

UPDATE ON CHANGES TO THE ILLINOIS LIQUOR CONTROL ACT

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Presented for: Illinois Municipal Prosecutors Seminar

Date: November 11, 2015

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ILLINOIS LIQUOR CONTROL COMMISSION

- 7 COMMISSIONERS
- EXECUTIVE DIRECTOR
- DIVISIONS
 - LICENSING (8-9)
 - LEGAL (3)
 - BASSET/INDUSTRY EDUCATION (2)
 - TOBACCO COMPLIANCE/TEP (1)
 - FIELD AGENTS (15)



Public Act 99-0046

Happy Hour Revision

Alcoholic Liquor Promotions

- Local government authority
- Application of section
- Schedule of drink prices
- All day specials
- Prohibitions/requirements
- Drink discounting
- Drink containers
- Drink packages

LOCAL GOVERNMENT AUTHORITY

Liquor Control Act - 235 ILCS 5/4-1

“In every city, village or incorporated town, the city council or president and board of trustees, and in counties in respect of territory outside the limits of any such city, village or incorporated town the county board shall have the power by general ordinance. . .to establish such further regulations and restrictions upon the issuance of and operations under local licenses not inconsistent with law as the public good and convenience may require.”

LOCAL GOVERNMENT AUTHORITY

Sip N Save v. Daley - “Liquor control is subject to concurrent jurisdiction of state and local government; home rule municipalities may legislate in area of liquor control, except as restricted by state...”

Cochrane’s of Champaign v. ILCC - It is acceptable for local liquor control rule to differ from state liquor control statute, so long as it is more restrictive than statute or places additional requirements on licensees.



LOCAL GOVERNMENT AUTHORITY

Local Law Differs From State:

- Hours of Operation
- Age of Service Rules
- Restrictive Licensing (i.e. beer/wine)
- BYO
- Mandatory BASSET Training

Local Law Same As State

- Drinking Age
- Licensing - Manufacturers/Distributors/Airplanes etc.

Application of Rules

- Applies to any person licensed to sell drinks for the consumption on premises.
- On-Premises Retailers, Brew Pubs, Brewers, Wineries, Distillers, Special Events, Gaming.
- Does not apply to Off-Premises license holders.

Schedule of Drink Prices

- A list, including but not limited to a drink menu, of the brands, sizes and prices of drinks offered by a license holder.
- In writing
- Made available upon request (No posting requirement).
- Prices cannot change throughout biz day unless per 5/6-28.5.

All Day Drink Specials

- Permitted – Price of the drink special must be on the Schedule of Drink Prices
- Proportionality Test Applies

Prohibitions/Requirements

- No 2 for 1's (3 for 1's, etc)
- No Unlimited for a Set Price (unless...)
- Proportionality Test
- No Games/Contests (sponsored or permitted)
- No advertising any of the above.

- Removed the Reduction of Prices Prohibition.

Drink Discounting

- Language of 5/6-28.5(10) – Discounting (from the schedule of drink prices) permitted “only if”:
 - Not more than 4 hours a day
 - Not more than 15 hours a week
 - Not after 10 pm (to close)
 - Mandatory notice
 - No change of prices during the discounting period.

Drink Discounting

- Discounts can change in non-consecutive discounting periods.
- Multiple Licenses in Contiguous Areas – Total time from first to last cannot exceed 4 hours
- Available to **all** persons (of legal age)
- Points rewards programs are ok as long as no 2 for 1's. Must purchase more than 1 drink to get a no charge drink.
- No redeemable coupons unless for a package.

Drink Discounting

- Credit card processing fee – documented
- No proportionality test
- No “free” or deep discounts. (Rule 100.280)
- No 2 for 1’s or games or contests (even during discounting period).

Drink Containers

- Pitcher, bucket, carafe, or bottle containing alcoholic liquor.
- May be offered to 1 person (Rules similar to drinks rules)
- Price required in Schedule of Drink Prices
- Price of drink container may not fluctuate unless part of a 5/6-28.5 discount
- No effective 2 for 1 pricing
- But...proportionality test does not apply – Volume discount ok.

