web site.

If the alcoholic beverages are to be given away as personal gifts to friends, neighbors, or relatives, etc., or are to be similarly distrib-

uted, the Federal Government health warning label requirement is applicable. Gifts of alcoholic beverages connected with the solicitation of orders for, or the sale of, such products constitutes commercial use and can only be conducted by a federally licensed Importer.

Finally, the determination whether or not a shipment is for personal or commercial use cannot be decided solely on the size of the shipment but must be determined on a case-by-case basis considering the circumstances surrounding the importation. However, the size of the shipment may give rise to a question resulting in the need for an investigation by Customs or ATF.

For Further Information Contact:

Bureau of ATF      U.S. Customs Service  
Alcohol Import-Export Branch/Commercial Rulings Division  
TEL: (202) 927-8110      Office of Regulations & Rulings  
FAX: (202) 927-8605      1300 Pennsylvania Ave., NW  
Washington, D.C. 20229  
TEL: (202) 927-2244

{The foregoing courtesy of the Bureau of Alcohol, Tobacco and Firearms website.}

#### Requests for Import Authorization into the State of Illinois

Generally, individuals are not permitted to import more than one gallon of alcoholic beverages into Illinois. Illinois has a “Three-Tier” system for the transportation and sale of alcohol, and in quantities greater than one gallon, the product must first pass from importers or manufacturers to distributors and then to retailers before finally being offered for sale to consumers.

The Commission, however, can make exceptions on a case-by-case basis for individuals who are returning or moving to Illinois from overseas with personal collections of alcoholic beverages. The following information is provided to you as a courtesy by the Illinois Liquor Control Commission and does not guarantee your request for import authorization will be granted. Each request will be reviewed by the Commission’s staff with an eye toward determining if the alcohol requested for import is of a “saleable” quality or quantity. A final determination will be made by the Commission’s Executive Director, and if appropriate, approved and issued within one or two days of receipt of the request.

Prior to requesting import authorization from the Illinois Liquor Control Commission, the United States Department of Customs should be contacted. That agency will have federal requirements for the importation of alcohol, including excise tax and duties that must be paid to the federal government. U.S. Customs will also require authorization from the state into which the alcohol is to be imported. If the final destination of the alcoholic beverage you wish to import is in a state other than Illinois, you must contact that state’s alcoholic beverage control authority, even if your imported alcohol passes through the State of Illinois. U.S. Customs will hold the imported alcoholic beverage at a port of entry until presented with authorization from the state of final destination for the product.

The importation of alcohol into the State of Illinois for personal consumption only and not for resale in any form, is allowed with: 1) prior authorization by the Illinois Liquor Control Commission; and 2) payment of the required “Use Tax” to the Illinois Department of Revenue. Both the import authorization and a receipt for the taxes paid are required for U.S. Customs officials to the release the

imported alcohol from its port of entry.

A request for import authorization from the State of Illinois must be received by the Illinois Liquor Control Commission in writing (e-mail is acceptable) and must include the following information about the individual importing the beverage, and about the beverage itself:

Regarding the individual importing the alcoholic beverage:

1. The individual’s name
2. The individual’s address (the final destination of the alcoholic beverage)
3. The individual’s date of birth
4. The individual’s Social Security Number (or resident, visa number)

Regarding the alcoholic beverage:

1. The names of the alcoholic beverages
2. The type of alcoholic beverages (beer, wine or spirits)
3. The number of bottles, cases, cans, etc., of each beverage being imported
4. The amount of beverage per container (typically 750 ml per bottle of wine)
5. The percentage of alcohol by volume (typically 9-14% for wine)
6. The approximate dollar value per bottle, can, etc.
7. The country or state of origin of the alcoholic beverage

Once the Commission has received this information, it will be reviewed and, if appropriate, authorization will issue. The original authorization will be sent to the address specified in the request, a copy forwarded to the Illinois Department of Revenue, and a copy retained as an official record by this office. If the importer wishes to have an additional copy faxed to another location, such as a current overseas residence, include that address in the request. At this time the Commission cannot issue authorizations over e-mail.

