

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

In the Matter of:)
City Beverage – Markham, LLC)
d/b/a City Beverage Markham)
2064 W. 167th St.)
Markham, IL 60428)

In the Matter of:)
City Beverage – Markham, LLC)
d/b/a City Beverage – Arlington Heights)
1401 E. Algonquin Rd.)
Arlington Heights, IL 60005)

Case No. 12-CCH-01
(Consolidated Case Nos. 12 C 100216,
100217, 100218, 100218, 100219,
100220, 100221, 100222 and 100223)

In the Matter of:)
Chicago Distributing LLC)
d/b/a City Beverage – Chicago)
4841 S. California Ave.)
Chicago, IL 60632)

In the Matter of:)
City Beverage LLC)
d/b/a City Beverage)
1105 E. Lafayette Ave.)
Bloomington, IL 61701)

NOTICE OF FILING

To: Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 W. Randolph Street, Suite 7-801
Chicago, IL 60601

Please take notice that on September 7, 2012, I caused to be filed with the Illinois Liquor Control Commission, WSDI's Memorandum of Law in the above-referenced matter, a copy of which is hereby served upon you.

**WINE AND SPIRITS
DISTRIBUTORS OF ILLINOIS**

By: /s/ James L. Webster
James L. Webster,
One of its attorneys

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CERTIFICATE OF SERVICE

I, James L. Webster, an attorney, certify that on September 7, 2012, a copy of the above-referenced pleading was e-mailed on September 7, 2012 to: Richard Haymaker, Chief Legal Counsel of the Illinois Liquor Control Commission, Allyson Reboyras, Commission Secretary at allyson.reboyras@illinois.gov, Michael Casey, Special Counsel to the Commission at mcasey@vblhc.com, and Maria Rosiles, Assistant to Michael Casey at mrosiles@vblhc.com; service was made by sending a copy thereof, in a sealed envelope, postage thereon fully prepaid, addressed to:

Illinois Liquor Control Commission
Attn: Stephen B. Schnorf, Chairman
100 W. Randolph St., Suite 7-801
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/s/ James L. Webster
James L. Webster

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LIQUOR CONTROL COMMISSION**

In the Matter of:)
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City Beverage – Markham, LLC) (Cons. Case Nos. 12 C 100216,
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1105 E. Lafayette Ave.)
Bloomington, IL 61701)

WSDI’S MEMORANDUM OF LAW

WINE AND SPIRITS DISTRIBUTORS OF ILLINOIS (“WSDI”), through its attorneys, WEBSTER POWELL, P.C., and UNGARETTI & HARRIS, LLP, and pursuant to Paragraph Nine of this Commission’s Scheduling Order issued on June 27, 2012, hereby submits its Memorandum on the issues raised by the above-captioned proceedings (the “Proceedings”).

I. INTRODUCTION

The Illinois Liquor Control Commission’s (“ILCC”) July 18, 2012 Amended Citation cites the above-captioned CITY Beverage entities (“CITY”) for two violations of the Illinois Liquor Control Act (“Act”):

1. After the enactment of P.A. 97-005, which amended the Act to prohibit large brewers from holding distributor’s licenses, WEDCO, a wholly-owned subsidiary

of Anheuser Busch, LLC (“AB”), (i.e., a brewer-owned entity), still maintained a 30% ownership interest in CITY, in violation of Section 5-1(a) of the Act; and

2. WEDCO was not authorized to do business in Illinois in violation of Section 6-2(10) and (10)(a) of the Act.

Discovery since conducted at the request of CITY and WEDCO (collectively, “Respondents”) suggests an addition to the above-mentioned violations: CITY is an unlawful nominee, in that AB fully controls it and through such control self-distributes its beer products in Illinois, in violation of Section 6-2(15) of the Act.¹

As discussed in more detail below, consistent with its prior Findings² underlying the present Proceedings, the ILCC should:

1. Suspend CITY’s licenses pending AB’s divestiture of its 30% ownership interest therein;
2. Suspend CITY’s licenses based upon the fact that WEDCO, a 30% owner of CITY, is not qualified to transact business in Illinois and, thus, stands in violation of Sections 5/6-2(10) and (10a) of the Act;
3. Refer this matter to the Illinois Attorney General’s Office for enforcement of the above-cited provisions of the Act; and
4. Promulgate discovery to determine whether AB has *de facto* control of the operations of CITY in violation of Section 5/6-2(15) of the Act and, if so, refer this matter to the Alcohol and Tobacco and Tax Trade Bureau, in that AB’s violations of the Act may also constitute a violation of fundamental term of its Federal Basic Permits, which are conditioned upon compliance with all applicable State laws.³

II. RELEVANT LEGISLATIVE AND PROCEDURAL HISTORY

At the time AB sued the ILCC in Federal Court to enforce its purported “right” to acquire the outstanding 70% of the stock of CITY, nothing in the Act suggested that it was unlawful for manufacturers situated outside Illinois to obtain a Brewer’s License. While it has been asserted

¹ See, 235 ILCS 5/6-2(15).

² See, Findings from the 12/7/2011 Meeting Regarding the Anheuser Busch Ownership Interest in City Beverage LLC (hereinafter “12/7/11 Findings”)

³ See, 27 USC §204(d).

by legal counsel for the ILCC that the creation of the Non-Resident Dealer (“NRD”) License thereafter prohibited such licensure, this interpretation finds no support in either the Act, or in any case law construing it.⁴ To the contrary, a review of the Act and its evolution since 1982 reveals no legal impediment to an out-of-state manufacturer obtaining an Illinois Brewer’s License until 2011. Thus, until as recently as last year, AB remained free to seek licensure as an Illinois Brewer, which would then have qualified it to hold an Illinois Distributor’s License. AB, however, for reasons left unexplained, never opted to pursue such a licensing scheme.

Of course, the recent changes to the Act promulgated under P.A. 97-005 now explicitly prohibit large brewers like AB from seeking a Distributor’s License in this State. And, while P.A. 97-005 is undoubtedly controlling with regard to the ILCC’s analysis in the current Proceedings, a review of prior legislative changes to the Act is nonetheless helpful to understand the degree to which certain Industry members, including AB and the Respondents (not to mention various prior ILCC attorneys), have struggled to properly construe the Act’s provisions governing the licensure of manufacturers situated outside Illinois.

A. P.A. 82-606⁵

In 1982, the Illinois General Assembly passed P.A. 82-606, which created the NRD License. An NRD License was defined as:

any person, firm, partnership, 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 manufacturer 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

⁴ In this regard, it is important to note that under the *Pennhurst* Doctrine, the District Court was required to accept ILCC’s interpretation of the Act, including its views on the interplay between NRD Licenses and brewers. A State court judge is under no such constraints.

⁵ A true and correct copy of P.A. 82-606 is attached hereto as Exhibit “A.”

as it may prescribe, shall be a prerequisite to the issuance of such license to an agent.⁶

P.A. 82-606 served to create the infrastructure supporting NRD Licenses. It imposed a license fee structure, for example, authorized the ILCC to issue or deny them and authorized forms for NRD License applications. It also exempted NRDs from local liquor control and permitted importing distributors to purchase alcoholic beverage products from NRDs. P.A. 82-606 *did not*, however, preclude out-of-state brewers from obtaining Brewers Licenses in Illinois.

Examination of the debate on P.A. 82-606 makes it clear that it was *never* the intent of the General Assembly to prohibit the licensure of out-of-state manufacturers.⁷ Only a handful of statements were made about the bill on the House and Senate floors:

- On May 20, 1981, Senator Newhouse spoke about the need to keep untaxed liquor out of Illinois;
- On June 26, 1981, Representative Mautino spoke of the bill's intent to address a need for minority-owned distributorships; and
- On the date of passage, Senator Newhouse spoke about bill's winery impact.

The legislative record reveals not a single word about beer, breweries or the ability of out-of-state producers to obtain licenses in Illinois. The record is similarly bereft of any duly promulgated rule to prohibit the licensure of out-of-state breweries. This omission is telling, in that the Illinois Administrative Procedure Act (“APA”) invalidates any administrative rule unless it has been made available for public inspection and filed with the Secretary of State.⁸

Thus, it cannot have been the law in Illinois after 1981 that out-of-state breweries were precluded from obtaining Illinois Brewer's Licenses. This remains true notwithstanding any assertion to the contrary voiced by the ILCC's legal staff. Any such position purporting to deny

⁶ 235 ILCS 5/1-3.29.

⁷ A true and correct copy of the Legislative Record pertaining to P.A. 82-606 is attached hereto as Exhibit “B.”

⁸ *See*, 5 ILCS 100/5-10.

licensure of out-of-state breweries under P.A. 82-606 reaches such a conclusion in contravention of the Constitution and the laws of Illinois.

B. P.A. 88-535⁹

In 1994, P.A. 88-535 added language to Section 5/5-1 of the Act which thereafter authorized brewers to sell “to retailers provided the brewer obtains an importing distributor’s license or distributor’s license.”¹⁰ The plain language here demonstrates that beginning in January of 1994, any entity licensed as a Brewer in Illinois wishing to sell and deliver beer to licensed Illinois retailers was required first to obtain the necessary Distributor Class License.

P.A. 88-535 amended only the Act’s language specific to brewers and applied only to the holders of valid Illinois Brewer’s Licenses (a brewer not licensed in Illinois, of course, would not be entitled to a Distributor Class License in this State). On the other hand, P.A. 88-535 did not alter in any way the Act’s language defining an NRD License and similarly undertook no action to provide for the holders of Illinois Brewer’s Licenses to engage in the “self-distribution” of their beer products. Additionally, like the preceding legislation, the ILCC did not promulgate any rules subject to public comment and JCAR review to limit a licensed brewer from also holding a Distributor Class License.

C. Anheuser-Busch v. Schnorf

On March 10, 2010, after failing to obtain the declaratory ruling they sought from ILCC (*i.e.*, that WEDCO was entitled to retain its 30% interest in and purchase the remaining 70% interest in CITY), AB, and the Respondents sued the ILCC in *Anheuser-Busch v. Schnorf*.¹¹ AB claimed that ILCC’s interpretation of the Act – that a licensed in-state brewer but not an out of

⁹ A true and correct copy of P.A. 82-535 is attached hereto as Exhibit “C.”

¹⁰ 235 ILCS 5/5-1 Class 3.

¹¹ 738 F. Supp. 2d 793 (N.D. Ill. 2010). For convenience, a true and correct copy of the AB opinion is attached hereto as Exhibit “D.”

state brewer could hold a Distributor's License – violated the dormant Commerce Clause. AB's fundamental argument in this case was that the ability of in-state brewers to hold Distributor's Licenses, a privilege not granted to out-of-state brewers, was facially discriminatory. In this regard, AB asserted:

In-state beer producers may hold a Brewer's License, which entitles them to hold Distributor's and Importing Distributor's Licenses. ("A Brewer may make sales and deliveries of beer . . . to retailers provided the brewer obtains an importing Distributor's license or distributor's license in accordance with the provisions of this Act") [Cites omitted.] On the other hand, *an out-of-state beer producer is ineligible to hold Distributor's and importing Distributor's Licenses.*¹²

In so arguing, AB conceded two key points for purposes of these Proceedings. First, it acknowledged that the language contained in Section 5/5-1 of the Act as it then existed constituted *the sole* legal authority supporting the ability of a brewer to obtain additional licensure as a distributor. Second, as the above-cited language makes clear, AB expressly acknowledged that its status as an out-of-state beer producer rendered it ineligible to hold Distributor's and Importing Distributor's Licenses in Illinois.

While the District Court in *Anheuser-Busch v. Schnorf* ultimately held that ILCC's interpretation of the Act violated the Commerce Clause, it concluded that "the more appropriate remedy" was nullification of the self-distribution "exception for in-state brewers, rather than extending the exception for all brewers."¹³ The District Court stayed its decision, however, "to provide an opportunity for the General Assembly to act on this matter if it so desires."¹⁴

It must be noted that the District Court's reference to "self-distribution" is mere *dicta*. As AB's above-cited assertions makes clear, the case before Judge Dow rested upon the ability of

¹² See Plaintiffs' April 9, 20120 Memorandum of Law in Support of Motion for Summary Judgment, Docket #29 at 13-14 (emphasis added). For convenience, a true and correct copy of the relevant pages from this pleading are attached hereto as Exhibit "E."

¹³ *Anheuser-Busch v. Schnorf*, 738 F. Supp. 2d at 814.

¹⁴ *Id.* at 815.

out-of-state brewers to obtain the same type of Distributor License that was available to in-state licensed Illinois Brewers. No party to the case ever argued that an entity holding an Illinois Brewer's License was automatically vested with the right to distribute their beer products directly to Illinois retailers, and Judge Dow's ruling did not act to create such new privileges.

D. P.A. 97-0005¹⁵

In 2011, the General Assembly reacted to the District Court order. Recognizing the constitutional problem presented by the ILCC's unilateral and unauthorized decision to exclude out-of-state brewers from obtaining Illinois Brewer's licenses, it authorized the licensure of all small brewers – without regard to their location – and granted them special distribution rights characterized as a self-distribution exemption. On the other hand, and in keeping with Judge Dow's order, P.A. 97-005 prohibited large breweries from thereafter holding Distributor Licenses. Thus, briefly summarized, P.A. 97-005:

- Created a new craft brewer license category for small brewers which are unaffiliated with large brewers and which produce no more than 465,000 gallons and authorized such craft brewers to self-distribute up to 232,500 gallons of beer under Sections 5/1-3.38 and 5/3-12(18)(C) of the Act;
- Repealed all prior authority under Section 5/5-1 of the Act for the holder of a brewer's license to make "sales to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act;"
- Subjected a licensed brewer to various limitations on retailer licenses under Section 5/6-4(e) of the Act.

ILCC recognized the General Assembly's intent regarding the prohibition against large breweries holding distributor's licenses. The repeal of such authority previously set forth in Section 5/5-1 of the Act can mean *only* that the General Assembly chose to terminate such rights.

¹⁵ A true and correct copy of P.A. 97-0005 is attached hereto as Exhibit "F."

Despite the passage of P.A. 97-005, Respondents have refused to come into compliance with Illinois law, leading to WSDI and others to file complaints with the ILCC, and hearings were held in December, 2011 and January, 2012, after which ILCC made multiple findings, including that “[i]t was the intent of the Illinois General Assembly in 2011 [when enacting P.A. 97-0005] to deny AB the right to own a distributorship.”

III. ARGUMENT

It is black letter law that administrative agencies may exercise only those powers expressly delegated to them by the General Assembly and necessarily implied from the delegated powers.¹⁶ Additionally, “[a]n administrative agency possesses no inherent or common law powers, and any authority that the agency claims must find its source within the provisions of the statute by which the agency was created.”¹⁷ Thus, “[a]n administrative body cannot extend or alter the enabling statute’s operation by the exercise of its rulemaking powers ... If an agency promulgates rules that are beyond the scope of the legislative grant of authority or that conflict with the statute, the rules are invalid.”¹⁸

Under the Act, it is the duty of the ILCC “to issue licenses to ... distributors ... in accordance with the provisions of the Act, and to suspend or revoke such licenses upon the State Commission’s determination, upon notice after hearing, that a licensee has violated any provisions of this Act.”¹⁹ ILCC should and must enforce the law as written in the present matter. It has no discretion to act in contravention of the above-expressed statutory mandate.

A. CITY’s Licenses Must Be Suspended Until AB Surrenders Its Ownership Interest

¹⁶ See, e.g., *Granite City Div. of Nat’l Steel Co. v. Ill. Pollution Control Bd.*, 155 Ill. 2d 149, 171 (1993) (administrative entity is creature of statute and “any power or authority claimed by it must find its source within the provision of its enabling statute”).

¹⁷ *Ill. Dep’t of Revenue v. Ill. Civil Serv. Comm’n*, 357 Ill. App. 3d 352, 364 (1st Dist. 2005).

¹⁸ *Id.*

¹⁹ 235 ILCS 5/3-12.

As discussed above, neither the passage of P.A. 82-606 in 1982, nor the enactment of P.A. 88-535 in 1994, prohibited the licensure of out of state breweries. The latter legislation did, however, vest the ILCC with the authority to allow licensed brewers to hold a distributor's license "in accordance with the provisions of this Act." Nonetheless, during the period between 1994 and 2011, when licensed brewers in Illinois maintained the privilege to apply for a distributor's license, it is clear that AB did not avail itself of that opportunity. It similarly did not mount any legal challenge to the law as it then existed, or the manner in which the ILCC interpreted and enforced the same. Finally, AB never sought for itself the privilege of self-distribution. To the contrary, when it brought its case to Federal Court, AB insisted that the Act permitted the ILCC to license it both as a brewer *and* as a distributor, and that the latter category constituted the *sole* source of wholesaling privileges in Illinois.

In the present Proceedings, Respondents have adopted a completely different argument. While previously they had embraced Section 5/5-1's language permitting the issuance of Distributor Class licenses to licensed Brewers, in the wake of P.A. 97-0005, Respondents now assert that the legislative repeal of that privilege is irrelevant to whether AB, through WEDCO, may hold a distributor's license. Instead, and presumably based upon the *dicta* contained in Judge Dow's order, the Respondent asserts that P.A. 97-0005 had no impact on the ability of an NRD holder to maintain ownership interests (and hence license interests) in an Illinois distributor. This argument, of course, is without merit.

As the ILCC has determined:

- The Commission ruled in March 2010 that under Illinois law Anheuser Busch (AB) couldn't own a distributor.²⁰
- It was the intent of the Illinois General Assembly in 2011 to deny AB the right to own a distributorship. We believe this even though the General Assembly did not

²⁰ 12/7/11 Findings, ¶A.

amend Section 5/6-4(a) to include brewers as parties specifically prohibited from owning distributorships.²¹

Nothing in the record suggests any error within these Findings. And, while the Respondents may assert that the ILCC is estopped from disavowing its prior actions regarding the licensure of CITY, such arguments are unavailing. For reasons known only to them, the ILCC's former legal counsel apparently agreed to issue Distributor Licenses to CITY knowing of AB's ownership and involvement in its business dealings. However, such decisions may be seen – at best – as having been undertaken in error and without the ILCC's formal sanction.²²

Moreover, to the extent any legal authority once existed for such actions, the 2011 passage of P.A. 97-0005 must be seen as having extinguished completely the notion of a large brewer also holding a license as a distributor. Consequently, the ILCC has no authority to permit AB to continue holding a distributors license through CITY. As a “creature of statute,” the ILCC *must* suspend CITY's license until such time as AB, through WEDCO, divests itself of its ownership in this distributing entity.

B. CITY's Licenses Must Be Suspended Until WEDCO Is Deemed Qualified to Transact Business in Illinois

The Act prohibits the issuance of licenses to certain persons, including:

A corporation or limited liability company unless it is incorporated or organized in Illinois, or unless it is a foreign corporation or foreign limited liability company which is qualified under the Business Corporation Act of 1983 or the Limited Liability Company Act to transact business in Illinois.²³

²¹ *Id.* at ¶F.