Drink Packages

- No unlimited drinks (open bars) for a single price except....
 - Meal Packages
 - Party Packages
 - Private Functions

Drink Packages

- Discounting Limitations [5/6-28.5(10)] do **not** apply
 - No 4 hr/day limitation (except “party package 3hr limitation)
 - No 15/week limitation
 - No after 10pm limitation
 - No notice requirement
- Commission/Rulemaking?
- New Year’s Eve

Drink Packages

- Meal Package
 - A combination package (food + alcoholic liquor) for a single price
 - No limitation on liquor (open bar)
 - Finger food ok (Ice is not food!)
 - Not a discount drink package (i.e. buffet + \$1.00 beers).
 - Advertisements must include the food and drinks. Can't just advertise drinks.

Drink Packages

- Party Package - unlimited drinks (open bar) permitted if:
 - Social or business occasion
 - Invitation or reservation for a defined number of individuals
 - Not open to the general public
 - Attendees served both food and alcohol in a dedicated event space.
 - Dedicated Event Space – No mingling in common area – “furniture, stanchions, ropes”.
 - Lanyards/wristbands/shirts (“wearable item”) shall be used to distinguish guest/non-guests

Drink Packages

- Party Package
 - Food (finger food) required
 - No more than 3hrs.
 - License holder may advertise its own event
 - Advertisement shall include max. capacity
 - References to service of food.
 - References to 3hr limitation
 - License holder may charge an entry fee (subject to local restrictions).

Drink Packages

- Private Function
 - Definition is same as Party Package except”
 - Must be in “rooms or rooms designated and used exclusively” for private function.
 - Not Dedicated Event Space separated by stanchions, ropes and furniture.
 - No food requirement
 - No 3hr limitation.
 - Advertisements – Room rental packages; License holder cannot advertise its own event.
 - Fees – License holder cannot charge; donations can be accepted by party host.

PA 99-0046 - BEYOND HAPPY HOUR

INFUSIONS (235 ILCS 5/6-22.5)

- Why? Distinguish from Rectification
- Definition
 - “Infusing”
 - Distilled Spirits
 - Including but not limited to “fruits, spices, nuts”.
- 14 day aging period; 21 day selling period
- Labeling requirement
- Not a “pre-mix”; Not “to go”.

PA 99-0046 - BEYOND HAPPY HOUR

MANDATORY SERVER TRAINING

- Counties 200,000 or more – 7/1/2016
- Counties between 30K-200K – 7/1/2017
- Counties 30K and under – 7/1/2018

- Server Training – Special Events? No
- Server Training – Special Uses? Yes
- Server Training – Samplings? No
- Server Training – Gaming? Yes
- Server Training – Bouncers? Yes

- Check out list of servers on ILCC website – 85K names.
- Don't cite business if server can prove they have taken course.

PA 99-0046 - BEYOND HAPPY HOUR

Hotel Licensing

- Multiple local licenses vs. one State license

Blue Law Change

- Sunday sales are no longer prohibited

ILCC Trade Practice Policies

- Unenforceable



Public Act 99-0448

Craft Beer Changes

Creation of Class 1 and Class 2 brewer licenses

Redefines Brew Pub

Clarifies Retailing and Distribution Privileges

Comment on 3-Tier System (aside)

- Cross-Tier Task Independence
- Cross-Tier Ownership/Control Independence
- No Illegal Tied-Houses (“of value”)
- How to handle Cross-Tier Craft Without Violating US Constitution Commerce Clause?