Finally, the person importing must remit an alcohol “Use Tax” to the Illinois Department of Revenue, a receipt for which will also be required prior to the shipment’s release from U.S. Customs. The tax will be calculated by volume and alcohol type (beer, wine or spirits). If you have questions regarding taxation issues, please address them to the following individual:

Mr. Richard Murphy  
Illinois Department of Revenue  
Cashier and Deposit Division  
James R. Thompson Center  
100 West Randolph Street, Suite C-300  
Chicago, Illinois 60601  
(312) 814-2620

Note that this procedure is an exception to the general prohibition against importing alcoholic beverages outside of the “three tier” system, and it is not intended to be used by individuals for bulk purchases of alcohol overseas. Under no means is any alcohol imported in the above fashion to be resold in any form. Existing Illinois licensees who import alcoholic beverages in a manner not proscribed by the Illinois Liquor Control Act are subject to revocation of their licenses. Individuals re-selling alcoholic beverages without a requisite Illinois Liquor license are subject to criminal penalties. (235 ILCS 5/10-1(a))

## TPP- 38 Distributor Warehousing

### I. Policy

It is the policy of the Illinois Liquor Control Commission (ILCC) that licensed Illinois distributors, importing distributors and foreign importers shall only store alcoholic liquors for sale to licensees in this State and to persons without the State, as may be permitted by law, from licensed premises located within the State of Illinois.

**II. Background** The following sections of the Liquor Control Act apply:

5/5-1. Licenses issued by Illinois Liquor Control Commission  
Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(b) A distributor's license shall allow the wholesale purchase and storage of alcoholic liquors and sale of alcoholic liquors to licensees in this State and to persons without the State, as may be permitted by law.

5/6-8. Record of Alcoholic Liquor B Storage

Each manufacturer or importing distributor or foreign importer shall keep an accurate record of all alcoholic liquors manufactured, distributed, sold, used, or delivered by him in this State during each month, showing therein to whom sold, and shall furnish a copy thereof or a report thereon to the State Commission, as the State Commission may, request. Each importing distributor or manufacturer to whom alcoholic liquors imported into this State have been consigned shall effect possession and physical control thereof by storing such alcoholic liquors in the premises wherein such importing distributor or manufacturer is licensed to engage in such business as an importing distributor or manufacturer and to make such alcoholic liquors together with accompanying invoices, bills of lading and receiving tickets available for inspection by an agent or representative of the Department of Revenue and of the State Commission.

All alcoholic liquor imported into this State must be off-loaded from the common carrier, vehicle, or mode of transportation by which the alcoholic liquor was delivered into this State. The alcoholic liquor shall be stored at the licensed premises of the importing distributor before sale and delivery to licensees in this State. A distributor or importing distributor, upon application to the Commission, may secure a waiver of the provisions of this Section for purposes of delivering beer directly to a licensee holding or otherwise participating in a special event sponsored by a unit of government or a not-for-profit organization.

5/6-9. Registration of trade marks, etc. B Sale within geographical area B Delivery to authorized persons

The Legislature hereby finds and declares that for purposes of ensuring the preservation and enhancement of interbrand competition in the alcoholic liquor industry within the State, ensuring that importation and distribution of alcoholic liquor in the State will be subject to thorough and inexpensive monitoring by the State, reducing the importation of illicit or untaxed alcoholic liquor into the State, excluding misbranded alcoholic liquor products from the State, providing incentives to distributors to service and sell to larger numbers of retail licensees in the geographic area where such distributors are engaged in business, and reducing the amount of spoiled and overaged alcoholic liquor products sold to consumers, it is necessary to restrict the purchase of alcoholic liquors at wholesale in the State to those persons selected by the manufacturer, distributor, importing distributor or foreign importer who owns or controls the trade mark, brand or name of the alcoholic liquor products sold to such persons, and to restrict the geographic area or

areas within which such persons sell such alcoholic liquor at wholesale, as provided in this Section.