²² Based on former ILCC General Counsel William O'Donoghue's (“O'Donoghue”) testimony before the ILCC on December 7, 2011, it is clear he personally knew of the WEDCO ownership and caused a license to issue to CITY. Instead of consulting with the ILCC regarding the propriety of such a relationship, O'Donoghue purportedly sought the advice and consent of various Industry trade associations and other private parties as his basis to sanction it. The fact remains, however, that CITY's license was issued without any statutory authority and without any rulemaking that would have revealed the ILCC's intent to establish a policy. This clearly violated both the APA and the Act.

²³ 235 ILCS 5/6-2(10)(a).

Section 6-2(10) of the Act prohibits issuance of a license to a corporation if any stockholder owning more than 5% would not be eligible to receive a license.²⁴ As this Commission knows, WEDCO owns more than a 5% interest in CITY. Further, WEDCO still is not qualified to do business in Illinois.²⁵ As a matter of law, therefore, CITY is ineligible to maintain any licenses in Illinois, and the ILCC is not authorized to overlook or otherwise condone this deficiency. Again, therefore, until such time as it is able to demonstrate its eligibility to hold them, CITY's licenses must be held in a state of suspension.

C. ILCC Should Pursue Discovery Of CITY

Documents produced in discovery here indicate a real possibility that CITY is but a front for WEDCO to unlawfully operate and control a distributorship in deliberate and willful violation of the Act. For example, in a document dated November 18, 2010 titled "City Beverage-Response to ILCC Questions" it is stated in item 2, "WEDCO's retained rights," that WEDCO retains the "right to approve 3 of 4 top management employees." Another document indicates that on September 27, 2011, City Beverage Illinois added two new managers, including Joaquin Schlottman.²⁶ Previously, Mr. Schlottman managed AB's distributor operations.²⁷

These relationships raise serious questions concerning AB's potential *de facto* control of the operations of CITY through WEDCO. Such an arrangement could well violate Section 5/6-2(15) of the Act and, may also violate the terms of its Federal Basic Permits, which as mentioned above are conditioned upon compliance with all applicable State laws.

D. The 2010 "Declaratory Ruling" Was A Nullity Under The APA

²⁴ 235 ILCS 5/6-2(10).

²⁵ See Certificates from the Secretary of State, true and correct copies of which are attached hereto as Exhibit "G."

²⁶ See Illinois Secretary of State LLC Act Articles of Amendment application confirmation, a true and correct copy of which is attached hereto as Exhibit "H."

²⁷ See *Beer Business Daily*, "A-B Branch Warehouse, Delivery Reporting to Corp. Logistics" (March 4, 2010), attached hereto as Exhibit "I."

The APA and established judicial precedent render the “grandfather” declaratory ruling of 2010 a nullity. The ILCC’s actions under the Act are governed by the APA,²⁸ which specifically requires an agency to enact rules governing its use of declaratory rulings before it is authorized to issue them:

Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling before making it available.²⁹

The APA also requires an agency making a rule to do so through set procedures and public notice and comment, otherwise the rule is invalid.³⁰ ILCC has not enacted any rules for declaratory rulings, and certainly none that might apply to the ruling issued in the present matter. Where, as here, an agency issues a declaratory ruling for which it has not properly enacted rules pursuant to the APA, its actions are *void ab initio*.³¹

The Act expressly applies and incorporates the provisions of the APA and specifies that the APA shall apply to all administrative rules and procedures of the State commission. . . .³² Additionally, the APA states that “it applies to every agency as defined by this Act.”³³ Further the APA defines “agency” broadly to include, “each officer, department, board, commission, agency, institution, university, and body politic or corporate outgrowth of the State.”³⁴

²⁸ 235 ILCS 5/3-13.

²⁹ 5 ILCS 100/5-150(a).

³⁰ 5 ILCS 100/5-10.

³¹ See, e.g., *Harrisonville Tel. Co. v. Ill. Commerce Comm’n*, 176 Ill. App. 3d 389, 392-393 (5th Dist. 1988) (“Our research has revealed no rule of the Commerce Commission which provides for the rendering of declaratory rulings. Barring the adoption of such a rule in compliance with appropriate rule-making procedures, the Commission has no authority to render declaratory rulings.”)

³² 235 ILCS 5/3-13.

³³ 5 ILCS 100/1-5 (a).

³⁴ 5 ILCS 100/1-20.

IV. CONCLUSION

In the wake of, and in direct response to, the holding in *Anheuser-Busch, Inv. v. Schnorf*, the Illinois General Assembly passed P.A. 97-005 which, among other things, amended Section 5/5-1 of the Act, to remove language which had previously authorized the holder of a Brewer's License to make "sales to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act." This legislation, thus, renders it unlawful for large brewers like AB to hold Distributor's License in this State. No action has been taken to come into compliance with the Act since the passage of P.A. 97-005, rendering manifest the answer to the question of the Respondents' liability in the Proceedings.

Simply put, WEDCO, as a wholly-owned subsidiary of AB, an out-of-state brewery and holder of an NRD License in Illinois, may not maintain an ownership interest in CITY, the holder of Illinois Distributor Licenses. For this reason, as well as for those set forth in the memorandum above, CITY's Licenses should be deemed ineligible to hold any Illinois licenses until it comes into compliance with all applicable provisions of the Act.

Respectfully submitted,

**WINE AND SPRITIS
DISTRIBUTORS OF ILLINOIS**

/s/ James L. Webster,
One of its attorneys

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(Ch. 108 1/2, par. 16-186) [S.H.A. ch. 108 1/2, ¶ 16-186]
Sec. 16-186. Survivors' benefit reserve. A Survivors' Benefit Reserve shall be established for the purpose of crediting contributions made by members and the State for survivors' benefits.

(1) This Reserve shall be credited with contributions by the members and the State under the provisions governing survivors' benefits, and with regular interest.

(2) This Reserve shall be charged with refunds of contributions as provided in subsection (1) in Section 16-142 and all payments made for survivors' benefits.

(3) An actuarial valuation shall be made at least once every 5 years to determine the adequacy of the amounts of revenue provided to meet the Survivors' Benefit obligations. Any excess in requirements shall be applied to reduce the amount contributed by the State for this purpose; any deficiency shall be removed by an increase in the amounts to be contributed by the State.

APPROVED: September 24, 1981 EFFECTIVE: January 1, 1982

LIQUOR CONTROL—NON-RESIDENT DEALERS

PUBLIC ACT 82-606

SENATE BILL 1119

AN ACT to add Section 2.29 to Article I and to amend Sections 12 and 13 of Article III, Section 3 of Article IV, Sections 1 and 4 of Article V, Section 7a of Article VI, Sections 1 and 6 of Article VII and Section 7 of Article VIII of "An Act relating to alcoholic liquors", approved January 31, 1934, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 12 and 13 of Article III, Section 3 of Article IV, Sections 1 and 4 of Article V, Section 7a of Article VI, Sections 1 and 6 of Article VII and Section 7 of Article VIII of "An Act relating to alcoholic liquors", approved January 31, 1934, as amended, are amended, and Section 2.29 is added to Article I thereof, the added and amended Sections to read as follows:

ARTICLE I

(Ch. 43, new par. 95.29) [S.H.A. ch. 43, ¶ 95.29]
Sec. 2.29. "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

Additions in text are indicated by underline; deletions by ~~strikeouts~~

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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.

ARTICLE III

(Ch. 43, par. 108) [S.H.A. ch. 43, ¶ 108]

Sec. 12. 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, retailers, non-beverage users, railroads, including owners and lessees of sleeping, dining and cafe cars, airplanes and boats, 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.

(2) To adopt such rules and regulations consistent with the provisions of this Act which shall be necessary to carry on its functions and duties 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 and to distribute copies of such rules and regulations to all licensees affected thereby.

(3) To call upon other administrative departments of the State, county and municipal governments, county and city police departments and upon prosecuting officers for such information and assistance as it deems necessary in the performance of its duties.

(4) To recommend to local commissioners rules and regulations, not inconsistent with the law, for the distribution and sale of alcoholic liquors throughout the State.

(5) To submit to the Governor on or before January, 1935, and annually thereafter, reports of its official acts and recommendations.

(6) To inspect, or cause to be inspected, any premises where alcoholic liquors are manufactured, distributed or sold.

(7) To hear and determine appeals from orders of a local commission in accordance with the provisions of this Act, as hereinafter set forth. Hearings under this subsection shall be held in Springfield or Chicago, at whichever location is the more convenient for the majority of persons who are parties to the hearing.

(8) The commission shall establish uniform systems of accounts to be kept by all retail licensees having more than 4 employees, and for this purpose the commission may classify all retail licensees having more than 4 employees and establish a uniform system of accounts for each class and prescribe the manner in which such accounts shall be kept. The commission may also prescribe the forms of accounts to be kept by all retail licensees having more than 4 employees, including but not limited to accounts of earnings and expenses and any distribution, payment, or other distribution of earnings or assets, and any other forms, records and memoranda which in the judgment of the commission may be necessary or appropriate to carry out any of the provisions of this Act, including but not limited to such forms, records and memoranda as will readily and accurately disclose at all times the beneficial ownership of such retail licensed business. The accounts, forms, records and memoranda shall be available at all reasonable times for inspection by authorized representatives of the State commission or by any local liquor control commissioner or his authorized representative. The commission, may, from time to time, alter, amend or repeal, in whole or in part, any uniform system of accounts, or the form and manner of keeping accounts.

(9) 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.

Any Circuit Court, or any judge thereof may by order duly entered, require the attendance of witnesses and the production of relevant books subpoenaed by the State commission and the court or judge may compel obedience to its or his order by proceedings for contempt.

(10) To investigate the administration of laws in relation to alcoholic liquors in this and other states and any foreign countries, and to recommend from time to time to the Governor and through him to the legislature of this State, such amendments to this Act, if any, as it may think desirable and as will serve to further the general broad purposes contained in Section 1 of Article I hereof.

¹ Paragraph 94 of this chapter.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

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(Ch. 43, par. 109) [S.H.A. ch. 43, ¶ 109]

Sec. 13. Nothing contained in this Act shall, however, be construed to permit the State Commission to issue any license, other than manufacturer's, foreign importer's, importing distributor's, non-resident dealer's, and distributor's and non-beverage user's license for any premises in any prohibited territory, or to issue any license other than manufacturer's, foreign importer's, importing distributor's, non-resident dealer's, distributor's, railroad's, airplane's or boat's license, or non-beverage user's license, unless the person applying for such license shall have obtained a local license for the same premises. When such person has obtained a local license and has made application to the State Commission in conformity with this Act and paid the license fee provided, it shall be the duty of the State Commission to issue a retailer's license to him, provided, however, that the State Commission may refuse the issuance or renewal of a retailer's license, upon notice and after hearing, upon the grounds authorized in Section 2a of Article VI of this Act, and, provided further, that the issuance of such license shall not prejudice the State Commission's action in subsequently suspending or revoking such license if it is determined by the State Commission, upon notice and after hearing, that the licensee has, within the same or the preceding license period, violated any provision of this Act or any rule or regulation issued pursuant thereto and in effect for 30 days prior to such violation.

1 Paragraph 120a of this chapter.

ARTICLE IV

(Ch. 43, par. 112) [S.H.A. ch. 43, ¶ 112]

Sec. 3. Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses, other than licenses to manufacturers, importing distributors, distributors, non-resident dealers, non-beverage users, railroads, airplanes and boats.

1. To grant and or suspend for not more than thirty days or revoke for cause all local licenses issued to persons for premises within his jurisdiction;

2. To enter or to authorize any law enforcing officer to enter at any time upon any premises licensed hereunder to determine whether any of the provisions of this Act or any rules or regulations adopted by him or by the State Commission have been or are being violated, and at such time to examine said premises of said licensee in connection therewith;

3. To receive complaint from any citizen within his jurisdiction that any of the provisions of this Act, or any rules or regulations adopted pursuant hereto, have been or are being violated and to act upon such complaints in the manner hereinafter provided;

4. To receive local license fees and pay the same forthwith to the city, village, town or county treasurer as the case may be.

ARTICLE V

(Ch. 43, par. 115) [S.H.A. ch. 43, ¶ 115]

Sec. 1. Licenses issued by the Illinois Liquor Control Commission shall be of the following classes: (a) Manufacturer's license—Class 1. Distiller, Class 2. Rectifier, Class 3. Brewer, Class 4. Wine manufacturer, Class 5. Winemaker; (b) Distributor's license, (c) Importing Distributor's license, (d) Retailer's license, (e) Railroad license, (f) Boat license, (g) Non-Beverage User's license, (h) Wine-maker's retail license, (i) Airplane license, (j) Foreign importer's license, (k) Broker's license, (l) non-resident dealer's license. Nothing in this provision, nor in any subsequent provision of this Act shall be interpreted as forbidding an individual or firm from concurrently obtaining and holding a Winemaker's and a Wine manufacturer's license.

(a) A manufacturer's license shall allow the manufacture, importation in bulk, storage, distribution and sale of alcoholic liquor to persons without the State, as may be permitted by law and to licensees in this State as follows:

Class 1. A Distiller may make sales and deliveries of alcoholic liquor to distillers, rectifiers, importing distributors, distributors and non-beverage users and to no other licensees.

Class 2. A Rectifier, who is not a distiller, as defined herein, may make sales and deliveries of alcoholic liquor to rectifiers, importing distributors, distributors, retailers and non-beverage users and to no other licensees.

Class 3. A Brewer may make sales and deliveries of beer to importing distributors, distributors, retailers and to non-licensees, in accordance with the provisions of this Act.

Class 4. A first class wine-manufacturer may make sales and deliveries of up to 30,000 gallons of wine to manufacturers, importing distributors and distributors, and to no other licensees.

Class 5. A second class Wine manufacturer may make sales and deliveries of more than 30,000 gallons of wine to manufacturers, importing distributors and distributors and to no other licensees.

Class 6. A first-class wine-maker's license shall allow the manufacturer storage and sale of less than ten thousand gallons of wine per year, from grapes grown on land owned or leased by the licensee, to distributors in the State and to persons without the State, as may be permitted by law.

Class 7. A second-class wine-maker's license shall allow the manufacture, storage and sale of not more than twenty thousand gallons of wine per year, from grapes grown on land owned or leased by the licensee, to distributors in this State and to persons without the State, as may be permitted by law.

(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.

(c) An importing distributor's license may be issued to and held by those only who are duly licensed distributors, but upon the filing of an application by a duly licensed

Additions in text are indicated by underline; deletions by ~~strikeouts~~

distributor, with the bond required by Section 3 of Article VII of this Act, the Commission shall, without the payment of any fee, immediately issue such importing distributor's license to the applicant, which shall allow the importation of alcoholic liquor by the licensee into this State from any point in the United States outside this State, and the purchase of alcoholic liquor in barrels, casks or other bulk containers and the bottling of such alcoholic liquors before resale thereof, but all bottles or containers so filled shall be sealed, labeled, stamped and otherwise made to comply with all provisions, rules and regulations governing manufacturers in the preparation and bottling of alcoholic liquors. The importing distributor's license shall permit such licensee to purchase alcoholic liquor from Illinois licensed non-resident dealers and foreign importers only, ~~that is imported by a licensed foreign importer from a point outside the United States, from such foreign importer.~~

(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.

(e) A railroad license shall permit the operator of any club, buffet, lounge or dining car to sell alcoholic liquor in any club, buffet, lounge or dining car operated on an electric, gas or steam railway in this State. A license shall be obtained for each car in which such sales are made.

(f) 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, which boat maintains a public dining room or restaurant thereon.

(g) A non-beverage user's license shall allow the licensee to purchase alcoholic liquor from a licensed manufacturer or importing distributor, without the imposition of any tax upon the business of such licensed manufacturer or importing distributor as to such alcoholic liquor to be used by such licensee solely for the non-beverage purposes set forth in subsection (a), Section 1 of Article VIII of this Act, and such licenses shall be divided and classified and shall permit the purchase, possession and use of limited and stated quantities of alcoholic liquor as follows:

- Class 1, not to exceed 500 gallons
- Class 2, not to exceed 1,000 gallons
- Class 3, not to exceed 5,000 gallons
- Class 4, not to exceed 10,000 gallons
- Class 5, not to exceed 50,000 gallons

(h) A wine-maker's retail license shall allow the licensee to sell and offer for sale at retail in the premises specified in such license not more than 5,000 gallons of wine for use or consumption, but not for resale in any form; this license shall be issued only to a person licensed as a first-class or second-class wine-maker.

(i) An airplane license shall permit the licensee to import alcoholic liquors into this State from any point in

Additions in text are indicated by underline; deletions by strikeouts

the United States outside this State and to store such alcoholic liquors in this State; to make wholesale purchases of alcoholic liquors directly from manufacturers, foreign importers, distributors and importing distributors from within or outside this State; and to store such alcoholic liquors in this State; provided that the above powers may be exercised only in connection with the importation, purchase or storage of alcoholic liquors to be sold or dispensed on an airplane; and provided further, that airplane licensees exercising the above powers shall be subject to all provisions of Article VIII of this Act³ as applied to importing distributors. An airplane licensee shall also permit the sale or dispensing of alcoholic liquors on any passenger airplane regularly operated by a common carrier in this State, but shall not permit the sale for resale of any alcoholic liquors to any licensee within this State. A single airplane license shall be required of an airline company if liquor service is provided on board aircraft in this State. The annual fee for such license shall be as determined in Section 118.⁴

(j) 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.

(k) A broker's license shall be required of all brokers who solicit orders for, offer to sell or offer to supply alcoholic liquor to retailers in the State of Illinois, or who offer to retailers to ship or cause to be shipped or to make contact with distillers, rectifiers, brewers or manufacturers or any other party within or without the State of Illinois in order that alcoholic liquors be shipped to a distributor, importing distributor or foreign importer, whether such solicitation or offer is consummated within or without the State of Illinois.

No holder of a retailer's license issued by the Illinois Liquor Control Commission shall purchase or receive any alcoholic liquor, the order for which was solicited or offered for sale to such retailer by a broker unless the broker is the holder of a valid broker's license.

The broker shall, upon the acceptance by a retailer of the broker's solicitation of an order or offer to sell or supply or deliver or have delivered alcoholic liquors, promptly forward to the Illinois Liquor Control Commission a notification of said transaction in such form as the Commission may by regulations prescribe.

Such license shall not entitle the holder to buy or sell any alcoholic liquors for his own account or to take or deliver title to such alcoholic liquors.

This Subsection shall not apply to distributors, employees of distributors, or employees of a manufacturer who has registered the trademark, brand or name of the alcoholic liquor pursuant to Section 7a of Article VI of this Act, and who regularly sells such alcoholic liquor in the State of Illinois only to its registrants thereunder.

(l) A non-resident dealer's license shall permit such licensee to ship alcoholic liquor into this State from any

Additions in text are indicated by underline; deletions by strikeouts

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 Article VI, Section 7a hereof with respect to registration of such Illinois licensees as may be granted the right to sell such brands at wholesale.