Creation of Class 1 and Class 2 Brewer Licenses

- Class 10 - A class 1 brewer license:
 - may only be issued to a licensed brewer or licensed non-resident dealer;
 - shall allow the manufacture of up to 930,000 gallons of beer per year (30K barrels);
 - not a member of or affiliated with, directly or indirectly, a manufacturer that produces more than 930,000 gallons of beer per year;
 - or any other alcoholic liquor.
 - A class 1 brewer licensee may make sales and deliveries to importing distributors and distributors.
 - Retailers under certain conditions. (up to 7,500 barrels)

Creation of Class 1 and Class 2 Brewer Licenses

- Class 11 - A class 2 brewer license:
 - may only be issued to a licensed brewer or licensed non-resident dealer;
 - shall allow the manufacture of up to 3,720,000 gallons of beer per year (120K barrels);
 - not a member of or affiliated with, directly or indirectly, a manufacturer that produces more than 3,720,000 gallons of beer per year;
 - or any other alcoholic liquor manufacturer.
 - A class 2 brewer licensee may make sales and deliveries to importing distributors and distributors.
 - NOT Retailers

Redefining Brew Pub

- Brew Pub Definition
 - Can produce up to 155K gallons of beer to be sold on site or to distributors or to wholly owned brew pubs.
 - Can purchase alcoholic liquor from distributors.
 - Can sell everything it produces and purchases directly to the public.
 - Old Brew Pub Definition did not cap production.
 - Led to production breweries seeking brew pub licenses.

Retailing Privileges for “Brewers” and “Brew Pubs”

- **Brewers = Manufacturer Tier (1st Tier)**
 - Primarily produce beer
 - Limited distribution privilege (Class I)
 - Limited retailing (Tap Rooms/Tours) – sell only the beer made at the location.
 - Local retail license
 - No State retail license

Retailing Privileges for “Brewers” and “Brew Pubs”

- Brew Pubs (3rd Tier License)
 - Local retailing license needed.
 - State Brew Pub license needed.
 - Brew Pubs holders can also be issued retail licenses.
 - Class 2 brewer may also own up to 3 Brew Pubs (3 tier exception).
 - Class 1 brewer shall not own an interest in a Brew Pub.



Public Act 99-0448

Social Media Advertising

- Supplier Tier Relationship to Retail Tier
- “Of Value”/Tied House – 235 ILCS 5/6-5
- Definition of “Of Value”??

Supplier Tier Relationship to Retail Tier

- Manufacturer/Distributor cannot have lease property, sell equipment, sell fixtures or have a direct or indirect interest in the business of a retail license holder. 235 ILCS 5/6-6

“Of Value”/Tied House – 235 ILCS 5/6-5

- Sec. 6-5. 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.**
- What is and is not “of value”????

Definition of “Of Value”??

- No specific definition.
- Defined on a case by case policy/rulemaking.
- Is an inducement or product exclusion required? Question. Feds vs. State.
- Liquor world v. Real world

Examples – Supplier to Retailer

Not “Of Value”

<30 Day Credit

Signage<\$\$ Cap

Display<\$300

External IRC's

Advertising-Live Ent.

C.A.S.–“Tschotschke”

“Of Value”

>30 Day Credit

Signage>\$\$ Cap

Display>\$300

Internal IRC's

Advertising-Gen

Cups/Coasters

Social Media

- Before P.A. 99-0448, 99-0046
 - Supplier internet advertising governed by ILCC Trade Practice Policy 2
 - “List One, List All” Rule
 - No mention of retailer promotions.

Social Media

- After PA 99-0046 – No ILCC Trade Practices
- After PA 99-0448 – Supplier may:
 - Expressly conduct social media advertising
 - For one retailer at a time
 - Retailer can request social media advertising.
 - Cannot mention product price

Pre-Rulemaking/Rulemaking

- Commission Process
 - Draft Rule
 - Share Rule with Commission
 - Commission Agrees to Post for Comment (ILCC Website)
 - Comments Received
 - ILCC Reviews Comments/Makes Changes
 - Rule sent to IL SOS – Publish in Register (formal process begins – ex parte rules)
 - Rule sent to the Joint Committee on Administrative Rules - Calendar/No Objection?

Right Now

- Six rules posted on ILCC website
 - Happy Hour
 - Manufacturer Retailing Privileges
- Responses Due - **December 4, 2015**
- More drafts expected in 2016 – “of value”

Further Questions?

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