Each manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer who owns or controls the trade mark, brand or name of any alcoholic liquor shall register with the State Commission, in the Chicago office, on or before the effective date, the name of each person to whom such manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer grants the right to sell at wholesale in this State any such alcoholic liquor, specifying the particular trade mark, brand or name of alcoholic liquor as to which such right is granted, the geographical area or areas for which such right is granted and the period of time for which such rights are granted to such person. Each manufacturer, non-resident dealer, distributor or importing distributor, or foreign importer who is required to register under this Section must furnish a copy of the registration statement at the time of appointment to the person who has granted the right to sell alcoholic liquor at wholesale. Such manufacturer, non-resident dealer, distributor, importing distributor, or foreign importer may grant the right to sell at wholesale any trade mark, brand or name of any alcoholic liquor in any geographical area to more than one person. If the registration is received after the effective date, the Commission shall treat the date the registration was received in the Chicago office as the effective date. Such registration shall be made on a form prescribed by the State Commission and the State Commission may require such registration to be on a form provided by it. No such registration shall be made by any other person or in any other manner than as is provided in this Section and only those persons registered by the manufacturer, non-resident dealer, distributor, importing distributor or foreign importer, shall have the right to sell at wholesale in this State, the brand of alcoholic liquor specified on the registration form. However, a licensed Illinois distributor who has not been registered to sell a brand of alcoholic liquor, but for a period of 2 years prior to November 8, 1979, has been engaged in the purchase of a brand for resale from a licensed Illinois distributor who has the right to sell that brand at wholesale, may continue to purchase and resell the brand at wholesale, and may purchase from the same distributor and resell at wholesale any new brands of the same manufacturer, provided that:

- (1) Within 60 days after November 8, 1979, he identifies the brand which he so purchased to the State Commission and the Commission within 30 days thereafter verifies that the purchases have occurred;
- (2) Thereafter, he notifies the State Commission in writing of any brands of the same manufacturer which he wishes to purchase from the same distributor that were not available for distribution on or before November 8, 1979, and that the Commission within 30 days of such notification verifies that the brand is a new brand of the same manufacturer, and that the same licensed Illinois distributor has the right to sell the new brand at wholesale;
- (3) His licensed business address is within the geographical area for which the licensed Illinois distributor from whom the purchases are made has the right to sell said brand or brands of alcoholic liquor; and
- (4) His sales are made within the geographical area for which the licensed Illinois distributor from whom the purchases are made has the right to sell the brand or brands of alcoholic liquor and only to retail licensees whose licensed premises are located within the aforementioned geographical area.

No person to whom such right is granted shall sell at wholesale in this State any alcoholic liquor bearing such trade mark, brand or name outside of the geographical area for which such person holds such selling right, as registered with the State Commission, nor shall he sell such alcoholic liquor within such geographical area to a retail licensee if the premises specified in such retailer's license are located

outside such geographical area. Any licensed Illinois distributor who has not been granted the right to sell any alcoholic liquor at wholesale and is purchasing alcoholic liquor from a person who has been granted the right to sell at wholesale may sell and deliver only to retail licensees whose licensed premises are within the same geographical area as the person who has been granted the right to sell at wholesale.

No manufacturer, importing distributor, distributor, non-resident dealer, or foreign importer shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this Act.

#### Sec. 6-9.1. Deliveries to retail establishments.

(a) A distributor of wine or spirits shall deliver to any retailer within any geographic area in which that distributor has been granted by a wholesaler the right to sell its trademark, brand, or name at least once every 2 weeks if (i) in the case of a retailer located in a county with a population of at least 3,000,000 inhabitants or in a county adjacent to a county with at least 3,000,000 inhabitants, the retailer agrees to purchase at least \$200 of wine or spirits from the distributor every 2 weeks; or (ii) in the case of a retailer located in a county with a population of less than 3,000,000 that is not adjacent to a county with a population of at least 3,000,000 inhabitants, the retailer agrees to purchase at least \$50 of wine or spirits from the distributor every 2 weeks.

(b) On January 1, 2002 and every 2 years thereafter, the dollar amount in items (i) and (ii) of subsection (a) shall be increased or decreased by a percentage equal to the percentage increase or decrease in the Consumer Price Index during the previous 2 years according to the most recent available data.