- 1 Paragraph 147 of this chapter.
- 2 Paragraph 158 of this chapter.
- 3 Paragraph 158 et seq. of this chapter.
- 4 Paragraph 118 of this chapter.
- 5 Paragraph 126 of this chapter.

(Ch. 43, par. 118) [S.H.A. ch. 43, ¶ 118]

Sec. 4. Except as otherwise provided herein, at the time application is made to the State Commission for a license of any class, the applicant shall pay to the State Commission the fee hereinafter provided for the kind of license applied for.

The fee for licenses issued by the State Commission shall be as follows:

For a manufacturer's license:

Class 1. Distiller	\$3000.00
Class 2. Rectifier	3000.00
Class 3. Brewer	750.00
Class 4. First-class Wine Manufacturer ...	\$250.00
Class 5. Second Class Wine Manufacturer ..	\$1000.00
Class 6. First-class wine-maker	200.00
Class 7. Second-class wine-maker	400.00
For a foreign importer's license	No fee
For an importing distributor's license ...	No fee
For a distributor's license	225.00
<u>For a non-resident dealer's license</u>	
<u>(500,000 gallons or over)</u>	<u>225.00</u>
<u>For a non-resident dealer's license</u>	
<u>(under 500,000 gallons)</u>	<u>75.00</u>
For a wine-maker's retail license	50.00
For a retailer's license	75.00
For a railroad license	50.00
For a boat license	150.00
For an airplane license	50.00

times the licensee's maximum number of aircraft in flight, serving liquor over the State at any given time which either originates, terminates or makes an intermediate stop in the State.

For a non-beverage user's license:

Class 1	20.00
Class 2	50.00
Class 3	100.00
Class 4	200.00
Class 5	500.00
For a broker's license	500.00

Fees collected under this Section shall be paid into the Dram Shop Fund.

No fee shall be paid for licenses issued by the State Commission to the following non-beverage users:

Additions in text are indicated by underline; deletions by strikeouts

(a) Hospitals, sanitariums, or clinics when their use of alcoholic liquor is exclusively medicinal, mechanical or scientific.

(b) Universities, colleges of learning or schools when their use of alcoholic liquor is exclusively medicinal, mechanical or scientific.

(c) Laboratories when their use is exclusively for the purpose of scientific research.

The increases in fees provided for in this amendatory Act of 1979 apply to licenses issued on or after October 1, 1979.

ARTICLE VI

(Ch. 43, par. 126) [S.H.A. ch. 43, ¶ 126]

Sec. 7a. 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 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. 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. Such registration 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 two 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 re-sell the brand at wholesale, and may purchase from the same distributor and re-sell 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

Additions in text are indicated by underline; deletions by strikeouts

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.

~~However, a licensed Illinois distributor who has not been registered to sell a brand of alcoholic liquor but for a period of two years prior to the effective date of this Amending Act of 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 re-sell the brand at wholesale if:~~

~~(1) Within sixty days of the effective date of this Amending Act of 1979 he identifies the brand which he has been so purchasing to the State Commission and the Commission within 30 days thereafter verifies that the purchases have occurred;~~

~~(2) 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 the brand of alcoholic liquor; and~~

~~(3) 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 of alcoholic liquor.~~

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.

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.

ARTICLE VII

(Ch. 43, par. 145) [S.H.A. ch. 43, ¶ 145]

Sec. 1. An applicant for a license from the State Commission shall submit to the State Commission an application in writing under oath stating:

- (1) The applicant's name and mailing address;
- (2) The name and address of the applicant's business;
- (3) If applicable, the date of the filing of the "assumed name" of the business with the County Clerk;
- (4) In case of a copartnership, the date of the formation of the partnership; in the case of an Illinois corporation, the date of its incorporation; or in the case of

a foreign corporation, the State where it was incorporated and the date of its becoming qualified under the Illinois Business Corporation Act to transact business in the State of Illinois;

(5) The number, the date of issuance and the date of expiration of the applicant's current local retail liquor license;

(6) The name of the city, village, or county that issued the local retail liquor license;

(7) The name and address of the landlord if the premises are leased;

(8) The date of the applicant's first request for a State liquor license and whether it was granted, denied or withdrawn;

(9) The address of the applicant when the first application for a State liquor license was made;

(10) The applicant's current State liquor license number;

(11) The date the applicant began liquor sales at his place of business;

(12) The address of the applicant's warehouse if he warehouses liquor;

(13) The applicant's Retailer's Occupation Tax (ROT) Registration Number;

(14) The applicant's document locator number on his Federal Special Tax Stamp;

(15) Whether the applicant is delinquent in the payment of the Retailer's Occupational Tax (Sales Tax), and if so, the reasons therefor;

(16) Whether the applicant is delinquent under the cash beer law, and if so, the reasons therefor;

(17) In the case of a retailer, whether he is delinquent under the 30 day credit law, and if so, the reasons therefor;

(18) In the case of a distributor, whether he is delinquent under the 15 day credit law, and if so, the reasons therefor;

(19) Whether the applicant has made an application for a liquor license which has been denied, and if so, the reasons therefor;

(20) Whether the applicant has ever had any previous liquor license suspended or revoked, and if so, the reasons therefor;

(21) Whether the applicant has ever been convicted of a gambling offense or felony, and if so, the particulars thereof;

(22) Whether the applicant possesses a current Federal Wagering or Gaming Device Stamp, and if so, the reasons therefor;

(23) Whether the applicant, or any other person, directly or indirectly in his place of business is a public official, and if so, the particulars thereof;

(24) Whether, in the case of an application for the renewal of a license, the applicant has made any political contributions within the past 2 years, and if so, the particulars thereof;

(25) The applicant's name, sex, date of birth, social security number, position and percentage of ownership in the business; and the name, sex, date of birth, social security

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number, position and percentage of ownership in the business of every sole owner, partner, corporate officer, director, manager and any person who owns 5% or more of the shares of the applicant business entity or parent corporations of the applicant business entity.

(26) That he has not received or borrowed money or anything else of value, and that he will not receive or borrow money or anything else of value (other than merchandising credit in the ordinary course of business for a period not to exceed 90 days as herein expressly permitted under Section 4 of Article VI hereof),² directly or indirectly, from any manufacturer, importing distributor or distributor or from any representative of any such manufacturer, importing distributor or distributor, nor be a party in any way, directly or indirectly, to any violation by a manufacturer, distributor or importing distributor of Section 5 of Article VI of this Act.³

In addition to the foregoing information, such application shall contain such other and further information as the State Commission and the local commission may, by rule or regulation not inconsistent with law, prescribe.

If the applicant reports a felony conviction as required under paragraph (21) of this Section, such conviction may be considered by the Commission in determining qualifications for licensing, but shall not operate as a bar to licensing.

If said application is made in behalf of a partnership, firm, association, club or corporation, then the same shall be signed by at least two members of such partnership or the president and secretary of such corporation.

Application for a non-resident dealer's license shall be on a form prescribed by the State Commission, and which may exclude any of the above requirements which the State Commission rules to be inapplicable.

¹ Chapter 32, ¶ 157.1 et seq.

² Paragraph 122 of this chapter.

³ Paragraph 123 of this chapter.

(Ch. 43, par. 150) [S.H.A. ch. 43, ¶ 150]

Sec. 6. All proceedings for the revocation or suspension of licenses of manufacturers, distributors, importing distributors, non-resident dealers, foreign importers, non-beverage users, railroads, airplanes and boats shall be before the State Commission. All such proceedings and all proceedings for the revocation or suspension of a retailer's license before the State commission shall be in accordance with rules and regulations established by it not inconsistent with law. However, no such license shall be so revoked or suspended except after a hearing by the State commission with reasonable notice to the licensee served by registered or certified mail with return receipt requested at least 5 days prior to the hearings at the last known place of business of the licensee and after an opportunity to appear and defend. Such notice shall specify the time and place of the hearing and the nature of the charges. The findings of the Commission shall be predicated upon competent evidence. The revocation of a local license shall automatically result in the revocation of a State license. All procedures for the suspension or revocation of a license, as enumerated above,

are applicable to the levying of fines for violations of this Act or any rule or regulation issued pursuant thereto.

ARTICLE VIII

(Ch. 43, par. 164) [S.H.A. ch. 43, § 164]

Sec. 7. It is the duty of each manufacturer, importing distributor and foreign importer to keep, at his licensed address, complete and accurate records of all sales or other dispositions of alcoholic liquor, and complete and accurate records of all alcoholic liquor produced, manufactured, compounded or imported, whether for himself or for another, together with a physical inventory made as of the close of each period for which a return is required, covering all alcoholic liquors on hand. The Department of Revenue may in its discretion prescribe reasonable and uniform methods for keeping such records by manufacturers and importing distributors and foreign importers.

In case of failure by manufacturers and importing distributors to keep such records or to make them available to the Department on demand, the Department shall determine the amount of tax due according to its best judgment and information, which amount so determined by the Department shall be prima facie correct, and the Department's notice of tax liability shall be given, and protest thereto and demand for a hearing may be made and final assessments arrived at, in accordance with the provisions of Section 6a hereof.

It is the duty of each manufacturer, importing distributor and foreign importer, who imports alcoholic liquor into the State, and each non-resident dealer who ships alcoholic liquor into the State, to mail to the Department one duplicate invoice, together with a bill of lading, covering such shipment and stating the quantity and, except in the case of alcoholic liquor imported in bulk to be bottled by an authorized licensee in this State using his own label and brand, the invoice shall also state the brand, labels and size of containers.

All books and records, which manufacturers, importing distributors, non-resident dealers and foreign importers are required by this Section to keep, shall be preserved for a period of 3 years, unless the Department, in writing, authorizes their destruction or disposal at an earlier date.

¹ Paragraph 163a of this chapter

APPROVED: September 24, 1981. EFFECTIVE: January 1, 1982

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82ND GENERAL ASSEMBLY



HOUSE

72nd Legislative Day

June 26, 1961

In that regard..."

Speaker Ryan: "Yes. There's a Motion filed ...a request to have you handle the bill, Representative. Are there any objections? Hearing; none, leave is granted. Proceed, Representative Mautino on Senate Bill 1119."

Clerk Leone: "Senate Bill 1119, a Bill for an Act relating to alcoholic liquors. Third Reading; or the Bill."

Mautino: "Thank you very much, Mr. Speaker and Ladies and Gentlemen of the House. Senate Bill 1119 creates a new category of licensee for the distribution and sale of alcoholic liquors which is referred to as a nonresident dealer. This nonresident dealer license applies only to the actual manufacture of an alcoholic liquor sold to foreign importers or importing distributors, the two classifications that are now in effect and the primary importer of such alcoholic liquor manufactured outside of the US or a duly registered agent of such manufacturer or importer. What that means is, there are three distributors in the immediate vicinity of Chicago in which this legislation affects. They have been distributing a product for one of the breweries for quite a few years and with this legislation, they will be allowed to continue and handle other products by that distributor, even though they had not been licensed as an importing distributor. That's what the legislation does and I would be happy to answer any questions."

Speaker Ryan: "Is there any discussion? The question is, 'Shall Senate Bill 1119 pass?'. All in favor will signify by voting 'aye', all opposed by voting 'no'. Have all voted who wish? Take the record, Mr. Clerk. Representative Mautino, Representative Sandquist ought to have you handle



82ND GENERAL ASSEMBLY

72nd Legislative Day

June 26, 1981

His Bills more often. On this question there are 157 voting 'aye', none voting 'no', none voting 'present'. This Bill, having received a Constitutional Majority, is hereby declared passed. Representative Tuerk, for what purpose do you rise?"

Tuerk: "Mr. Speaker, several days ago Senate Bill 1201 was on Short Debate. It was amended by Representative Keane and it was by understanding that that returned to Short Debate. However, because of a quirk in administrative duties within the Clerk's Office, it got on the Long Debate Calendar. I would like leave of the House to hear that Bill on Short Debate. I believe Representative Keane could corroborate my statements."

Speaker Ryan: "Representative Keane."

Keane: "Thank you, Mr. Speaker. I would just agree with what the previous speaker said. He was gracious enough to bring the Bill back for an Amendment, a technical Amendment, a clarifying Amendment that I put on, that in no way changed the substance of the Bill. And it was not my intention to have it removed from Short Debate and I thought I had asked for leave to return it to Short Debate.."

Speaker Ryan: "Mr. Clerk, did you make an error on this?"

Clerk Leone: "Mr. Speaker, we did check the transcript yesterday and I spoke with Representative Tuerk. We could find no instance in the transcript where leave was asked for and given."

Speaker Ryan: "The Gentleman asks leave to return the Senate Bill 1201 to the Order of Short Debate, Third Reading. Are there any objections? Hearing none, leave is granted. Senate Bill 1201 will be returned to the Order of Short Debate, Third Reading. Senate Bill 1201, Representative

1. Those opposed vote Nay. The voting is open. Have all voted
2. who wish? Have all voted who wish? Take the record. On
3. that question, the Ayes are 40, the Nays are 6, 2 Voting
4. Present. Senate Bill 1107 having received a constitutional
5. majority is declared passed, Senate Bill 1119, on page 15
6. of your Calendar, Senator Newhouse. Read the bill, Mr. Secre-
7. tary, please.

8. SECRETARY:

9. Senate Bill 1119.

10. (Secretary reads title of bill)

11. 3rd reading of the bill.

12. PRESIDING OFFICER: (SENATOR BRUCE)

13. Senator Newhouse.

14. SENATOR NEWHOUSE:

15. Thank you, Mr. President. This is that grandfather clause
16. bill that we had last year. There are some...there was some
17. technical problems which were straightened out. In addition
18. to that, however, the industry asked that...asked to add on
19. some things...an...and an amendment that would...have the effect
20. of keeping untaxed liquor out of the State and it might...
21. result in some...some revenue to the State of...of approxi-
22. mately a hundred and fifty million, according to their
23. figures. I would ask for a favorable roll call.

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. Further discussion? Further discussion? The question
26. is, shall Senate Bill 1119 pass. Those in favor vote Aye.
27. Those opposed vote Nay. The voting is open. Have all voted
28. who wish? Have all voted who wish? Have all voted who wish?
29. Take the record. On that question, the Ayes are 35, the Nays
30. are 17, 1 Voting Present. Senate Bill 1119 having received
31. the required constitutional majority is declared passed. 1168,
32. Senator Jeremiah Joyce. Read the bill, Mr. Secretary, please.

33. SECRETARY:

1. PRESIDENT:

2. Senator Lemke.

3. SENATOR LEMKE:

4. All this... amendment does is changes the term of directors
5. from three years to four. It was requested by the Slovenian
6. Women of America of Senator Sangmeister, Senator D'Arco,
7. Senator Becker, myself. I think it's a good amendment, this
8. may...this helps the Fraternal Burial Societies to conform
9. with their National Charters and...and the department has no
10. objection and...I talked to Senator Rupp and he agreed to put
11. the amendment on for us.

12. PRESIDENT:

13. All right. Senator Lemke moves the adcpion of Amendment
14. No. 1 to Senate Bill 1073. Is there any discussion? If not,
15. all in favor signify by saying Aye. All opposed. The Ayes
16. have it, the amendment is adopted. Further amendments?

17. SECRETARY:

18. No further amendments.

19. PRESIDENT:

20. 3rd reading. Top of Page 43...on the Order of Senate
21. Bills 3rd reading, Senate Bill 1119. Senator Newhouse seeks
22. leave of the Body to return that bill to the Order of 2nd
23. reading for purposes of an amendment. Is leave granted?
24. Leave is granted. On the Order of Senate Bills, 2nd reading,
25. Senate Bill 1119, Mr. Secretary.

26. SECRETARY:

27. Amendment No. 1 by Senator Newhouse.

28. PRESIDENT:

29. Senator Newhouse.

30. SENATOR NEWHOUSE:

31. Thank you, Mr. President, Senators. This bill we've...
32. passed out of here last year and it's been explained before.
33. The grandfather provision in this bill did not permit those

1. people who were grandfathered in to acquire the products which
2. they have been...which they...which...which the lines generate
3. in the future. And this bill corrects that...this amendment
4. corrects that problem. The amendment also goes to another
5. problem of the industry. The industry asks that we include
6. a provision that will protect Illinois distributors from
7. untaxed out-of-State liquor. This is the second provision
8. in the bill. I would move its adoption.

9. PRESIDENT:

10. All right. Senator Newhouse has moved the adoption
11. of Amendment No. 1 to Senate Bill 1119. Is there any discussion?
12. If not, all in favor signify by saying Aye. All opposed. The
13. Ayes have it, the amendment is adopted. Are there further
14. amendments?

15. SECRETARY:

16. No further amendments.

17. PRESIDENT:

18. 3rd reading. 1145, Senator Berman. On the Order of
19. Senate Bills 3rd reading, Senate Bill 1145, top of Page 44.
20. Senator Berman seeks leave of the Body to return that bill
21. to the Order of 2nd reading for purposes of an amendment.
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24. SECRETARY:

25. Amendment No. 1 by Senator Bruce.

26. PRESIDENT:

27. Senator Bruce.

28. SENATOR BRUCE:

29. Thank you. The bill as it was introduced allows Social
30. Service employees as designated by the judge in Cook County
31. to take consents for adoptions. In prior years, we've allowed
32. the judge to appoint the Circuit Clerk in downstate counties
33. to take these consents. What the amendment does is...restore
34. that right so that we can have someone other than a judge,

SENATE

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- 5. constitutional majority is declared passed. Senate Bill 119, Senator
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7. SENATOR NEWHOUSE:

8. Thank you, Mr. President, Senators. This is the Dram Shop
9. Act that we sent over to the House...that cleared up the problem that
10. we had with the small dealers in the City of Chicago. At the
11. request of the industry, this amendment was added and I agreed
12. to it and it does this. There are some small wineries outside
13. this State that...that...whose products come into this State.
14. At the present level of licensing fee, they would not be able
15. to deliver those goods into this State. So what this amendment
16. has done, is made two levels of licensing fees. For those
17. wineries that produce less than five hundred...five hundred
18. thousand gallons per year, the fee is seventy-five dollars,
19. for those above five hundred thousand gallons, the fee is
20. two hundred and fifty dollars. It seems to me to be a reasonable
21. amendment, the industry wants it and I would move that we...we
22. accept the amendment...concur in the amendment...Amendment No. 1
23. on Senate Bill 1119.

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. The motion is to concur. Discussion? Discussion? The
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TRANSCRIPTION OF DEBATE

82ND GENERAL ASSEMBLY

133

Does not
talk about
bill 1119.

64th Legislative Day

June 16, 1981

many times they are charged with violating unreasonable rules and regulations. But because of the cost of fighting the matter they have, instead, succumbed and entered into some kind of an agreement with the agency. We thought that this particular provision would give the incentive to individuals who are charged by agencies in trying to weed out these 'picaky ones', small, unreasonable regulations.

So, the Committee and the Sponsor felt that in this type of situation attorney's fees were justified also. I think it's a good Bill. It will help the small guy, the businessman who's being harassed by bureaucrats only in those instances where there's true harassment. Not in those instances where there's a legitimate difference of opinion. So, I urge that everyone support the Lady in Senate Bill 355 and let's send this on to the Governor."