The Peerless changes: 5/6-9

(4) His sales are made within the geographical area for which the licensed Illinois distributor from whom the purchases are made has the right to sell the brand or brands of alcoholic liquor *and only to retail licensees whose licensed premises are located within the aforementioned geographical area.*

No person to whom such right is granted shall sell at wholesale in this State any alcoholic liquor bearing such trade mark, brand or name outside of the geographical area for which such person holds such selling right, as registered with the State Commission, nor shall he sell such alcoholic liquor within such geographical area to a retail licensee if the premises specified in such retailer's license are located outside such geographical area. *Any licensed Illinois distributor who has not been granted the right to sell any alcoholic liquor at wholesale and is purchasing alcoholic liquor from a person who has been granted the right to sell at wholesale may sell and deliver only to retail licensees whose licensed premises are within the same geographical area as the person who has been granted the right to sell at wholesale.*

No manufacturer, importing distributor, distributor, non-resident dealer, or foreign importer shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this Act.

(Source: P.A. 90-0596, eff. 6-24-98 )

### III. Procedures

1. All licensed Illinois distributors, importing distributors and foreign importers shall have licensed warehouse facilities within the State of Illinois.
2. All sales to retailers, located within each distributor, importing

distributor and foreign importer's geographic territory, shall be made from the licensed warehouse facilities within the State of Illinois.

3. All business records, as defined in Sec. 5/6-8 and Regulation 100.130, shall be maintained upon the licensed warehouse facilities within the State of Illinois.

4. All alcoholic products sold to the licensed Illinois distributors, importing distributors and foreign importers shall be off-loaded at the licensed warehouse facilities within the State of Illinois.

5. The alcoholic products shall be stored at the licensed warehouse facilities within the State of Illinois before sale and delivery to licensees in this State.

6. Illinois distributors, importing distributors and foreign importers may warehouse product in public warehouses, registered under Article VIIA of the Liquor Control Act, however, sales of such products may not take place from such warehouse premises.

### TPP-39 Multi-tier licensing arrangements

#### Non-resident dealer and Distributor

The Commission has received applications requesting the issuance to one legal entity both an Illinois Distributor and Non-resident dealer license.

It is the position of the Legal Division of the Commission that such licenses cannot be issued to the same applicant for the following reasons:

1. The Liquor Control Act defines a Non-resident dealer as follows:5/1-3.29. Non-resident dealer

"Non-resident dealer" means any person, firm, partnership, corporation or other legal business entity who or which exports into this State, from any point outside of this State, any alcoholic liquors for sale to Illinois licensed foreign importers or importing distributors. Such license shall be restricted to the actual manufacturer of such alcoholic liquors or the primary United States importer of such alcoholic liquors, if manufactured outside of the United States, or the duly registered agent of such manufacturer or importer. Registration of such agent with the State Commission, in such manner and form as it may prescribe, shall be a prerequisite to the issuance of such license to an agent.

Any licensed Illinois manufacturer of Class 1, Class 2, or Class 3 may obtain a Non-Resident Dealer's License at no fee. A manufacturer whose production of alcoholic liquor is less than 500,000 gallons per year may obtain a Non-Resident Dealer's License for an annual fee of \$75. (*emphasis supplied*)

#### 5/5-1. Licenses issued by Illinois Liquor Control Commission

Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(m) A non-resident dealer's license shall permit such licensee to ship into and warehouse alcoholic liquor into this State from any point outside of this State, and to sell such alcoholic liquor to Illinois licensed foreign importers and importing distributors and to no one else in this State; provided that said non-resident dealer shall register with the Illinois Liquor Control Commission each and every brand of alcoholic liquor which it proposes to sell to Illinois licensees during the license period; and further provided that it shall comply with all of the provisions of Section 6-9 hereof with respect to registration of such Illinois licensees as may be granted the right to sell such brands at wholesale.

2. The Liquor Control Act defines a distributor as follows:

### 5/1-3.15. Distributor

“Distributor” means any person, *other than a manufacturer or non-resident dealer licensed under this Act*, who is engaged in this State in purchasing, storing, possessing or warehousing any alcoholic liquors for resale or reselling at wholesale, whether within or without this State. (*emphasis supplied*)

### 5/5-1. Licenses issued by Illinois Liquor Control Commission

Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(b) A distributor’s license shall allow the wholesale purchase and storage of alcoholic liquors and sale of alcoholic liquors to licensees in this State and to persons without the State, as may be permitted by law.

3. The above sections of the Liquor Control Act specifically exclude both manufacturers and non-resident dealers licensed under the Act from the class of proper applicants for a distributors license.

4. Further, a second ground for the denial of such licenses to a single legal entity is found in Sec. 6-4 of the Liquor Control Act which provides in relevant part:

### 5/6-4. Retail sales by Distillers, Manufacturers, Subsidiaries or Affiliates Prohibited Transactions and Interests Exemptions

(a) *No person licensed by any licensing authority as a distiller, or a wine manufacturer, or any subsidiary or affiliate thereof, or any officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such person shall be issued an importing distributor’s or distributor’s license, nor shall any person licensed by any licensing authority as an importing distributor, distributor or retailer, or any subsidiary or affiliate thereof, or any officer or associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of such person be issued a distiller’s license or a wine manufacturer’s license; and no person or persons licensed as a distiller by any licensing authority shall have any interest, directly or indirectly, with such distributor or importing distributor.*

However, an importing distributor or distributor, which on January 1, 1985, is owned by a brewer, or any subsidiary or affiliate thereof or any officer, associate, member, partner, representative, employee, agent or shareholder owning more than 5% of the outstanding shares of the importing distributor or distributor referred to in this paragraph, may own or acquire an ownership interest of more than 5% of the outstanding shares of a wine manufacturer and be issued a wine manufacturer’s license by any licensing authority.

(b) The foregoing provisions shall not apply to any person licensed by any licensing authority as a distiller or wine manufacturer, or to any subsidiary or affiliate of any distiller or wine manufacturer who shall have been heretofore licensed by the State Commission as either an importing distributor or distributor during the annual licensing period expiring June 30, 1947, and shall actually have made sales regularly to retailers.

(c) Provided, however, that in such instances where a distributor’s or importing distributor’s license has been issued to any distiller or wine manufacturer or to any subsidiary or affiliate of any distiller or wine manufacturer who has, during the licensing period ending June 30, 1947, sold or distributed as

such licensed distributor or importing distributor alcoholic liquors and wines to retailers, such distiller or wine manufacturer or any subsidiary or affiliate of any distiller or wine manufacturer holding such distributor’s or importing distributor’s license may continue to sell or distribute to retailers such alcoholic liquors and wines which are manufactured, distilled, processed or marketed by distillers and wine manufacturers whose products it sold or distributed to retailers during the whole or any part of its licensing periods; and such additional brands and additional products may be added to the line of such distributor or importing distributor, provided, that such brands and such products were not sold or distributed by any distributor or importing distributor licensed by the State Commission during the licensing period ending June 30, 1947, but can not sell or distribute to retailers any other alcoholic liquors or wines.

(d) It shall be unlawful for any distiller licensed anywhere to have any stock ownership or interest in any distributor’s or importing distributor’s license wherein any other person has an interest therein who is not a distiller and does not own more than 5% of any stock in any distillery. Nothing herein contained shall apply to such distillers or their subsidiaries or affiliates, who had a distributor’s or importing distributor’s license during the licensing period ending June 30, 1947, which license was owned in whole by such distiller, or subsidiaries or affiliates of such distiller. (*emphasis supplied*)

4. From the foregoing, it appears that there are two options available to such an applicant: (a) continue to be licensed as a Non-resident dealer and to secure another Illinois distributor, or (b) relinquish the non-resident dealer license and become licensed as an Illinois distributor. Either of these options assumes that the applicant has the proper permit from the Bureau of Alcohol, Tobacco and Firearms.

### TPP-40 Introduction of new spirits products

Parties wishing to introduce new spirits products in the State of Illinois may utilize non-licensed third-party companies representing the manufacturer and promoting the new products. These representatives may not carry on any activities which are enumerated in Sec. 5/5-1(a-1) unless the third-party company shall be registered as agents of the manufacturer under 5/5-1(a-1).

The manufacturer and its third-party agent may run the risk of “exposing” the product for sale, which practice was specifically addressed in the Fourth District Appellate Court case of **People v. Select Specialties**, Docket No. 4-99-0976 (12/6/2000), which found that such “exposure” amounted to “selling,” stating:

“Although defendants did not ship the product or cash the consumer’s check, they conducted a ‘sale’ within the meaning of the Act. Both the intent behind the Act (see **Hassiepen v. Marcin**, 24 Ill. App. 3d 97, 100, 320 N.E.2d 572, 575 (1974)) and common sense dictate the finding of a sale under the Act. Although defendants later added the terms ‘all wines are delivered by Shermer Specialties, which will appear on all credit card receipts and statements’ in small print at the bottom of the form, this does not change the result: defendants are selling alcohol without a license. The language of the statute is sufficiently comprehensive to include any person, natural or artificial, and any kind of a sale or device used in lieu of a direct sale. **People ex rel. Stevenson v. Law & Order Club**, 203 Ill. 127, 131, 67 N.E. 855, 857 (1903).