Speaker Peters: "Representative Stearney."

Stearney: "Mr. Speaker and Ladies and Gentlemen of the House, I rise in support of this measure and let me remind you that last term we did support legislation of Representative Yourell's which would set up a joint Administrative Committee which would go over and have the authority to revoke proposed rules of the department. The reason we did that is because we felt that the power to institute rules should be with the General Assembly. Now, this here Bill goes on step further because it says that a party that has agreed shall have the right to recover reasonable attorney's fees and the reasonable expenses incurred in certain situations. And namely I remind you and that's when they can prove by going into a court at a later date and having the court rule that the agency exceeded its statutory authority or the agency failed to follow

82ND GENERAL ASSEMBLY

House

64th Legislative Day

June 16, 1981

statutory procedure in the adoption of the rule. In those instances the court, in those instances the agreed party would have the right to recover its expenses and attorney's fees. I think this Bill is sufficiently circumscribed to provide only recovery in those certain instances and for that reason it is rationable. It is reasonable and I think we should adopt it. I urge an 'aye' vote on this measure.

Thank you."

Speaker Peters: "Representative Pullen."

Pullen: "I'd like to ask the Sponsor a couple of questions, please."

Speaker Peters: "Representative Pullen."

Pullen: "I'd like to ask the Sponsor a couple of questions, please."

Speaker Peters: "She indicates she'll respond."

Pullen: "Representative, are you trying harass the Governor with this Bill?"

Topinka: "No, I'm just trying to keep the little guy from having to buckle under..."

Pullen: "Do you think that contrary to harassing the Governor that this Bill would keep the government from harassing small business?"

Topinka: "I think that might have some bearing on it, yes."

Pullen: "Do you think that this Bill might actually accomplish causing departments and agencies to be more cautious before they move against people?"

Topinka: "Oh, I would certainly hope so."

Pullen: "Thank you for presenting this fine Bill."

Speaker Peters: "Further discussion? Representative Zito."

Zito: "Mr. Speaker, I move the previous question."

Speaker Peters: "The question is, 'Shall the previous question be

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HOUSE OF REPRESENTATIVES
TRANSCRIPTION OF DEBATE

135

82ND GENERAL ASSEMBLY

64th Legislative Day

June 16, 1981

put?' Those in favor will signify by saying 'aye', those opposed 'nay'. The opinion of the Chair, the 'ayes' have it. Representative Topinka, to close."

Topinka: "Well, Mr. Chairman and Members of the House, I would like to thank all the fine people that stood up for this Bill because in general I think they have known reputations for trying to find something that is very sound legally as well as trying to get the will of the people out. It's very difficult when you're just the little guy to have to go up against the state or the Federal Government and the whole faceless mass of bureaucracies. I think would be one way of settling up and keeping the little guy from having to buckle under and I would really encourage an 'aye' vote on this. Thank you."

Speaker Peters: "The question is, 'Shall Senate Bill 355 pass?' Those in favor will signify by voting 'aye', those opposed by voting 'nay'. Mr. Clerk. The voting is open. Have all voted who wish? Have all voted who wish? Representative Leinenweber, you spoke in debate."

Leinenweber: "No, I just wanted to compliment my seatmate. He's working the floor against this Bill."

Speaker Peters: "Representative Collins, to explain his vote. Inexplicable? Your light is on. Have all voted who wish? Another error. Take the record, Mr. Clerk. On this question there are 143 voting 'aye', 10 voting 'no', 5 voting 'present'. This Bill, having received the Constitutional Majority, is hereby declared passed. Senate Bill 404, Representative Rea. Read the Bill, Mr. Clerk."

Clerk O'Brien: "Senate Bill 404, a Bill for an Act to amend Sections of the Civil Administrative Code, Third Reading of the Bill."

STATE OF ILLINOIS
82ND GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

72nd Legislative Day

June 26, 1981

in Enrolling and Engrossing and then later, Weth Publishing Company. Left a Section of the certification...Administrative Certification Act out. Amendment #9 puts that back in and also validates actions done by the State Board under the absent Act for the period of time covered after the passage in November of...er..the signing in November of 1979 of Public Act 81-1208. And I would ask for the adoption of Amendment #9."

Speaker Ryan: "Is there any discussion? The question...The Gentleman moves for the adoption of Amendment #9 to Senate Bill 955. All in favor will signify by saying 'aye', all opposed 'no'. The 'ayes' have it and the Amendment's adopted. Further Amendments."

Clerk Leone: "No further Amendments."

Speaker Ryan: "Third Reading. Senate Bill 1119, Representative Sandquist. Representative Mautino?"

Mautino: "I thank you, Mr. Speaker. I believe Representative Sandquist could not be here this morning. He left a note on the desk that he asked me to handle the Bill for him. In that regard..."

Speaker Ryan: "Yes. There's a Motion filed ..er..a request to have you handle the Bill, Representative. Are there any objections? Hearing none, leave is granted. Proceed, Representative Mautino on Senate Bill 1119."

Clerk Leone: "Senate Bill 1119, a Bill for an Act relating to alcoholic liquors. Third Reading of the Bill."

Mautino: "Thank you very much, Mr. Speaker and Ladies and Gentlemen of the House. Senate Bill 1119 creates a new category of licensee for the distribution and sale of alcoholic liquors which is referred to as a nonresident dealer. This nonresident dealer license applies only to the actual manufacture of an alcoholic liquor sold to foreign importers or importing distributors, the two

STATE OF ILLINOIS
82ND GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

72nd Legislative Day

June 26, 1981

classifications that are now in effect and the primary importer of such alcoholic liquor manufactured outside of the US or a duly registered agent of such manufacturer or importer. What that means is, there are three distributors in the inner city of Chicago is where this legislation affects. They have been distributing a product for one of the breweries for quite a few years and with this legislation, they will be allowed to continue and handle other products by that distributor, even though they had not been licensed as an importing distributor. That's what the legislation does and I would be happy to answer any questions."

Speaker Ryan: "Is there any discussion? The question is, 'Shall Senate Bill 1119 pass?'. All in favor will signify by voting 'aye', all opposed by voting 'no'. Have all voted who wish? Take the record, Mr. Clerk. Representative Mautino, Representative Sandquist ought to have you handle his Bills more often. On this question there are 157 voting 'aye', none voting 'no', none voting 'present'. This Bill, having received a Constitutional Majority, is hereby declared passed. Representative Tuerk, for what purpose do you rise?"

Tuerk: "Mr. Speaker, several days ago Senate Bill 1201 was on Short Debate. It was amended by Representative Keane and it was my understanding that that returned to Short Debate. However, because of a quirk in administrative duties within the Clerk's Office, it got on the Long Debate Calendar. I would like leave of the House to hear that Bill on Short Debate. I believe Representative Keane could corroborate my statements."

Speaker Ryan: "Representative Keane."

Keane: "Thank you, Mr. Speaker. I would just agree with what the previous speaker said. He was gracious enough to bring the

SB 1119
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311
3rd reading

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7. tary, please.
8. SECRETARY:
9. Senate Bill 1119.
10. (Secretary reads title of bill)
11. 3rd reading of the bill.
12. PRESIDING OFFICER: (SENATOR BRUCE)
13. Senator Newhouse.
14. SENATOR NEWHOUSE:
15. Thank you, Mr. President. This is that grandfather clause
16. bill that we had last year. There are some...there was some
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18. to that, however, the industry asked that...asked to add on
19. some things...an...and an amendment that would...have the effect
20. of keeping untaxed liquor out of the State and it might...
21. result in some...some revenue to the State of...of approxi-
22. mately a hundred and fifty million, according to their
23. figures. I would ask for a favorable roll call.
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33. SECRETARY:

82nd GENERAL ASSEMBLY

REGULAR SESSION

MAY 20, 1981

1. PRESIDENT:

2. The hour of eleven having arrived the Senate will please
3. come to order. Will the members please be at their desks.
4. Will our guests in the gallery...please rise. Our prayer
5. this morning by the Reverend Mason Finks, First United Methodist
6. Church, Springfield, Illinois. Reverend.

7. REVEREND MASON FINKS:

8. (Prayer given by Reverend Mason Finks)

9. PRESIDENT:

10. Thank you, Reverend. Reading of the Journal. Senator
11. Johns.

12. SENATOR JOHNS:

13. Thank you, Mr. President. I move that reading and approval
14. of the Journal of Thursday, May the 14th, Friday, May the 15th,
15. Monday, May the 18th and Tuesday, May the 19th in the year
16. 1981 be postponed pending arrival of the printed Journal.

17. PRESIDENT:

18. You've heard the motion as placed by Senator Johns. Any
19. discussion? If not, all in favor signify by saying Aye. All
20. opposed. The Ayes have it. So ordered. Resolutions.

21. SECRETARY:

22. Senate Resolution 191, offered by Senators Lemke, Degnan,
23. and all Senators and it's congratulatory.

24. PRESIDENT:

25. Consent Calendar. Ladies and Gentlemen, we will begin,..
26. everybody has been provided with a list of the recalls, we'll
27. try to get those handled with some dispatch. Prior to beginning
28. on that order of business, we have some special guests. The
29. Chair will yield to Senator Simms.

30. SENATOR SIMMS:

31. Thank you, Mr. President. It's my privilege today to
32. introduce to the Illinois Senate...a contest was conducted,
33. a State-wide art competition contest that was conducted by the

SB 1119
Received

1. PRESIDENT:
2. Senator Lemke.
3. SENATOR LEMKE:
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11. the amendment on for us.
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ILLINOIS 1994 LEGISLATIVE SERVICE
Eighty-Eighth General Assembly, 1994

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Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

PUBLIC ACT 88-535
H.B. 2082
STATE AND LOCAL GOVERNMENT--GENERAL AMENDMENTS

AN ACT in relation to State and local government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5.1. The Illinois Administrative Procedure Act is amended by changing Section 5-80 as follows:

<< IL ST CH 5 § 100/5-80 >>

[S.H.A. 5 ILCS 100/5-80] (5 ILCS 100/5-80) (from Ch. 127, par. 1005-80)

§ 5-80. Publication of rules.

(a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) Each rule proposed in compliance with the codification system shall be reviewed by the Secretary of State before the expiration of the public notice period under subsection (b) of Section 5-40. The Secretary of State shall cooperate with agencies in the Secretary of State's review to insure that the purposes of the codification system are accomplished. The Secretary of State shall have the authority to make changes in the numbering and location of the rule in the codification scheme if those changes do not affect the meaning of the rules. The Secretary of State may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The Secretary of

State may add notes concerning the statutory authority, dates proposed and adopted, and other similar notes to the text of the rules, if the notes are not supplied by the agency. This review by the Secretary of State shall be for the purpose of insuring the uniformity of and compliance with the codification system. The Secretary of State shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables, and other aids for locating rules to assist the public in the use of the Code.

(c) The Secretary of State shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency, in the notice required by subsection (c) of Section 5-40, shall provide to the Joint Committee a response to the recommendations of the Secretary of State including any reasons for not adopting the recommendations.

(d) If a reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law affects rules on file with the Secretary of State, the Secretary of State shall notify the Governor, the Attorney General, and the agencies involved of the effects upon the rules on file. If the Governor or the agencies involved do not respond to the Secretary of State's notice within 45 days by instructing the Secretary of State to delete or transfer the rules, the Secretary of State may delete or place the rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General, and the agencies involved.

(f) The Secretary of State shall <<+ensure that the+>> <<-publish an->> Illinois Administrative Code <<+is published and made available to the public in a form that is updated at least annually+>>. <<-The Secretary of State shall update each section of the Code at least annually.->> The Code shall contain the complete text of all rules of all State agencies filed with <<+the Secretary's+>> <<-his->> office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the Secretary of State. The Secretary of State shall design the Illinois Register to supplement the Code. The Secretary of State shall <<+ensure that+>> <<-make->> copies of the <<+Illinois Register are+>> <<-Code->> available <<+to the public and governmental entities and agencies+>> <<-generally at a price covering publication and mailing costs->>.

<<+If the Secretary of State determines that the Secretary's office will publish and distribute either the Register or the Code, the Secretary shall make copies available to the public at a reasonable fee, established by the Secretary by rule, and shall make copies available to governmental entities and agencies at a price covering publication and mailing costs only.+>>

<<+The Secretary of State shall make the electronically stored database of the Illinois Register and the Code available in accordance with this Section and Section 5.08 of the Legislative Information System Act. [FN1]+>>

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and

that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such a presumption. Judicial or official notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the Secretary of State, notes, and other materials developed under this Section in connection with the publication of the Illinois Administrative Code <<+and the Illinois Register+>> shall be <<+the official compilations of the administrative rules of Illinois and shall be entirely in the public domain for purposes of federal copyright law.+>> <<-the property of the State. No person may attempt to copyright or publish for sale those materials except the Secretary of State as provided in this Section.->>

<<+(i) The Legislative Information System shall maintain on its electronic data processing equipment the complete text of the Illinois Register and Illinois Administrative Code created in compliance with this Act. This electronic information shall be made available for use in the publication of the Illinois Register and Illinois Administrative Code by the Secretary of State if the Secretary determines that his office will publish these materials as authorized by subsection (f).+>>

<<+(j) The Legislative Information System, upon consultation with the Joint Committee on Administrative Rules and the Secretary of State, shall make the electronically stored database of the Illinois Register and the Illinois Administrative Code available in an electronically stored medium to those who request it. The Legislative Information System shall establish and charge a reasonable fee for providing the electronic information. Amounts received under this Section shall be deposited into the General Assembly Computer Equipment Revolving Fund.+>>

<<+(Source: P.A. 87-823.)+>>

[FN1] 25 ILCS 145/5.08.

Section 5.2. The Legislative Information System Act is amended by changing Section 5.08 as follows:

<< IL ST CH 25 § 145/5.08 >>

[S.H.A. 25 ILCS 145/5.08] (25 ILCS 145/5.08) (from Ch. 63, par. 42.15-8)

§ 5.08. <<+The Legislative Information System shall+>> <<-To->> maintain on its electronic data processing equipment the complete text of the <<+Illinois Register and the Illinois Administrative Code created+>> <<-rules adopted->> in compliance with <<-the codification system prescribed by Section 5.80 of->> the Illinois Administrative Procedure Act [FN1] <<+and+>><<-; to->> cooperate with the Secretary of State <<+and the Joint Committee on Administrative Rules+>> in making such computerized <<+information+>> <<-text->> available for use in publication of the Illinois Register and Illinois Administrative Code. The System, upon consultation with the Secretary of State <<+and the Joint Committee on Administrative Rules,+>> shall make available for sale to <<+ those who request it, including+>> <<-the->>

public <<+and+>> <<-or to->> governmental entities or agencies<<+,+>> the computerized <<+ information+>> <<-text->> of the <<+Illinois Register and the Illinois Administrative Code created+>> <<-rules adopted->> in compliance with the codification system prescribed by Section 5-80 of the Illinois Administrative Procedure Act. [FN2] Equipment, programs, training and support necessary to maintain this system shall be under the control of the Legislative Information System.

<<+(Source: P.A. 88-45.)+>>

[FN1] 5 ILCS 100/1-1 et seq.

[FN2] 5 ILCS 100/5-80.

Section 5.3. The Copies of Legislative Materials Act is amended by changing Section 1 as follows:

<< IL ST CH 25 § 105/1 >>

[S.H.A. 25 ILCS 105/1] (25 ILCS 105/1) (from Ch. 63, par. 801)

§ 1. <<+Copy fees.+>>

(a) The Clerk of the House of Representatives may establish a schedule of reasonable fees to be charged for providing <<-to the public->> copies of <<+daily and bound journals,+>> committee documents, committee tape recordings, transcripts of committee proceedings, and committee notices, for providing copies of bills on a continuing or individual basis <<-to members of the public other than governmental entities->>, and for providing <<-to the public->> tape recordings and transcripts of floor debates and other proceedings of the House.

(b) The Secretary of the Senate may establish a schedule of reasonable fees to be charged for providing <<-to the public->> copies of <<+daily and bound journals,+>> committee notices, for providing copies of bills on a continuing or individual basis <<-to members of the public other than governmental entities->>, and for providing <<-to the public->> tape recordings and transcripts of floor debates and other proceedings of the Senate.

(c) Receipts from all fees established under subsections (a) and (b) shall be deposited by the Clerk and the Secretary into the General Assembly Operations Revolving Fund, a special fund in the State treasury. Amounts in the Fund may be appropriated for the operations of the offices of the Clerk of the House of Representatives and the Secretary of the Senate.

<<+(Source: P.A. 86-738; 86-1274.)+>>

Section 5.4. The State Printing Contracts Act is amended by changing Sections 3, 24, 25, 26, 28, 29 and 31 as follows:

<< IL ST CH 30 § 515/3 >>

[S.H.A. 30 ILCS 515/3] (30 ILCS 515/3) (from Ch. 127, par. 132.203)

§ 3. The Department of Central Management Services is responsible for enforcing the provisions of this Act <<+and+>><<-. The Department->> shall issue rules and regulations implementing this Act<<+, exclusive of Sections assigning powers and duties to the Legislative Printing Unit, the Secretary of the Senate, and the Clerk of the House of Representatives+>>.

The provisions of <<+the+>> <<-"The->> Illinois Administrative Procedure Act<<-" , as now or hereafter amended,->> [FN1] are hereby expressly adopted and incorporated herein as though a part of this Act, and shall apply to all administrative rules and procedures of the Department of Central Management Services under this Act.

<<+(Source: P.A. 82-789.)+>>

[FN1] 5 ILCS 100/1-1 et seq.

<< IL ST CH 30 § 515/24 >>

[S.H.A. 30 ILCS 515/24] (30 ILCS 515/24) (from Ch. 127, par. 132.224)

§ 24. Public printing <<-primarily->> for the use of either House of the General Assembly shall be subject to its control. <<+Any printing or operation of printing that the Legislative Printing Unit is unable to perform may be purchased through the Department of Central Management Services.+>> <<-The chief clerical officer of the House requiring such printing, or of the House where originates proceedings for joint action of both Houses requiring printing, shall deliver to the Department printer's copy of and an order for such printing. If, however, the Speaker of the House of Representatives or the President of the Senate determines that the printing for the use of his house is being done in so inexpeditious a manner as to impede the proper legislative functioning of his house, he may order the printer's copy delivered directly to the printer rather than to the Department or may make such temporary arrangements for printing for the use of his house as he considers necessary to insure the expeditious operation of his house.->>

<<+(Source: P.A. 79-447.)+>>

<< IL ST CH 30 § 515/25 >>

[S.H.A. 30 ILCS 515/25] (30 ILCS 515/25) (from Ch. 127, par. 132.225)

§ 25. Daily calendars, journals and other similar printing for which manuscript or copy is delivered to the <<+Legislative Printing Unit+>> <<-Department->> by the clerical officer of either House shall be printed so as to permit delivery <<+at any reasonable time required by the clerical officer+>> <<-by 9 A.M. on the next day, Sunday excepted, following that when the order for such printing is delivered->>.