However, recognizing the parties’ right of commercial free speech and the importance of product promotion, and assuming all of the above concerns are groundless, there is

nothing to prevent the third-party companies from displaying product photographs at licensed retailer business premises.

### **TPP-41 Administrative Review Process (ARP) (New 4/2003)**

#### **I. Purpose**

To set the procedures of the Illinois Liquor Control Commission whereby alleged violations of the Liquor Control Act and Rules and Regulations may be handled in an informal manner, without the necessity of a full formal hearing before the Commission.

#### **II. Policy Statement**

It is the policy of this Commission to offer all licensees the availability of a process whereby the vast majority of all alleged violations of the Liquor Control Act and Rules and Regulations may be compromised without the necessity of a formal, contested hearing before the full Commission.

#### **III. Precedent**

##### **A. Statutes**

Liquor Control Act (235 ILCS 5/3-12):

Powers and duties of Commission

(a) The State Commission shall have the following powers, functions and duties:

(1) to receive applications and to issue licenses to manufacturers, foreign importers, importing distributors, distributors, non-resident dealers, on premise consumption retailers, off premise sale retailers, special event retailer licensees, special use permit licenses, auction liquor licenses, brew pubs, caterer retailers, non-beverage users, railroads, including owners and lessees of sleeping, dining and cafe cars, airplanes, boats, brokers, and wine maker's premises licensees in accordance with the provisions of this Act, and to suspend or revoke such licenses upon the State Commission's determination, upon notice after hearing, that a licensee has violated any provision of this Act or any rule or regulation issued pursuant thereto and in effect for 30 days prior to such violation.

In lieu of suspending or revoking a license, the Commission may impose a fine, upon the State Commission's determination and notice after hearing, that a licensee has violated any provision of this Act or any rule or regulation issued pursuant thereto and in effect for 30 days prior to such violation. The fine imposed under this paragraph may not exceed \$500 for each violation. Each day that the activity, which gave rise to the original fine, continues is a separate violation. The maximum fine that may be levied against any licensee, for the period of the license, shall not exceed \$20,000. The maximum penalty that may be imposed on a licensee for selling a bottle of alcoholic liquor with a foreign object in it or serving from a bottle of alcoholic liquor with a foreign object in it shall be the destruction of that bottle of alcoholic liquor for the first 10 bottles so sold or served from by the licensee. For the eleventh bottle of alcoholic liquor and for each third bottle thereafter sold or served from by the licensee with a foreign object in it, the maximum penalty that may be imposed on the licensee is the destruction of the bottle of alcoholic liquor and a fine of up to \$50.

(8) In the conduct of any hearing authorized to be held by the Commission, to examine, or cause to be examined, under oath, any licensee, and to examine or cause to be examined the books and records of such licensee; to hear testimony and take proof material for its information in the discharge of its duties hereunder; to administer or cause to be administered oaths; and for any such

purpose to issue subpoena or subpoenas to require the attendance of witnesses and the production of books, which shall be effective in any part of this State.

Liquor Control Act (235 ILCS 5/3-13)

The Liquor Control Act further provides that the Illinois Administrative Procedure Act, as amended, is expressly adopted and incorporated herein as though a part of the Act, and shall apply to all administrative rules and procedures of the State Commission.

Administrative Procedure Act (5 ILCS 100/10-70) "Waiver":

"Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties." (5 ILCS 100/10-70)

The foregoing statutes provide implicitly for the maintenance of a system of dispute resolution whereby the parties may by agreement dispense with the necessity of a formal hearing.

#### **IV. Procedures**

The following "flow chart" tracks the process of disciplinary matters through the Administrative Review Process (ARP), from initial premises inspection to judicial review:

1. The process usually begins with an inspection of a licensed premises by a Commission agent, which may be an unannounced, routine visit; a follow-up on a complaint from a citizen, another licensee, etc., to the Investigation Division; or a request from local officials for assistance, etc.