Any petition, bill, resolution, joint resolution, memorial and similar manuscript or copy delivered to the <<+Legislative Printing Unit+>> <<- Department->> by the

clerical officer of either house shall be printed at any reasonable time required by such officer. <<-The Department shall place such orders with printing contractors as will insure delivery to the clerical officers at the required time.->>

<<+(Source: Laws 1967, p. 313.)+>>

<< IL ST CH 30 § 515/26 >>

[S.H.A. 30 ILCS 515/26] (30 ILCS 515/26) (from Ch. 127, par. 132.226)

§ 26. The manner, form, style, size and arrangement of type used in printing the bills, resolutions, amendments and conference reports of the General Assembly shall be as provided in the <<-Joint->> Rules of the General Assembly.

<<+(Source: Laws 1967, p. 3412.)+>>

<< IL ST CH 30 § 515/28 >>

[S.H.A. 30 ILCS 515/28] (30 ILCS 515/28) (from Ch. 127, par. 132.228)

§ 28. The Clerk of the House of Representatives and the Secretary of the Senate shall each prepare and deliver to the <<+Legislative Printing Unit+>> <<-Department->>, immediately after the close of each daily session, <<+a+>> printer's copy of the daily journal for his House.

The journals, including the daily journals if any are ordered by the General Assembly, shall be printed in the manner, form, style, size and arrangement of type provided in the <<-Joint->> Rules of the General Assembly.

<<+(Source: Laws 1967, p. 3412.)+>>

<< IL ST CH 30 § 515/29 >>

[S.H.A. 30 ILCS 515/29] (30 ILCS 515/29) (from Ch. 127, par. 132.229)

§ 29. <<+Daily and bound journals.+>>

<<+(a)+>> The <<+Legislative Printing Unit+>> <<-Department->> shall have printed such number of copies of the daily journal as may be <<+ requested by the clerical officer of each house+>> <<-necessary to fill the subscriptions therefor and for the use of the General Assembly and the officers of the State government->>.

The Secretary of the Senate and the Clerk of the House of Representatives shall furnish a copy of each daily journal of their respective houses to those persons who apply therefor upon payment of a <<+reasonable+>> subscription fee <<+established separately by the Secretary of the Senate and the Clerk of the House+>> <<-of \$50 per calendar year->> for each house. Each subscriber shall specify at the time he subscribes the address where he wishes the journals mailed. The daily journals shall be furnished free of charge on a pickup basis to State of-

ices and to the public as long as the supply lasts. The Secretary of the Senate and the Clerk of the house shall determine the number of journals available for pickup at their respective offices.

<<+(b)+>> After the General Assembly adjourns, the Clerk of the House and the Secretary of the Senate shall prepare and deliver to the <<+Legislative Printing Unit a+>> <<-Department->> printer's copy of matter for the regular House and Senate journals, together with any matter, not previously printed in the daily journals, which is required by law, by order of either house or by joint resolution to be printed in the journals. <<+The Legislative Printing Unit shall have printed such number of copies of the bound journal as may be requested by the clerical officer of each house.+>>

<<+A reasonable number of bound volumes of the journal of each house of the General Assembly shall be provided to State and local officers, boards, commissions, institutions, departments, agencies, and libraries requesting them through canvasses conducted separately by the Secretary of the Senate and the Clerk of the House. Reasonable fees established separately by the Secretary of the Senate and the Clerk of the House may be charged for bound volumes of the journal of each house of the General Assembly.+>>

<<+(Source: P.A. 86-759.)+>>

<< IL ST CH 30 § 515/31 >>

[S.H.A. 30 ILCS 515/31] (30 ILCS 515/31) (from Ch. 127, par. 132.231)

§ 31. The bound volumes of the session laws <<-and of the journals of both Houses->> of the General Assembly shall be made available to the following:

(a) One copy of each to each State Officer, board, commission, institution and department, requesting a copy pursuant to a canvass conducted by the Secretary of State prior to the printing of the session laws except judges of the Appellate Courts, and judges and associate judges of the Circuit Court;

(b) 10 copies to the law library of the Supreme Court; one copy each to the law libraries of the Appellate Courts and one copy to each of the County Law Libraries where same have been established. In those counties which do not have County Law Libraries, one copy to the Clerk of the Circuit Court;

(c) One copy of each to each county clerk;

(d) 10 copies of each to the library of the University of Illinois;

(e) 3 copies of each to the libraries of University of Illinois at Chicago Circle, Southern Illinois University at Carbondale, Southern Illinois University at Edwardsville, Northern Illinois University, Western Illinois University, Eastern Illinois University, Illinois State University at Normal, Chicago State College, Northeastern Illinois State College, Chicago Kent College of Law, DePaul University, John Marshall Law School, Loyola University, Northwestern University, Roosevelt

University and the University of Chicago;

(f) A number of copies sufficient for exchange purposes to the Legislative Reference Bureau and the University of Illinois College of Law library;

(g) A number of copies sufficient for public libraries in the State to the State library; and

(h) The remainder shall be retained for such distribution as the interests of the State may require to persons making application in writing or in person for any such publication.

<<+(Source: P.A. 86-759.)+>>

<< Repealed: IL ST CH 30 § 515/36 >>

[S.H.A. 30 ILCS 515/36 repealed] (30 ILCS 515/36 rep.)

Section 5.5. The State Printing Contracts Act is amended by repealing Section 36.

Section 7. The Illinois Health Finance Reform Act is amended by changing Sections 4-2, 4-3, and 5-2 as follows:

<< IL ST CH 20 § 2215/4-2 >>

[S.H.A. 20 ILCS 2215/4-2] (20 ILCS 2215/4-2) (from Ch. 111 1/2 , par. 6504-2)

§ 4-2. Powers and duties.

(a) The Illinois Health Care Cost Containment Council may enter into any agreement with any corporation, association or other entity it deems appropriate to undertake the process described in this Article for the compilation and analysis of data collected by the Council and to conduct or contract for studies on health-related questions carried out in pursuance of the purposes of this Article. The agreement may provide for the corporation, association or entity to prepare and distribute or make available data to health care providers, health care subscribers, third-party payors, government and the general public, in accordance with the rules of confidentiality and review to be developed under this Act.

(b) The input data collected by and furnished to the Council or designated corporation, association or entity pursuant to this Section shall not be a public record under the Illinois Freedom of Information Act. [FN1] It is the intent of this Act and of the regulations written pursuant to it to protect the confidentiality of individual patient information and the proprietary information of commercial insurance carriers and hospitals. To accomplish this, the data specified in subsection (c) shall be released in the following manner. Total gross revenue, total deductions from gross revenue and gross inpatient revenue shall be reported to the Council and released by the Council on a hospital specific basis. The remaining data elements in subsection (c) shall not be released on a hospital-specific basis

<<+except as needed by the executive, legislative, and judicial branches of govern-

ment for the performance of their duties+>>. Data specified in subsection (e) shall be released on a hospital specific basis to facilitate comparisons among hospitals by purchasers.

(c) The Council shall require the Departments of Public Health and Public Aid and hospitals located in the State to assist the Council in gathering and submitting the following hospital-specific financial information<<+, and the Council is authorized to share this data with both Departments to reduce the burden on hospitals by avoiding duplicate data collection+>>:

<<+OPERATING REVENUES+>>

<<+(1) Net patient service revenue+>>

<<+(2) Other revenue+>>

<<+(3) Total operating revenue+>>

<<+OPERATING EXPENSES+>>

<<+(4) Bad debt expense+>>

<<+(5) Total operating expenses+>>

<<+NON-OPERATING GAINS/LOSSES+>>

<<+(6) Total non-operating gains+>>

<<+(7) Total non-operating losses+>>

<<+PATIENT CARE REVENUES+>>

<<+(8) Gross inpatient revenue+>>

<<+(9) Gross outpatient revenue+>>

<<+(10) Other Patient care revenue+>>

<<+(11) Total patient revenue+>>

<<+(12) Total gross patient care revenue+>>

<<+(13) Medicare gross revenue+>>

<<+(14) Medicaid gross revenue+>>

<<+(15) Total other gross revenue+>>

<<+DEDUCTIONS FROM REVENUE+>>

<<+(16) Charity care+>>

<<+(17) Medicare allowance+>>

<<+(18) Medicaid allowance+>>

<<+(19) Other contractual allowances+>>

<<+(20) Other allowances+>>

<<+(21) Total Deductions+>>

<<+ASSETS+>>

<<+(22) Operating cash and short-term investments+>>

<<+(23) Estimated patient accounts receivable+>>

<<+(24) Other current assets+>>

<<+(25) Total current assets+>>

<<+(26) Total other assets+>>

<<+(27) Total Assets+>>

<<+LIABILITIES AND FUND BALANCES+>>

<<+(28) Total current liabilities+>>

<<+(29) Long Term Debt+>>

<<+(30) Other liabilities+>>

<<+(31) Total liabilities+>>

<<+(32) Total liabilities and fund balances+>>

<<+In addition, each hospital shall annually submit to the Council a duplicate copy of the hospital's Medicaid Cost Report at the same time that the hospital submits the cost report to the Illinois Department of Public Aid and any settled cost report upon receipt by the hospital of a notice of amount of program reimbursement.+>>

<<-(1) total gross revenue->>

<<-(2) total deductions from gross revenue->>

<<-A. Medicare contractual allowances->>

<<-B. Medicaid contractual allowances->>

<<-C. other contractual allowances->>

<<-D. bad debts and charity care->>

<<-(3) gross in patient revenue->>

<<-(4) Medicare gross revenue->>

<<-(5) Medicaid and medical assistance gross revenue->>

<<-(6) total discharges->>

<<-(7) Medicare discharges->>

<<-(8) Medicaid, medical assistance discharges->>

<<-(9) other discharges->>

<<-(10) total assets->>

<<-(11) total liabilities->>

<<-(12) total admissions->>

<<-(13) total patient days->>

<<-(14) average length of stay->>

<<-(15) total outpatient visits->>

<<-(16) liquidity ratio->>

<<-(17) debt structure->>

<<-(18) capital structure->>

<<-Further, the method of computing the contractual allowances listed under clause (2) of subsection (c) shall be described by the hospital on the financial statement submitted to the Council and released on a hospital specific basis with the first three data elements above.->>

<<-In addition, each hospital shall annually submit to the Council a duplicate

copy of the hospital's Medicare Cost Report (OMB Form 2552) at the same time that the hospital submits the Cost Report to its Medicare fiscal intermediary, and any settled Cost Report upon receipt by the hospital of a Notice of Amount of Program Reimbursement.->>

On and after the effective date of this Act, such information shall be annually submitted from each hospital in the State of Illinois no later than 120 days after the close of its fiscal year. The information submitted in the report shall be based upon audited financial statements and shall be attested to by the Chief Executive Officer of each hospital.

<<+All financial data collected by the Council from publicly available sources such as the HCFA Electronic Medicare Reports is releasable by the Council on a hospital specific basis when appropriate.+>>

(d) Uniform Provider Utilization and Charge Information. The Council shall require that:

(1) Hospitals licensed to operate in the State of Illinois adopt a uniform system for submitting patient charges for payment from public and private payors effective January 1, 1985. This system shall be based upon adoption of the uniform hospital billing form (UB-82/HCFA-1450) or its successor form developed by the National Uniform Billing Committee.

(2) The Illinois Department of Public Aid accept the uniform billing form effective October 1, 1985. In addition, the Illinois Department of Public Aid shall report the data listed in subsection (e) for the period January 1, 1985 through October 1, 1985.

(3) The Department of Insurance require all third-party payors, including but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans, to accept the uniform billing form, without attachment as submitted by hospitals pursuant to paragraph (1) of subsection (d) above, effective January 1, 1985; provided, however, nothing shall prevent all such third party payors from requesting additional information necessary to determine eligibility for benefits or liability for reimbursement for services provided.

(e) The Council, in cooperation with the State Departments of Public Aid, Insurance, and Public Health, shall establish a system for the collection of the following information from hospitals utilizing the raw data available on the uniform billing forms. Such data shall include the following elements and other elements contained on the uniform billing form or its successor form determined as necessary by the Council:

(1) Patient date of birth

(2) Patient sex

(3) Patient zip code

- (4) Third-party coverage
- (5) Date of admission
- (6) Source of admission
- (7) Type of admission
- (8) Discharge date
- (9) Principal and up to four other diagnoses
- (10) Principal procedure and date
- (11) Patient status
- (12) Other procedures and dates
- (13) Total charges and components of those charges
- (14) Attending physician identification number
- (15) Hospital identification number
- (16) An alphanumeric number based on the information to identify the payor
- (17) Principal source of payment.

(f) Extracts of the UB82 transactions shall be prepared by hospitals according to regulations promulgated by the Council and submitted in magnetic tape format to the Council or the corporation, association or entity designated by the Council.

For hospitals unable to submit extracts in magnetic tape format, the Council shall determine an alternate method for electronic submission of data. Such extract reporting systems shall be in operation before January 1, 1987; however, the Council may grant time extensions to individual hospital.

(g) Under no circumstances shall patient name and social security number appear on the extracts.

(h) Hospitals shall be assigned a standard identification number by the Council to be used in the submission of all data.

(i) The Council shall collect a 100% sample annually. The Council shall require each hospital in the State to submit the UB-82 data extracts required in subsection (e) to the Council, except that hospitals with fewer than 50 beds may be exempted by the Council from the filing requirements if they prove to the Council's satis-

faction that the requirements would impose undue economic hardship and if the Council determines that the data submitted from these hospitals are not essential to its data base and its concomitant health care cost comparison efforts.

(j) The information submitted to the Council pursuant to subsection (e) shall be reported for each primary payor category, including Medicare, Medicaid, other government programs, private insurance, health maintenance organizations, self-insured, private pay patients, and others. Preferred provider organization reimbursement shall also be reported for each primary third party payor category.

(k) The Council shall require and the designated corporation, association or entity, if applicable, shall prepare quarterly, basic reports in the aggregate on health care costs trends in Illinois. The Council shall provide these reports to the public, if requested. These shall include, but not be limited to, comparative information on average charges, total and ancillary charge components, length of stay on diagnosis-specific and procedure specific cases, and number of discharges, compiled in aggregate by hospital, by diagnosis, and by primary payor category.

(l) The Council shall, from information submitted pursuant to subsection (e), prepare an annual report in the aggregate by hospital containing the following:

- (1) the ratio of caesarean section deliveries to total deliveries;
- (2) the average length of stay for patients who undergo caesarean sections;
- (3) the average total charges for patients who have normal deliveries without any significant complications;
- (4) the average total charges for patients who deliver by caesarean section.

The Council shall provide this report to the public, if requested.

(m) Prior to the release or dissemination of these reports, the Council or the designated corporation shall permit providers the opportunity to verify the accuracy of any information pertaining to the provider. The providers may submit to the Council any corrections or errors in the compilation of the data with any supporting evidence and documents the providers may submit. The Council or corporation shall correct data found to be in error and include additional commentary as requested by the provider for major deviations in the charges from the average charges. For purposes of this subsection (m), "providers" includes physicians licensed to practice medicine in all of its branches.

(n) In addition to the reports indicated above, the Council shall respond to requests by agencies of government and organizations in the private sector for <<+data products,+>> special studies and analysis of data collected pursuant to this Section. Such reports shall be undertaken only by the agreement of a majority of the members of the Council who shall designate the form in which the information shall be made available. The Council or the corporation, association or entity in consultation with the Council shall also determine a fee to be charged to the requesting agency or private sector organization to cover the direct and indirect

costs for producing such a report, and shall permit affected providers the rights to review the accuracy of the report before it is released. Such reports shall not be subject to The Freedom of Information Act.

<<+(Source: P.A. 86-617; 86-989; 86-1028; 87-1003.)+>>

[FN1] 5 ILCS 140/1 et seq.

<< IL ST CH 20 § 2215/4-3 >>

[S.H.A. 20 ILCS 2215/4-3] (20 ILCS 2215/4-3) (from Ch. 111 1/2 , par. 6504-3)

§ 4-3. Confidentiality. (a) As indicated elsewhere in this Act, all steps necessary under State and Federal law to protect patient confidentiality shall be undertaken by the Council to prevent the identification of individual patient records. Regulations are to be written to assure the confidentiality of patient records when gathering and submitting data to the Council or designated corporation, association or entity.

(b) The information submitted to the Council, designated corporation, association or entity by hospitals pursuant to subsections (c) and (e) of Section 4-2 shall be privileged and confidential, and shall not be disclosed in any manner. The foregoing includes, but shall not be limited to, disclosure, inspection or copying under The Freedom of Information Act, [FN1] The State Records Act, [FN2] and paragraph (1) of Section 404 of the Illinois Insurance Code. [FN3] However, the prohibitions stated in this subsection shall not apply to the compilations of information assembled by the Council pursuant to subsections (k) and (m) of Section 4-2.

<<+(c) Any person or organization, including but not limited to, hospitals, government agencies, associations, businesses, or researchers receiving data under an agreement with the Council under the terms indicated in Section 6504-2 shall be required to adhere strictly to the terms of the agreement, especially the terms that are related to preserving patient confidentiality. The use of Council data either alone or in combination with data from another source or sources to identify specific patients is prohibited unless such identification is specifically authorized by Illinois Statute and agreed to in writing by the Council. An intentional breach of patient confidentiality not authorized by statute and the Council shall render the responsible individual or organization liable to the penalties under Section 6505-2.+>>

<<+(Source: P.A. 83-1243.)+>>

[FN1] 5 ILCS 140/1 et seq.

[FN2] 5 ILCS 160/1 et seq.

[FN3] 215 ILCS 5/1 et seq.

<< IL ST CH 20 § 2215/5-2 >>

[S.H.A. 20 ILCS 2215/5-2] (20 ILCS 2215/5-2) (from Ch. 111 1/2 , par. 6505-2)

§ 5-2. Penalties. (a) Any <<+individual+>> hospital <<+or other organization or entity+>> wilfully violating the provisions of this Act, or the rules and regulations promulgated by the Council, shall be guilty of a business offense punishable by a fine of \$10,000 and each day's violation shall constitute a separate offense. <<+These penalties apply to all intentional breaches of patient confidentiality not authorized by statute or the Council.+>>

(b) The State's Attorney of the county in which the violation occurred, or the Attorney General shall upon the request of the Council, bring an action for an injunction against any hospital violating the provisions of this Act.

<<+(Source: P.A. 83-1243.)+>>

Section 8. The Civil Administrative Code of Illinois is amended by changing Section 55.53 as follows:

<< IL ST CH 20 § 2310/55.53 >>

[S.H.A. 20 ILCS 2310/55.53] (20 ILCS 2310/55.53) (from Ch. 127, par. 55.53)

§ 55.53. <<+Programs to expand access to primary care.+>>

<<+(a)+>> The Department shall establish a program to expand access to comprehensive primary care in medically underserved communities throughout Illinois. This program may include the provision of financial support and technical assistance to eligible community health centers. To be eligible for such grants community health centers must meet requirements comparable to those enumerated in Sections 329 and 330 of the federal Public Health Service Act. [FN1] In establishing its program, the Department shall avoid duplicating resources in areas already served by community health centers.