NOTE: If during an inspection of unlicensed premises or of a premises upon which criminal activities are detected, the information gathered during that inspection is referred to local law enforcement, or other appropriate agency, under Article 10 of Liquor Control Act.

The agent conducts an examination of the premises, records, inventory, etc., in accordance with the itemized list contained within the document known as the "Field Report." This inspection is performed by the agent in the company of the licensee or licensee's agent, if that person wishes to do so; the agent will request directions and information from the licensee or agent, as is needed to complete the inspection. Unless prevented by some intervening activity, such as a refusal of the licensee to comply with reasonable requests, the agent will complete the inspection. If the licensee refuses inspection, or refuses to comply with reasonable requests of the agent, that licensee will be cited for formal hearing as soon thereafter as possible.

2. At the conclusion of the inspection, the agent prepares the formal Field Report [computer-generated or handwritten], a copy of which is delivered to the licensee or the licensee's agent at end of visit. The agent explains the nature of any violations to the licensee, and may provide additional documentation, such as for example, pregnancy warning sign, copies of statute, rules, etc. The licensee or agent signs the "file" copy of the Report as evidence that the agent was present and performed the inspection; this is not an admission of the existence of what the agent reports, nor an admission of culpability. The agent may secure items of evidence, such as for example, receipts of retail purchases, gambling paraphernalia, etc., or may take photographs of conditions, items, etc., on the premises, which become part of the Commission file which will be created in the Commission offices.

3. The completed Field Reports, and any accompanying documents, are transmitted to the Area Supervisor for review, comment, etc. After this review, and any clarifications, comments, etc., have been made and recorded, the Supervisor transmits this information to the Electronic Data (ED) administrator, in the Legal Division, in the Chicago office where it is inputted into the Administrative Review Process (ARP) computer system, using electronic download, usually via disc, however the system does have the capability of accepting the data via modem. This process involves the downloading of the raw electronic data into the Commission's licensing database, and the review of all downloaded information by the ED administrator and the correction of any anomalies, such as duplicate files.

Any report which was handwritten necessitates manual entry of the information contained by ARP personnel, which electronic information is then processed identically to the "automatic" electronic downloads.

Once all information is downloaded, the ED administrator directs the system to generate an "Exception Report" detailing information contained in the "Note" field of the inspection reports, as well as other information included by the Field Agent, such as referring a matter to the Legal Division because of a question about the violation, etc. This printed report provides the ARP personnel, and the Legal staff when applicable, with the opportunity of reviewing any matter before it is processed by the computer system. Some review simply involves the mechanics of the processing of the records while other review necessitates one of the attorneys reviewing the entire file.

4. The computer is then instructed to apply its programming to the raw data, evaluating information, categorizes reports, etc.; assigning an ARP number to matters in which violations are found; determining the category into which the violation is to "filed"; and then applying the monetary penalties.

Once the programming has processed all the information, ARP personnel determine that a mailing of documents to the licensees should be made (usually when sufficient records exist to warrant a bulk mailing), and generate letters to the licensee, when necessary. The review of the electronic information results in two types of processing:

A. A "pass" report indicates no violations of the Liquor Control Act or Rules of Commission was detected; no documentation is generated; and the information is electronically maintained in a "history" function of the database.

B. A "fail" report indicates violation(s) of Liquor Control Act or Commission Rules detected; documentation of one of the types listed below is generated; this information is electronically maintained in a "history" function of the database for use in determining if the licensee is a repeat violator:

1. Offenses which are technical in nature, or otherwise are not serious breaches of law or threats to the health, safety and welfare of the people of the state are processed in the following manner:

a. "Violation Discharge" letter - similar to a "warning" or other disposition not on the merits, such as a "first inspection" of a new licensee.

b. "Offer in Compromise" letter - notification to the licensee of an administrative penalty which has been assessed; the licensee has the option of:

2) Request for Pre-Disciplinary Conference, which will schedule a meeting with the Legal Staff to discuss the nature

and consequences of the violations; provide additional information to the licensee to come into compliance; and provide an opportunity for the licensee to present matters in excuse or mitigation; the conference will result in:

- a) reduction of administrative penalty or discharge of the violation(s)
- b) payment of administrative penalty
- c) referral to Legal Division for further processing
- d) Citation/Hearing (See No. 5 below)

2. Offenses of a more serious nature which may or do pose a threat to the health, safety and welfare of the people of the state, or constitute serious breaches of law, or require additional review of the information provided with the documents received in support of the violation and/or further investigation are processed in one of the following manners:

(1) "Violation Notification" letter advises the licensee of the violation(s) which were discovered, and requests the licensee to contact the Legal Staff to discuss the inspection results before proceeding with a Pre Disciplinary Conference or Citation. correspondence; a certified mail, return receipt requested, letter is served upon the licensee. [See B., 1., b., above]

[NOTE: At any time during the process, the licensee can request that the matter be referred to the Commission and be presented to the Commissioners for decision. All letters which the ARP staff direct to licensees contain this statement. The matter is then brought to the Commissioners' attention via the preparation of documents by the Legal staff. Any matter which is not resolved within the ARP Unit, whether due to the licensee's request for a hearing, or the lack of response to communication from the staff, is then "Referred to Legal" for further handling.]

5. The Legal staff then begins the preparation of a Citation and Notice of Hearing, giving the matter a Citation number, and setting the matter for hearing at the next scheduled Commission hearing. The Citation advises the licensee of the charges alleged and statute(s)/rule(s) violated. This document provides necessary notice pursuant to Sec. 5/7-6 of Liquor Control Act and Sec. 100/10-25 of Administrative Procedures Act].

The Citation and Notice of Hearing are sent via certified mail, return receipt requested, to the licensee, with a copy to the local commissioner. A docket of all Citations is prepared by the Legal staff and available for inspection by the public several days prior to the actual hearing.

A. The Hearing:

1. Statement of the case by the Legal staff; all witnesses administered an oath.
2. Presentation of case by Legal staff, field agent, local authorities, or other witnesses, and evidence gathered by Field Agent.
3. Cross-examination of Commission's witnesses.
4. Presentation of defense by the licensee, or attorney or both.
5. Cross-examination of the licensee and licensee's witnesses.
6. Closing remarks by both sides.

B. Decision by Commissioners and entry of Order, usually involves one of the following:

1. fine
2. suspend
3. revoke
4. finding in favor of licensee (no violation).

C. Certified mail, return receipt requested, service of Order

on licensee with copy to the local commissioner; date of mailing is date of service for computation of time periods for application for rehearing by the Commissioners and Circuit Court. [Sec. 5/7-10]

6. Application/petition for rehearing filed within 20 days of service of order (5.C. above).

[NOTE: Petition is jurisdictional if judicial review is to be sought.]

The Commission may:

- A. Deny the request for rehearing (no basis for reconsidering original ruling).
- B. Grant and conduct a rehearing
  - 1. confirm original order
  - 2. new findings and order

Only one application/petition for rehearing may be filed in each case.

7. Filing of Complaint for Administrative Review with appropriate Circuit Court and placing summons for service, within 35 days of entry of last order entered on rehearing, i.e., denial of request, or order on rehearing.

Upon receipt of Summons and Complaint for Administrative Review by the Commission, the matter is referred to the Office of Attorney General for representation.

The case is generally decided by a Circuit Court judge based upon the official record of the Commission's hearing, so no new evidence taken.

Judges may enter one of the following types of orders:

- 1. affirm in whole or in part.
- 2. reverse in whole or in part.
- 3. reverse and remand the decision in whole or in part, and, in that case, to state the questions requiring further hearing or proceedings and to give such other instructions as may be proper.
- 4. stay the decision of the administrative agency in whole or in part pending the final disposition of the case.

Petition/Motion to Reconsider/Rehearing may be filed. Judges may grant, in which event he/she will usually "reverse" the prior ruling, or deny, which upholds the original order.

8. Filing of Notice of Appeal with the appropriate Appellate and Circuit Courts, usually within 30 days of entry of last order. At this point in time, the handling of the matter will be transferred within the Attorney General's Office from "General Law" to the "Appellate Division."

9. The party against whom the Appellate Court rules may petition the Supreme Court for leave to appeal the case. However, this is an unlikely occurrence since the Supreme Court only accepts about 4% of the petitions filed.