<<+(b) The Department may develop financing programs with the Illinois Development Finance Authority to carry out the purposes of this Act or any other Act that the Department is responsible for administering. The Department may transfer to the Illinois Development Finance Authority, into an account outside of the State treasury, any moneys it deems necessary from its accounts to establish bond reserve or credit enhancement escrow accounts, or loan or equipment leasing programs. The disposition of moneys at the conclusion of any such financing program shall be determined by an interagency agreement.+>>

<<+(Source: P.A. 86-839; 86-1028.)+>>

[FN1] 42 U.S.C.A. §§ 254b, 254c.

<< Repealed: IL ST CH 30 § 505/6.5 >>

[S.H.A. 30 ILCS 505/6.5 repealed] (30 ILCS 505/6.5 rep.)

Section 8.5. The Illinois Purchasing Act is amended by repealing Section 6.5.

Section 9. The Fiscal Note Act is amended by changing Sections 1 and 5 as follows:

<< IL ST CH 25 § 50/1 >>

[S.H.A. 25 ILCS 50/1] (25 ILCS 50/1) (from Ch. 63, par. 42.31)

§ 1. Every bill, except those bills making a direct appropriation, the purpose or effect of which is to expend any State funds or to increase or decrease the revenues of the State, <<+either directly or indirectly,+>> to require the expenditure of their own funds by, or to increase or decrease the revenues of, units of local government, school districts or community college districts, or to revise the distribution of State funds among units of local government, school districts, or community college districts, either directly or indirectly, shall have prepared for it prior to second reading in the house of introduction a brief explanatory statement or note which shall include a reliable estimate of the anticipated change in State, local governmental, school district, or community college district expenditures or revenues under its provisions. <<+For purposes of this Act, indirect revenues include, but are not limited to, increased tax revenues or other increased revenues resulting from economic development, job creation, or cost reduction. The statement or note shall also include an explanation of the methodology used to determine the estimated direct and indirect costs.+>> Any notes for bills having a fiscal impact on units of local government, school districts or community college districts shall include such cost estimates as may be required under the State Mandates Act. [FN1]

If a bill authorizes capital expenditures or appropriates funds for capital expenditures, a statement shall be prepared by the Bureau of the Budget specifying by year any principal and interest payments required to finance such capital expenditures.

These statements or notes shall be known as "fiscal notes".

<<+(Source: P.A. 87-847.)+>>

[FN1] 30 ILCS 805/1 et seq.

<< IL ST CH 25 § 50/5 >>

[S.H.A. 25 ILCS 50/5] (25 ILCS 50/5) (from Ch. 63, par. 42.35)

§ 5. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the fiscal note is prepared; however, technical or mechanical defects may be noted. The work sheet shall include, insofar as practicable, a breakdown of the costs upon which any appropriation measure or measure which is expected to cause an expenditure of State, local governmental, school district, or community college district funds is based and the expectable <<+direct or indirect+>> increase or decrease in State, local governmental, school district, or community college district revenues, as the case may be, including but not neces-

sarily limited to costs of personnel, materials and supplies and capital outlay. It shall also include such other information as is required by rules and regulations which may be promulgated by each house of the General Assembly with respect to the preparation of fiscal notes. The fiscal note shall be prepared in quintuplicate, and the name of the State board, commission, department, agency, or other entity preparing it shall appear at the end of the note and the original of both the work sheet and the fiscal note shall be signed by the head of the board, commission, department, agency, or other entity or by a responsible representative designated by him for the purpose.

<<+(Source: P.A. 81-0544; 81-0650; 81-1509.)+>>

Section 9.05. The State Finance Act is amended by adding Section 5.384 as follows:

<< IL ST CH 30 § 105/5.384 >>

[S.H.A. 30 ILCS 105/5.384] (30 ILCS 105/5.384 new)

<<+\$ 5.384. The Facility Licensing Fund.+>>

Section 9.1. The Cigarette Tax Act is amended by changing Section 2 as follows:

<< IL ST CH 35 § 130/2 >>

[S.H.A. 35 ILCS 130/2] (35 ILCS 130/2) (from Ch. 120, par. 453.2)

§ 2. (a) A tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at the rate of 5 1/2 mills per cigarette sold, or otherwise disposed of in the course of such business in this State. In addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 1/2 mill per cigarette sold or otherwise disposed of in the course of such business in this State on and after January 1, 1947, and shall be paid into the Metropolitan Fair and Exposition Authority Reconstruction Fund. On and after December 1, 1985, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 4 mills per cigarette sold or otherwise disposed of in the course of such business in this State. Of the additional tax imposed by this amendatory Act of 1985, \$9,000,000 of the moneys received by the Department of Revenue pursuant to this Act shall be paid each month into the Common School Fund. On and after the effective date of this amendatory Act of 1989, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 5 mills per cigarette sold or otherwise disposed of in the course of such business in this State. On and after the effective date of this amendatory Act of 1993, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business in this State. The payment of such taxes shall be evidenced by a stamp affixed to each original package of cigarettes, or an authorized substitute for such stamp imprinted on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, as hereinafter provided. However, such taxes are not

imposed upon any activity in such business in interstate commerce or otherwise, which activity may not under the Constitution and statutes of the United States be made the subject of taxation by this State.

Beginning on the effective date of this amendatory Act of 1993, all of the moneys received by the Department of Revenue pursuant to this Act <<+and the Cigarette Use Tax Act+>>, [FN1] other than the moneys that are dedicated to the Metropolitan Fair and Exposition Authority Reconstruction Fund and the Common School Fund, shall be distributed each month as follows: first, there shall be paid into the General Revenue Fund an amount which, when added to the amount paid into the Common School Fund for that month, equals \$25,000,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then, from the moneys remaining, if any amounts required to be paid into the Long-Term Care Provider Fund in previous months remain unpaid, those amounts shall be paid into the Long-Term Care Provider Fund; then, from the moneys remaining, \$9,545,000 shall be paid into the Long-Term Care Provider Fund (except that not more than \$105,000,000 shall be paid into the Long-Term Care Provider Fund in State fiscal year 1994 from moneys received pursuant to this Act); and finally the remaining moneys, if any, shall be paid into the Hospital Provider Fund. <<+To the extent that more than \$25,000,000 has been paid into the General Revenue Fund and Common School Fund per month for the period of July 1, 1993 through the effective date of this amendatory Act of 1994 from combined receipts of the Cigarette Tax Act [FN2] and the Cigarette Use Tax Act, notwithstanding the distribution provided in this Section, the Department of Revenue is hereby directed to adjust the distribution provided in this Section to increase the next monthly payments to the Long-Term Care Provider Fund by the amount paid to the General Revenue Fund and Common School Fund in excess of \$25,000,000 per month and to decrease the next monthly payments to the General Revenue Fund and Common School Fund by that same excess amount.+>>

When any tax imposed herein terminates or has terminated, distributors who have bought stamps while such tax was in effect and who therefore paid such tax, but who can show, to the Department's satisfaction, that they sold the cigarettes to which they affixed such stamps after such tax had terminated and did not recover the tax or its equivalent from purchasers, shall be allowed by the Department to take credit for such absorbed tax against subsequent tax stamp purchases from the Department by such distributor.

The impact of the tax levied by this Act is imposed upon the retailer and shall be prepaid or pre-collected by the distributor for the purpose of convenience and facility only, and the amount of the tax shall be added to the price of the cigarettes sold by such distributor. Collection of the tax shall be evidenced by a stamp or stamps affixed to each original package of cigarettes, as hereinafter provided.

Each distributor shall collect the tax from the retailer at or before the time of the sale, shall affix the stamps as hereinafter required, and shall remit the tax collected from retailers to the Department, as hereinafter provided. Any distributor who fails to properly collect and pay the tax imposed by this Act shall be liable for the tax. Any distributor who fails to properly collect and pay the tax imposed by this Act shall be liable for the tax. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on the effective date

of this amendatory Act of 1989 shall not be required to pay the additional tax imposed by this amendatory Act of 1989 on such stamped cigarettes. Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale at 12:01 a.m. on the effective date of this amendatory Act of 1993, is required to pay the additional tax imposed by this amendatory Act of 1993 on such stamped cigarettes. This payment, less the discount provided in subsection (b), shall be due when the distributor first makes a purchase of cigarette tax stamps after the effective date of this amendatory Act of 1993, or on the first due date of a return under this Act after the effective date of this amendatory Act of 1993, whichever occurs first.

The amount of the Cigarette Tax imposed by this Act shall be separately stated, apart from the price of the goods, by both distributors and retailers, in all advertisements, bills and sales invoices.

(b) The distributor shall be required to collect the taxes provided under paragraph (a) hereof, and, to cover the costs of such collection, shall be allowed a discount during any year commencing July 1st and ending the following June 30th in accordance with the schedule set out hereinbelow, which discount shall be allowed at the time of purchase of the stamps when purchase is required by this Act, or at the time when the tax is remitted to the Department without the purchase of stamps from the Department when that method of paying the tax is required or authorized by this Act. Prior to December 1, 1985, a discount equal to $1\frac{2}{3}\%$ of the amount of the tax up to and including the first \$700,000 paid hereunder by such distributor to the Department during any such year; $1\frac{1}{3}\%$ of the next \$700,000 of tax or any part thereof, paid hereunder by such distributor to the Department during any such year; 1% of the next \$700,000 of tax, or any part thereof, paid hereunder by such distributor to the Department during any such year, and $\frac{2}{3}$ of 1% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year shall apply. On and after December 1, 1985, a discount equal to 1.75% of the amount of the tax payable under this Act up to and including the first \$3,000,000 paid hereunder by such distributor to the Department during any such year and 1.5% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year shall apply.

Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.

(c) The taxes herein imposed are in addition to all other occupation or privilege taxes imposed by the State of Illinois, or by any political subdivision thereof, or by any municipal corporation.

<<+(Source: P.A. 88-88.)+>>

[FN1] 35 ILCS 135/1 et seq.

[FN2] 35 ILCS 130/1 et seq.

Section 9.2. The Cigarette Use Tax Act is amended by changing Section 35 as follows:

<< IL ST CH 35 § 135/35 >>

[S.H.A. 35 ILCS 135/35] (35 ILCS 135/35) (from Ch. 120, par. 453.65)

§ 35. <<+Distribution of receipts.+>> All moneys received by the Department under this Act shall be <<+distributed as provided in subsection (a) of Section 2 of the Cigarette Tax Act+>> [FN1] <<-paid into the General Revenue Fund in the State Treasury->>.

<<+(Source: P.A. 77-1898.)+>>

[FN1] 35 ILCS 130/2.

Section 9.5. The Property Tax Code is amended by changing Section 9-45 as follows:

<< IL ST CH 35 § 200/9-45 >>

[S.H.A. 35 ILCS 200/9-45] (35 ILCS 200/9-45)

§ 9-45. Property index number system. The county clerk in counties of 3,000,000 or more inhabitants and, subject to the approval of the county board, the chief county assessment officer or recorder, in counties of less than 3,000,000 inhabitants, may establish a property index number system under which property may be listed for purposes of assessment, collection of taxes or automation of the office of the recorder. The system may be adopted in addition to, or instead of, the method of listing by legal description as provided in Section 9-40. The system shall describe property by township, section, block, and parcel or lot, and may cross-reference the street or post office address, if any, and street code number, if any. The county clerk, county treasurer, chief county assessment officer or recorder may establish and maintain cross indexes of numbers assigned under the system with the complete legal description of the properties to which the numbers relate. Index numbers shall be assigned by the county clerk in counties of 3,000,000 or more inhabitants, and, at the direction of the county board in counties with less than 3,000,000 inhabitants, shall be assigned by the chief county assessment officer or recorder. Tax maps of the county clerk, county treasurer or chief county assessment officer shall carry those numbers. The indexes shall be open to public inspection and be made available to the public. Any property index number system established prior to the effective date of this Code shall remain valid. However, in counties with less than 3,000,000 inhabitants, the system may be transferred to another authority upon the approval of the county board.

Any real property used for a power generating <<+or automotive manufacturing+>> facility located within a county of less than 1,000,000 inhabitants, as to which litigation with respect to its assessed valuation is pending <<+or was pending as of January 1, 1993+>>, may be the subject of a real property tax assessment settlement agreement among the taxpayer and taxing districts in which it is situated. Other appropriate authorities, which may include county and State boards or officials, may also be parties to such an agreement. Such an agreement may include the assessment of the facility for any years in dispute as well as for up to 10 years

in the future. Such an agreement may provide for the settlement of issues relating to the assessed value of the facility and may provide for related payments, refunds, claims, credits against taxes and liabilities in respect to past and future taxes of taxing districts, including any fund created under Section 192(a) of this Act, all implementing the settlement agreement. Any such agreement may provide that parties thereto agree not to challenge assessments as provided in the agreement. <<+An agreement entered into on or after January 1, 1993 may provide for the classification of property that is the subject of the agreement as real or personal during the term of the agreement and thereafter.+>> It may also provide that taxing districts agree to reimburse the taxpayer for amounts paid by the taxpayer in respect to taxes for the real property which is the subject of the agreement to the extent levied by those respective districts, over and above amounts which would be due if the facility were to be assessed as provided in the agreement. Such reimbursement may be provided in the agreement to be made by credit against taxes of the taxpayer. No credits shall be applied against taxes levied with respect to debt service or lease payments of a taxing district. No referendum approval or appropriation shall be required for such an agreement or such credits and any such obligation shall not constitute indebtedness of the taxing district for purposes of any statutory limitation. The county collector shall treat credited amounts as if they had been received by the collector as taxes paid by the taxpayer and as if remitted to the district. A county treasurer who is a party to such an agreement may agree to hold amounts paid in escrow as provided in the agreement for possible use for paying taxes until conditions of the agreement are met and then to apply these amounts as provided in the agreement. No such settlement agreement shall be effective unless it shall have been approved by the court in which such litigation is pending. Any such agreement which has been entered into prior to adoption of this amendatory Act of 1988 and which is contingent upon enactment of authorizing legislation shall be binding and enforceable.

<<+(Source: P.A. 85-1221; 86-1481; 88-455.)+>>

Section 9.6. The Property Tax Code is amended by changing Sections 21-90 and 22-20 as follows:

<< IL ST CH 35 § 200/21-90 >>

[S.H.A. 35 ILCS 200/21-90] (35 ILCS 200/21-90)

§ 21-90. Purchase and sale by county; distribution of proceeds. When any property is delinquent<<+,+>> or <<+is+>> forfeited<<-,->> for each of 2 or more years, and is offered for sale under any of the provisions of this Code, the County Board of the County in which the property is located, in its discretion, may bid, or, in the case of forfeited property, may apply to purchase it, in the name of the County as trustee for all taxing districts having an interest in the property's taxes or special assessments for the nonpayment of which the property is sold. The presiding officer of the county board, with the advice and consent of the Board, may appoint on its behalf some officer or person to attend such sales and bid or, in the case of forfeited property, to apply to the county clerk to purchase. The County shall apply on the bid or purchase the unpaid taxes and special assessments due upon the property. No cash need be paid. The County shall take all steps necessary to acquire title to the property and may manage and operate the property. When a

county, or other taxing district within the county, is a petitioner for a tax deed, no filing fee shall be required. <<+When a county or other taxing district within the county is the petitioner for a tax deed, one petition may be filed including all parcels that are tax delinquent within the county or taxing district, and any publication made under Section 22-20 of this Code may combine all such parcels within a single notice. The notice shall list the street or common address, if known, of the parcels for informational purposes.+>> The county, as tax creditor and as trustee for other tax creditors, or other taxing district within the county, shall not be required to allege and prove that all taxes and special assessments which become due and payable after the sale to the county have been paid nor shall the county be required to pay the subsequently accruing taxes or special assessments at any time. The county board or its designee may prohibit the county collector from including the property in the tax sale of one or more subsequent years. The lien of taxes and special assessments which become due and payable after a sale to a county shall merge in the fee title of the county, or other taxing district within the county, on the issuance of a deed.

The County may sell or assign the property so acquired, or the certificate of purchase to it, and the proceeds of that sale or assignment<<+, less all costs of the county incurred in the acquisition and sale or assignment of the property,+>> shall be distributed to the taxing districts in proportion to their respective interests therein.

Under Sections 21-110, 21-115, 21-120 and 21-405, a County may bid or purchase only in the absence of other bidders.

<<+(Source: P.A. 86-949; 88-455.)+>>

<< IL ST CH 35 § 200/22-20 >>

[S.H.A. 35 ILCS 200/22-20] (35 ILCS 200/22-20)

§ 22-20. Proof of service of notice--Publication of notice. The sheriff or coroner serving notice under Section 22-15 shall endorse his or her return thereon and file it with the Clerk of the Circuit Court and it shall be a part of the court record. If a sheriff or coroner to whom any notice is delivered for service, neglects or refuses to make the return, the purchaser or his or her assignee may petition the court to enter a ruler requiring the sheriff or coroner to make return of the notice on a day to be fixed by the court, or to show cause on that day why he or she should not be attached for contempt of the court. The purchaser or assignee shall cause a written notice of the rule to be served upon the sheriff or coroner. If good and sufficient cause to excuse the sheriff or coroner is not shown, the court shall adjudge him or her guilty of a contempt, and shall proceed to punish him as in other cases of contempt.

If the property is located in a municipality in a county with less than 3,000,000 inhabitants, the purchaser or his or her assignee shall also publish a notice as to the owner or party interested, in some newspaper published in the municipality. If the property is not in a municipality in a county with less than 3,000,000 inhabitants, or if no newspaper is published therein, or if the property is in a county with 3,000,000 or more inhabitants, the notice shall be published in some newspaper

in the county. If no newspaper is published in the county, then the notice shall be published in the newspaper that is published nearest the county seat of the county in which the property is located. If the owners and parties interested in the property upon diligent inquiry are unknown to the purchaser or his or her assignee, the publication as to such owner or party interested, may be made to unknown owners or parties interested. Any notice by publication given under this Section shall be given 3 times at any time after filing a petition for tax deed, but not less than 3 months nor more than 5 months prior to the expiration of the period of redemption. The publication shall contain (a) notice of the filing of the petition for tax deed, (b) the date on which the petitioner intends to make application for an order on the petition that a tax deed issue, (c) a description of the property, (d) the date upon which the property was sold, (e) the taxes or special assessments for which it was sold and (f) the date on which the period of redemption will expire. The publication shall not include more than one property listed and sold in one description, <<+except as provided in Section 21-90, and+>> except that when more than one property is owned by one person, all of the parcels owned by that person may be included in one notice.

<<+(Source: P.A. 86-949; 87-1189; 88-455.)+>>

Section 9.7. The Property Tax Code is amended by changing Section 22-35 as follows:

<< IL ST CH 35 § 200/22-35 >>

[S.H.A. 35 ILCS 200/22-35] (35 ILCS 200/22-35)

§ 22-35. Reimbursement of municipality before issuance of tax deed. An order for the issuance of a tax deed under this Code shall not be entered affecting the title to or interest in any property in which a city, village or incorporated town has an interest under the police and welfare power by advancements made from public funds, until the purchaser or assignee makes reimbursement to the city, village or incorporated town of the money so advanced <<+or the city, village, or town waives its lien on the property for the money so advanced+>>. However, in lieu of reimbursement <<+or waiver+>>, the purchaser or his or her assignee may make application for and the court shall order that the tax purchase be set aside as a sale in error. A filing or appearance fee shall not be required of a city, village or incorporated town seeking to enforce its claim under this Section in a tax deed proceeding.

<<+(Source: P.A. 86-1158; 88-455.)+>>

Section 11. The Illinois Pension Code is amended by changing or adding Sections 1-110, 8-138.2, 8-230.4, 14-103.05, 14-108.2a, 14-123.1, 14-124, and 20-109 as follows:

<< IL ST CH 40 § 5/1-110 >>

[S.H.A. 40 ILCS 5/1-110] (40 ILCS 5/1-110) (from Ch. 108 1/2 , par. 1-110)

§ 1-110. Prohibited Transactions.

(a) A fiduciary with respect to a retirement system or pension fund shall not cause the retirement system or pension fund to engage in a transaction if he or she knows or should know that such transaction constitutes a direct or indirect:

(1) Sale or exchange, or leasing of any property from the retirement system or pension fund to a party in interest for less than adequate consideration, or from a party in interest to a retirement system or pension fund for more than adequate consideration.

(2) Lending of money or other extension of credit from the retirement system or pension fund to a party in interest without the receipt of adequate security and a reasonable rate of interest, or from a party in interest to a retirement system or pension fund with the provision of excessive security or an unreasonably high rate of interest.

(3) Furnishing of goods, services or facilities from the retirement system or pension fund to a party in interest for less than adequate consideration, or from a party in interest to a retirement system or pension fund for more than adequate consideration.

(4) Transfer to, or use by or for the benefit of, a party in interest of any assets of a retirement system or pension fund for less than adequate consideration.

(b) A fiduciary with respect to a retirement system or pension fund established under this Code shall not:

(1) Deal with the assets of the retirement system or pension fund in his own interest or for his own account;

(2) In his individual or any other capacity act in any transaction involving the retirement system or pension fund on behalf of a party whose interests are adverse to the interests of the retirement system or pension fund or the interests of its participants or beneficiaries; <<or>>

(3) Receive any consideration for his own personal account from any party dealing with the retirement system or pension fund in connection with a transaction involving the assets of the retirement system or pension fund<<+.>><<-; or->>

<<-(4) Make any loan or investment in its individual nonfiduciary capacity after February 1, 1987 to a prohibited entity, or invest any employee or employer contributions received under such retirement system or pension fund after February 1, 1987 in any (i) stocks, bonds, notes, units of beneficial ownership, certificates of deposit or other similar obligations, securities or evidences of indebtedness or ownership of any firm, corporation, entity, agency, association or unit, group or collective trust, partnership or joint venture, which, after February 1, 1987, invests in, has any ownership interest in property of, or makes any loan to, a prohibited entity, or (ii) real or tangible property located in the Republic of South Africa, until such time as the United Nations certifies that the system of racial discrimination, commonly known as apartheid, is abolished. This paragraph (4),

however, shall not require or prohibit the liquidation of any investment in existence on February 1, 1987 of any such retirement system or pension fund or abrogate, or require the acceleration of principal payments under, any contract for a loan in existence on February 1, 1987 to a prohibited entity. For purposes of this paragraph (4), "loan" shall mean any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, "the Republic of South Africa" shall mean the Republic of South Africa or any territory under the administration of the Republic of South Africa, and "prohibited entity" shall mean (a) the Republic of South Africa, (b) a national corporation or other corporation organized under the laws of the Republic of South Africa, or (c) a company, firm, corporation, entity, agency, association or unit, group or collective trust, partnership or joint venture which makes new investments in the Republic of South Africa and of which the fiduciary has knowledge.->>

(c) Nothing in this Section shall be construed to prohibit any trustee from:

- (1) Receiving any benefit to which he may be entitled as a participant or beneficiary in the retirement system or pension fund.
- (2) Receiving any reimbursement of expenses properly and actually incurred in the performance of his duties with the retirement system or pension fund.
- (3) Serving as a trustee in addition to being an officer, employee, agent or other representative of a party in interest.

<<-(d) Nothing in paragraph (4) of subsection (b) of this Section shall be construed to be a breach of fiduciary duty on the part of a trustee.->>

<<+(Source: P.A. 84-1472.)+>>

<< IL ST CH 40 § 5/8-138.2 >>

[S.H.A. 40 ILCS 5/8-138.2] (40 ILCS 5/8-138.2 new)

<<+\$ 8-138.2. Early retirement for certain public health workers.+>>

<<+(a) To be eligible for the benefits provided in this Section, an employee must:+>>

<<+(1) be a current contributor to the Fund who, on November 1, 1993, is in active payroll status as an employee of the Chicago Department of Public Health whose job relates to certain clinical health laboratory functions to be transferred to the Illinois Department of Public Health by intergovernmental agreement;+>>

<<+(2) have not previously retired under this Article;+>>

<<+(3) file with the Board before March 1, 1994, a written application requesting the benefits provided in this Section;+>>

<<+(4) withdraw from service on or before March 31, 1994;+>>

<<+(5) have attained age 55 on or before June 30, 1993;+>>

<<+(6) by June 30, 1993, have at least 10 years of creditable service in this Fund and a total of at least 15 years of creditable service in one or more of the participating systems under the Retirement Systems Reciprocal Act, [FN1] without including any creditable service established under this Section.+>>

<<+A person is not eligible for the benefits provided in this Section if the person (i) elects to receive the alternative annuity for city officers under Section 8-243.2, (ii) elects to receive a retirement annuity calculated under the alternative formula formerly set forth in Section 20-122, or (iii) receives any early retirement incentive under Section 8-138.1.+>>

<<+(b) An eligible employee may establish up to 5 years of creditable service under this Section, in increments of one month, by making the contributions specified in subsection (d). An eligible person must establish at least the amount of creditable service necessary to bring his or her total creditable service, including service in this Fund, service established under this Section, and service in any of the other participating systems under the Retirement Systems Reciprocal Act, to a minimum of 20 years.+>>

<<+The creditable service under this Section may be used for all purposes under this Article and the Retirement Systems Reciprocal Act, except for the computation of average annual salary and the determination of salary, earnings, or compensation under this or any other Article of this Code.+>>

<<+(c) An eligible employee shall be entitled to have his or her retirement annuity calculated in accordance with the formula provided in Section 8-138, but with the following exceptions:+>>

<<+(1) The annuity shall not be subject to reduction because of withdrawal or commencement of the annuity before attainment of age 60.+>>

<<+(2) The annuity shall be subject to a maximum of 80% of the employee's highest average annual salary for any 4 consecutive years within the last 10 years of service, rather than the 75% maximum otherwise provided in Section 8-138.+>>

<<+(d) For each month of creditable service established under this Section, the employee must pay to the Fund an employee contribution, to be calculated by the Fund, equal to 4.25% of the member's monthly salary rate on November 1, 1993. The employee may elect to pay the entire contribution before the retirement annuity commences, or to have it deducted from the annuity over a period not longer than 24 months. If the retired employee dies before the contribution has been paid in full, the unpaid installments may be deducted from any annuity or other benefit payable to the employee's survivors.+>>

<<+All employee contributions paid under this Section shall be deemed contributions made by employees for annuity purposes under Section 8-173, and shall be made

and credited to a special reserve, without interest. Employee contributions paid under this Section may be refunded under the same terms and conditions as are applicable to other employee contributions for retirement annuity.+>>

<<+(e) Notwithstanding Section 8-165, an annuitant who reenters service under this Article or Article 14 [FN2] after receiving a retirement annuity based on benefits provided under this Section thereby forfeits the right to continue to receive those benefits, and shall have his or her retirement annuity recalculated at the appropriate time without the benefits provided in this Section.+>>

[FN1] 40 ILCS 5/20-101 et seq.

[FN2] 40 ILCS 5/14-101 et seq.

<< IL ST CH 40 § 5/8-230.4 >>

[S.H.A. 40 ILCS 5/8-230.4] (40 ILCS 5/8-230.4 new)

<<+§ 8-230.4. Certain Department of Public Health employees.+>>

<<+(a) This Section applies only to persons who were employed at any time during the period July 13 through December 31, 1993, by the City of Chicago Department of Public Health in connection with clinical health laboratory functions that are transferred to the State pursuant to an intergovernmental agreement, and who become employed by the Illinois Department of Public Health before July 1, 1994 to perform services relating to those transferred functions.+>>

<<+(b) A person to whom this Section applies who has not begun receiving a retirement benefit under this Article may elect to participate in the Fund governed by this Article during the dual eligibility period defined in Section 14-108.2a by giving written notice to this Fund and the Article 14 retirement system in accordance with subsection (b) of Section 14-108.2a.+>>

<<+(c) The Board of this Fund and the board of the retirement system governed by Article 14 shall together determine the manner of payment of employee contributions to the Fund for periods of participation in the Fund under this Section. These employee contributions may be paid or picked up by the Illinois Department of Public Health on behalf of the employee as otherwise provided by law. No employer contribution is required for those periods.+>>

<<+(d) Any period of nonparticipation in the Fund immediately preceding a period of participation under this Section shall be disregarded for purposes of establishing eligibility for and the amount and duration of any benefit under this Article.+>>

<< IL ST CH 40 § 5/14-103.05 >>

[S.H.A. 40 ILCS 5/14-103.05] (40 ILCS 5/14-103.05) (from Ch. 108 1/2 , par. 14-103.05)

§ 14-103.05. Employee. Any person employed by a Department who receives salary for personal services rendered to the Department on a warrant issued pursuant to a payroll voucher certified by a Department and drawn by the State Comptroller upon the State Treasurer, including an elected official described in subparagraph (d) of Section 14-104, shall become an employee for purpose of membership in the Retirement System on the first day of such employment.

A person entering service on or after January 1, 1972 and prior to January 1, 1984 shall become a member as a condition of employment and shall begin making contributions as of the first day of employment.

A person entering service on or after January 1, 1984 shall, upon completion of 6 months of continuous service which is not interrupted by a break of more than 2 months, become a member as a condition of employment. Contributions shall begin the first of the month after completion of the qualifying period.

The qualifying period of 6 months of service is not applicable to: (1) a person who has been granted credit for service in a position covered by the State Universities Retirement System, the Teachers' Retirement System of the State of Illinois, the General Assembly Retirement System, or the Judges Retirement System of Illinois unless that service has been forfeited under the laws of those systems; <<-or->> (2) a person entering service on or after July 1, 1991 in a noncovered position<<+; or (3) a person to whom Section 14-108.2a applies+>>.

The term "employee" does not include the following:

(1) members of the State Legislature, and persons electing to become members of the General Assembly Retirement System pursuant to Section 2-105;

(2) incumbents of offices normally filled by vote of the people;

(3) except as otherwise provided in this Section, any person appointed by the Governor with the advice and consent of the Senate unless that person elects to participate in this system;

(4) except as provided in Section 14-108.2, any person who is covered or eligible to be covered by the Teachers' Retirement System of the State of Illinois, the State Universities Retirement System, or the Judges Retirement System of Illinois;

(5) an employee of a municipality or any other political subdivision of the State;

(6) any person who becomes an employee after June 30, 1979 as a public service employment program participant under the Federal Comprehensive Employment and Training Act and whose wages or fringe benefits are paid in whole or in part by funds provided under such Act;

(7) enrollees of the Illinois Young Adult Conservation Corps program, administered by the Illinois Department of Conservation, authorized grantee pursuant to Title VIII of the "Comprehensive Employment and Training Act of 1973", 29 USC 993,

as now or hereafter amended;

(8) enrollees and temporary staff of programs administered by the Department of Conservation under the Youth Conservation Corps Act of 1970; [FN1]

(9) any person who is a member of any professional licensing or disciplinary board created under an Act administered by the Department of Professional Regulation, and who receives per diem compensation rather than a salary, notwithstanding that such per diem compensation is paid by warrant issued pursuant to a payroll voucher; such persons have never been included in the membership of this System, and this amendatory Act of 1987 (P.A. 84-1472) is not intended to effect any change in the status of such persons;

(10) any person who is a member of the Illinois Health Care Cost Containment Council, and receives per diem compensation rather than a salary, notwithstanding that such per diem compensation is paid by warrant issued pursuant to a payroll voucher; such persons have never been included in the membership of this System, and this amendatory Act of 1987 is not intended to effect any change in the status of such persons; or

(11) any person who is a member of the Oil and Gas Board created by Section 1.2 of the Illinois Oil and Gas Act, [FN2] and receives per diem compensation rather than a salary, notwithstanding that such per diem compensation is paid by warrant issued pursuant to a payroll voucher.

<<+(Source: P.A. 86-676; 87-11.)+>>

[FN1] 16 U.S.C.A. § 1701 et seq.

[FN2] 225 ILCS 725/1 et seq.

<< IL ST CH 40 § 5/14-108.2a >>

[S.H.A. 40 ILCS 5/14-108.2a] (40 ILCS 5/14-108.2a new)

<<+§ 14-108.2a. Former Chicago public health employees.+>>

<<+(a) This Section applies only to persons who were employed at any time during the period July 13 through December 31, 1993, by the City of Chicago Department of Public Health in connection with clinical health laboratory functions that are transferred to the State pursuant to an intergovernmental agreement, and who become employed by the Illinois Department of Public Health before July 1, 1994 to perform services relating to those transferred functions.+>>

<<+For the purposes of this Section and Section 8-230.4, the "dual eligibility period" of a person to whom this Section applies means the period beginning when the person is employed by the Illinois Department of Public Health to perform services relating to the transferred clinical health laboratory functions and ending on the last day of the second complete pay period of that employment following the effective date of this Section.+>>

<<+(b) A person to whom this Section applies who has not begun receiving a retirement benefit under Article 8 may elect to continue participation in the pension fund governed by Article 8 through the last day of his or her dual eligibility period by giving written notice to the System and the Article 8 [FN1] fund of this election within 15 days of beginning service or within 15 days after this Section takes effect. Any person so electing shall become a member of this System beginning on the day following the last day of the dual eligibility period and shall be a noncovered employee for the remainder of his or her employment, except as may be otherwise required under federal law.+>>

<<+(c) If a person to whom this Section applies does not elect to become a member of this System in accordance with subsection (b), the person shall be deemed to have elected to participate in the System as of the first day of his or her employment with the Illinois Department of Public Health and shall be a covered employee for the duration of that employment.+>>

<<+(d) In the case of a person to whom this Section applies and who is performing services for the Illinois Department of Public Health relating to the transferred clinical health laboratory functions at the time of death or the commencement of disability, the following requirements are not applicable:+>>

<<+(1) The requirement of 18 months of creditable service to qualify for temporary disability benefits under Section 14-123.1.+>>

<<+(2) The requirement of 1 1/2 years of creditable service to qualify for nonoccupational disability benefits under Section 14-124.+>>

<<+(3) The requirement of 1 1/2 years of contributing creditable service for the surviving spouse to qualify for a survivors annuity under Section 14- 120.+>>

[FN1] 40 ILCS 5/8-101 et seq.

<< IL ST CH 40 § 5/14-123.1 >>

[S.H.A. 40 ILCS 5/14-123.1] (40 ILCS 5/14-123.1) (from Ch. 108 1/2 , par. 14-123.1)

§ 14-123.1. Temporary disability benefit.

(a) A member who has at least 18 months of creditable service and who becomes physically or mentally incapacitated to perform the duties of his position shall receive a temporary disability benefit, provided that:

(1) the agency responsible for determining the liability of the State has formally denied all benefits under the Workers' Compensation Act [FN1] or the Workers' Occupational Diseases Act [FN2] and an appeal of such denial is pending before the Industrial Commission of Illinois; and

(2) application is made not later than 12 months after the date that such disa-

bility results in loss of pay, or 12 months after the date the agency responsible for determining the liability of the State under the Workers' Compensation Act or Workers' Occupational Diseases Act has formally denied the claim, whichever is later; and

(3) proper proof is received from one or more physicians designated by the Board certifying that the member is mentally or physically incapacitated.

(b) The temporary disability benefit shall begin to accrue on the 31st day of absence from work on account of disability, but the benefit shall not become actually payable to the member until the expiration of 31 days from the day upon which the member last received or had a right to receive any compensation. The benefit shall continue to accrue until the first of the following events occurs:

(1) the disability ceases;

(2) the member engages in gainful employment;

(3) the end of the month in which the member attains age 65, in the case of benefits commencing prior to attainment of age 60;

(4) the end of the month following the fifth anniversary of the effective date of the benefit in the case of benefits commencing on or after attainment of age 60;

(5) the end of the month in which the death of the member occurs;

(6) the end of the month in which the aggregate period for which temporary disability payments have been made becomes equal to 1/2 of the member's total period of creditable service, not including the time for which he has received a temporary disability benefit or nonoccupational disability benefit; <<+ for purposes of this item (6) only, in the case of a member to whom Section 14-108.2a applies and who, at the time disability commences, is performing services for the Illinois Department of Public Health relating to the transferred functions referred to in that Section and has less than 10 years of creditable service under this Article, the member's "total period of creditable service" shall be augmented by an amount equal to (i) one half of the member's period of creditable service in the Fund established under Article 8 [FN3] (excluding any creditable service over 20 years), minus (ii) the amount of the member's creditable service under this Article;+>>

(7) a payment is made on the member's claim pursuant to a determination made by the agency responsible for determining the liability of the State under the Workers' Compensation Act or the Workers' Occupational Diseases Act;

(8) a final determination is made on the member's claim by the Industrial Commission of Illinois.

(c) The temporary disability benefit shall be 50% of the member's final average compensation at the date of disability.

If a covered employee is eligible under the Social Security Act [FN4] for a disa-

bility benefit before attaining age 65, or a retirement benefit on or after attaining age 65, then the amount of the member's temporary disability benefit shall be reduced by the amount of primary benefit the member is eligible to receive under the Social Security Act, whether or not such eligibility came about as the result of service as a covered employee under this Article. The Board may make such reduction pending a determination of eligibility if it appears that the employee may be so eligible, and shall make an appropriate adjustment if necessary after such determination has been made. The amount of temporary disability benefit payable under this Article shall not be reduced by reason of any increase in benefits payable under the Social Security Act which occurs after the reduction required by this paragraph has been applied.

(d) The temporary disability benefit provided under this Section is intended as a temporary payment of occupational or nonoccupational disability benefit, whichever is appropriate, in cases in which the occupational or nonoccupational character of the disability has not been finally determined. When a final determination of the character of the disability has been made by the Industrial Commission of Illinois, or by settlement between the parties to the disputed claim, the Board shall calculate the benefit that is payable under Section 14-123 or 14-124, whichever is applicable, and shall deduct from such benefit the amounts already paid under this Section; such amounts shall then be treated as if they had been paid under such Section 14-123 or 14-124.

(e) Any excess benefits paid under this Section shall be subject to recovery by the System from benefits payable under the Workers' Compensation Act or the Workers' Occupational Diseases Act or from third parties as provided in Section 14-129, or from any other benefits payable either to the member or on his behalf under this Article. A member who accepts benefits under this Section acknowledges and authorizes these recovery rights of the System.

(f) Service credits under the State Universities Retirement System and the Teachers' Retirement System of the State of Illinois shall be considered for the purposes of determining temporary disability benefit eligibility under this Section, and for determining the total period of time for which such benefits are payable.

(g) The Board shall prescribe rules and regulations governing the filing of claims for temporary disability benefits, and the investigation, control and supervision of such claims.

<<+(Source: P.A. 86-272; 86-1488.)+>>

[FN1] 820 ILCS 305/1 et seq.

[FN2] 820 ILCS 310/1 et seq.

[FN3] 40 ILCS 5/8-101 et seq.

[FN4] 42 U.S.C.A. § 1396 et seq.

<< IL ST CH 40 § 5/14-124 >>

[S.H.A. 40 ILCS 5/14-124] (40 ILCS 5/14-124) (from Ch. 108 1/2 , par. 14-124)

§ 14-124. Nonoccupational disability benefit. A member with at least 1 1/2 years of creditable service may be granted a nonoccupational disability benefit, if:

- (1) application for the benefit is made to the system by the member in writing after the commencement of disability;
- (2) the member is found upon medical examination to be mentally or physically incapacitated to perform the duties of the member's position;
- (3) the disability resulted from a cause other than an injury or illness sustained in connection with the member's performance of duty as a State employee;
- (4) the member has been granted a leave of absence for disability at the time of commencement of disability. Renewal of a disability leave of absence shall not be required for the continued payment of benefits; and
- (5) the member has used all accumulated sick leave available at the beginning of the leave of absence for disability.

The benefit shall begin to accrue on the latest of (i) the 31st day of absence from work on account of disability (including any periods of such absence for which sick pay was received); (ii) the day following the day on which the member last receives or has a right to receive any compensation as an employee, including any sick pay; or (iii) if application by the member is delayed more than 90 days after the member's name is removed from the payroll, the date application is received by the system. The benefit shall continue to accrue until the first of the following to occur:

- (a) the date on which disability ceases;
- (b) the end of the month in which the member attains age 65 in the case of benefits commencing prior to attainment of age 60;
- (c) the end of the month following the fifth anniversary of the effective date of the benefit, or of the temporary disability benefit if one was received, in the case of benefits commencing on or after attainment of age 60;
- (d) the end of the month in which the aggregate period for which non-occupational disability and temporary disability benefit payments have been made becomes equal to 1/2 of the member's total period of creditable service, not including the time during which he has received a temporary disability benefit or nonoccupational disability benefit; <<+for purposes of this item (d) only, in the case of a member to whom Section 14-108.2a applies and who, at the time disability commences, is performing services for the Illinois Department of Public Health relating to the transferred functions referred to in that Section and has less than 10 years of creditable service under this Article, the member's "total period of creditable service" shall be augmented by an amount equal to (i) one half of the member's pe-

riod of creditable service in the Fund established under Article 8 [FN1] (excluding any creditable service over 20 years), minus (ii) the amount of the member's creditable service under this Article;+>>

(e) the date on which the member engages in gainful employment;

(f) the end of the month in which the death of the member occurs.

If disability has ceased and the member again becomes disabled within 60 days from date of resumption of State employment, and if the disability is due to the same cause for which he received nonoccupational disability benefit immediately preceding such reentry into service, the 30 days waiting period prescribed for the receipt of benefits is waived as to such new period of disability.

A member shall be considered disabled only when the board has received:

(a) a written certificate by one or more licensed and practicing physicians designated by the board, certifying that the member is disabled and unable properly to perform the duties of his position at the time of disability; and

(b) the employee certifies that he is not and has not been engaged in gainful employment.

The board shall prescribe rules and regulations governing the filing of claims for nonoccupational disability benefits, and the investigation, control and supervision of such claims.

Service credits under the State Universities Retirement System and the Teachers' Retirement System of the State of Illinois shall be considered for the purposes of nonoccupational disability benefit eligibility under this Article and for the total period of time for which such benefits are payable.

<<+(Source: P.A. 86-272; 86-1488.)+>>

[FN1] 40 ILCS 5/8-101 et seq.

<< IL ST CH 40 § 5/20-109 >>

[S.H.A. 40 ILCS 5/20-109] (40 ILCS 5/20-109) (from Ch. 108 1/2 , par. 20-109)

§ 20-109. "Pension credit": Credit or equities acquired by an employee in the form of contributions, earnings or service as defined under the law governing each of the systems in which he has credits or equities, except credits and equities (1) of less than one year in any one system, except that this one-year limitation shall not apply to employees who transfer or are transferred, as a class, from one participating system to another <<+or who are persons to whom Section 14-108.2a applies+>>; or (2) which have previously been forfeited by acceptance of a refund or which have been applied towards a retirement annuity and have not been reestablished in accordance with the law governing the system from which the refund or retirement annuity had been received. If a retirement system provides no refund of

contributions, the pension credit in the case of any employee who has participated in that system shall be considered effective for the purposes of this Article.

<<+(Source: P.A. 84-1472.)+>>

Section 12. The Counties Code is amended by changing Section 5-25012 as follows:

<< IL ST CH 55 § 5/5-25012 >>

[S.H.A. 55 ILCS 5/5-25012] (55 ILCS 5/5-25012) (from Ch. 34, par. 5-25012)

§ 5-25012. Board of health. Except in those cases where a board of 12 members is provided for as authorized in this Section, each county health department shall be managed by a board of health consisting of 8 members appointed by the president or chairman of the county board, with the approval of the county board, for a 3 year term, except that of the first appointees 2 shall serve for one year, 2 for 2 years, 3 for 3 years and the term of the member appointed from the county board, as provided in this Section, shall be one year and shall continue until reappointment or until a successor is appointed.

The county health department in a county having a population of 200,000 or more may, if the county board, by resolution, so provides, be managed by a board of health consisting of 12 members appointed by the president or chairman of the county board, with the approval of the county board, for a 3 year term, except that of the first appointees 3 shall serve for one year, 4 for 2 years, 4 for 3 years and the term of the member appointed from the county board, as provided in this Section, shall be one year and shall continue until reappointment or until a successor is appointed. In counties with a population of 200,000 or more which have a board of health of 8 members, the county board may, by resolution, increase the size of the board of health to 12 members, in which case the 4 members added shall be appointed, as of the next anniversary of the present appointments, 2 for terms of 3 years, one for 2 years and one for one year.

The county board in counties with a population of more than 100,000 but less than 3,000,000 inhabitants and contiguous to any county with a metropolitan area with more than 1,000,000 inhabitants, may establish compensation for the board of health, as remuneration for their services as members of the board of health. Monthly compensation shall not exceed \$200 except in the case of the president of the board of health whose monthly compensation shall not exceed \$400.

Each multiple-county health department shall be managed by a board of health consisting of 4 members appointed from each county by the president or chairman of the county board with the approval of the county board for a 3 year term, except that of the first appointees from each county one shall serve for one year, one for 2 years, one for 3 years and the term of the member appointed from the county board of each member county, as hereinafter provided, shall be one year and shall continue until reappointment or until a successor is appointed.

The term of office of original appointees shall begin on July 1 following their appointment, and the term of all members shall continue until their successors are appointed. All members shall serve without compensation but may be reimbursed for

actual necessary expenses incurred in the performance of their duties. At least 2 members of each county board of health shall be physicians licensed in Illinois to practice medicine in all of its branches and at least one member shall be a dentist licensed in Illinois. In counties with a population under 500,000, one member shall be chosen from the county board or the board of county commissioners as the case may be. In counties with a population over 500,000, two members shall be chosen from the county board or the board of county commissioners as the case may be. At least one member from each county on each multiple-county board of health shall be a physician licensed in Illinois to practice medicine in all of its branches, one member from each county on each multiple-county board of health shall be chosen from the county board or the board of county commissioners, as the case may be, and at least one member of the board of health shall be a dentist licensed in Illinois. Whenever possible, at least one member shall have experience in the field of mental health. All members shall be chosen for their special fitness for membership on the board.

Any member may be removed for misconduct or neglect of duty by the chairman or president of the county board, with the approval of the county board, of the county which appointed him.

Vacancies shall be filled as in the case of appointment for a full term.

Notwithstanding any other provision of this Act to the contrary, a county with a population of <<+240,000+>> <<-275,000->> or more inhabitants <<+ that+>><<- , which->> does not currently have a county health department<<- ,->> may<<+ ,+>> by resolution of the county board, establish a board of health consisting of the members of such board. Such board of health shall be advised by a committee which shall consist of at least 5 members appointed by the president or chairman of the county board with the approval of the county board for terms of 3 years; except that of the first appointees at least 2 shall serve for 3 years, at least 2 shall serve for 2 years and at least one shall serve for one year. At least one member of the advisory committee shall be a physician licensed in Illinois to practice medicine in all its branches, at least one shall be a dentist licensed in Illinois, and one shall be a nurse licensed in Illinois. All members shall be chosen for their special fitness for membership on the advisory committee.

<<+(Source: P.A. 86-962.)+>>

Section 15. The Illinois Municipal Code is amended by changing Section 11- 74.4-3 as follows:

<< IL ST CH 65 § 5/11-74.4-3 >>

[S.H.A. 65 ILCS 5/11-74.4-3] (65 ILCS 5/11-74.4-3) (from Ch. 24, par. 11-74.4- 3)

§ 11-74.4-3. <<+Definitions.+>> The following terms, wherever used or referred to in this Division 74.4 shall have the following respective meanings, unless in any case a different meaning clearly appears from the context.

(a) "Blighted area" means any improved or vacant area within the boundaries of a redevelopment project area located within the territorial limits of the municipali-

ty where, if improved, industrial, commercial and residential buildings or improvements, because of a combination of 5 or more of the following factors: age; dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, is detrimental to the public safety, health, morals or welfare, or if vacant, the sound growth of the taxing districts is impaired by, (1) a combination of 2 or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; flooding on all or part of such vacant land; deterioration of structures or site improvements in neighboring areas adjacent to the vacant land, or (2) the area immediately prior to becoming vacant qualified as a blighted improved area, or (3) the area consists of an unused quarry or unused quarries, or (4) the area consists of unused railyards, rail tracks or railroad rights-of-way, or (5) the area, prior to its designation, is subject to chronic flooding which adversely impacts on real property in the area and such flooding is substantially caused by one or more improvements in or in proximity to the area which improvements have been in existence for at least 5 years, or (6) the area consists of an unused disposal site, containing earth, stone, building debris or similar material, which were removed from construction, demolition, excavation or dredge sites, or (7) the area is not less than 50 nor more than 100 acres and 75% of which is vacant, notwithstanding the fact that such area has been used for commercial agricultural purposes within 5 years prior to the designation of the redevelopment project area, and which area meets at least one of the factors itemized in provision (1) of this subsection (a), and the area has been designated as a town or village center by ordinance or comprehensive plan adopted prior to January 1, 1982, and the area has not been developed for that designated purpose.

(b) "Conservation area" means any improved area within the boundaries of a redevelopment project area located within the territorial limits of the municipality in which 50% or more of the structures in the area have an age of 35 years or more. Such an area is not yet a blighted area but because of a combination of 3 or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning, is detrimental to the public safety, health, morals or welfare and such an area may become a blighted area.

(c) "Industrial park" means an area in a blighted or conservation area suitable for use by any manufacturing, industrial, research or transportation enterprise, of facilities to include but not be limited to factories, mills, processing plants, assembly plants, packing plants, fabricating plants, industrial distribution centers, warehouses, repair overhaul or service facilities, freight terminals, research facilities, test facilities or railroad facilities.

(d) "Industrial park conservation area" means an area within the boundaries of a redevelopment project area located within the territorial limits of a municipality that is a labor surplus municipality or within 1 1/2 miles of the territorial lim-

its of a municipality that is a labor surplus municipality if the area is annexed to the municipality; which area is zoned as industrial no later than at the time the municipality by ordinance designates the redevelopment project area, and which area includes both vacant land suitable for use as an industrial park and a blighted area or conservation area contiguous to such vacant land.

(e) "Labor surplus municipality" means a municipality in which, at any time during the 6 months before the municipality by ordinance designates an industrial park conservation area, the unemployment rate was over 6% and was also 100% or more of the national average unemployment rate for that same time as published in the United States Department of Labor Bureau of Labor Statistics publication entitled "The Employment Situation" or its successor publication. For the purpose of this subsection, if unemployment rate statistics for the municipality are not available, the unemployment rate in the municipality shall be deemed to be the same as the unemployment rate in the principal county in which the municipality is located.

(f) "Municipality" shall mean a city, village or incorporated town.

(g) "Initial Sales Tax Amounts" means the amount of taxes paid under the Retailers' Occupation Tax Act, [FN1] Use Tax Act, [FN2] Service Use Tax Act, [FN3] the Service Occupation Tax Act, [FN4] the Municipal Retailers' Occupation Tax Act, [FN5] and the Municipal Service Occupation Tax Act [FN6] by retailers and servicemen on transactions at places located in a State Sales Tax Boundary during the calendar year 1985.

(g-1) "Revised Initial Sales Tax Amounts" means the amount of taxes paid under the Retailers' Occupation Tax Act, Use Tax Act, Service Use Tax Act, the Service Occupation Tax Act, the Municipal Retailers' Occupation Tax Act, and the Municipal Service Occupation Tax Act by retailers and servicemen on transactions at places located within the State Sales Tax Boundary revised pursuant to Section 11-74.4-8a(9) of this Act.

(h) "Municipal Sales Tax Increment" means an amount equal to the increase in the aggregate amount of taxes paid to a municipality from the Local Government Tax Fund arising from sales by retailers and servicemen within the redevelopment project area or State Sales Tax Boundary, as the case may be, for as long as the redevelopment project area or State Sales Tax Boundary, as the case may be, exist over and above the aggregate amount of taxes as certified by the Illinois Department of Revenue and paid under the Municipal Retailers' Occupation Tax Act and the Municipal Service Occupation Tax Act by retailers and servicemen, on transactions at places of business located in the redevelopment project area or State Sales Tax Boundary, as the case may be, during the base year which shall be the calendar year immediately prior to the year in which the municipality adopted tax increment allocation financing. For purposes of computing the aggregate amount of such taxes for base years occurring prior to 1985, the Department of Revenue shall determine the Initial Sales Tax Amounts for such taxes and deduct therefrom an amount equal to 4% of the aggregate amount of taxes per year for each year the base year is prior to 1985, but not to exceed a total deduction of 12%. The amount so determined shall be known as the "Adjusted Initial Sales Tax Amounts". For purposes of determining the Municipal Sales Tax Increment, the Department of Revenue shall for each period subtract from the amount paid to the municipality from the Local Government Tax

Fund arising from sales by retailers and servicemen on transactions located in the redevelopment project area or the State Sales Tax Boundary, as the case may be, the certified Initial Sales Tax Amounts, the Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts for the Municipal Retailers' Occupation Tax Act and the Municipal Service Occupation Tax Act. For the State Fiscal Year 1989, this calculation shall be made by utilizing the calendar year 1987 to determine the tax amounts received. For the State Fiscal Year 1990, this calculation shall be made by utilizing the period from January 1, 1988, until September 30, 1988, to determine the tax amounts received from retailers and servicemen pursuant to the Municipal Retailers' Occupation Tax and the Municipal Service Occupation Tax Act, which shall have deducted therefrom nine-twelfths of the certified Initial Sales Tax Amounts, the Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts as appropriate. For the State Fiscal Year 1991, this calculation shall be made by utilizing the period from October 1, 1988, to June 30, 1989, to determine the tax amounts received from retailers and servicemen pursuant to the Municipal Retailers' Occupation Tax and the Municipal Service Occupation Tax Act which shall have deducted therefrom nine-twelfths of the certified Initial Sales Tax Amounts, the Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts as appropriate. For every State Fiscal Year thereafter, the applicable period shall be the 12 months beginning July 1 and ending June 30 to determine the tax amounts received which shall have deducted therefrom the certified Initial Sales Tax Amounts, the Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts, as the case may be.

(i) "Net State Sales Tax Increment" means the sum of the following: (a) 80% of the first \$100,000 of State Sales Tax Increment annually generated within a State Sales Tax Boundary; (b) 60% of the amount in excess of \$100,000 but not exceeding \$500,000 of State Sales Tax Increment annually generated within a State Sales Tax Boundary; and (c) 40% of all amounts in excess of \$500,000 of State Sales Tax Increment annually generated within a State Sales Tax Boundary. If, however, a municipality established a tax increment financing district in a county with a population in excess of 3,000,000 before January 1, 1986, and the municipality entered into a contract or issued bonds after January 1, 1986, but before December 31, 1986, to finance redevelopment project costs within a State Sales Tax Boundary, then the Net State Sales Tax Increment means, for the fiscal years beginning July 1, 1990, and July 1, 1991, 100% of the State Sales Tax Increment annually generated within a State Sales Tax Boundary; and notwithstanding any other provision of this Act, for those fiscal years the Department of Revenue shall distribute to those municipalities 100% of their Net State Sales Tax Increment before any distribution to any other municipality and regardless of whether or not those other municipalities will receive 100% of their Net State Sales Tax Increment. For Fiscal Year 1999, and every year thereafter until the year 2007, for any municipality that has not entered into a contract or has not issued bonds prior to June 1, 1988 to finance redevelopment project costs within a State Sales Tax Boundary, the Net State Sales Tax Increment shall be calculated as follows: By multiplying the Net State Sales Tax Increment by 90% in the State Fiscal Year 1999; 80% in the State Fiscal Year 2000; 70% in the State Fiscal Year 2001; 60% in the State Fiscal Year 2002; 50% in the State Fiscal Year 2003; 40% in the State Fiscal Year 2004; 30% in the State Fiscal Year 2005; 20% in the State Fiscal Year 2006; and 10% in the State Fiscal Year 2007. No payment shall be made for State Fiscal Year 2008 and thereafter.

Municipalities that issued bonds in connection with a redevelopment project in a redevelopment project area within the State Sales Tax Boundary prior to July 29, 1991, shall continue to receive their proportional share of the Illinois Tax Increment Fund distribution until the date on which the redevelopment project is completed or terminated, or the date on which the bonds are retired, whichever date occurs first. Refunding of any bonds issued prior to July 29, 1991, shall not alter the Net State Sales Tax Increment.

(j) "State Utility Tax Increment Amount" means an amount equal to the aggregate increase in State electric and gas tax charges imposed on owners and tenants, other than residential customers, of properties located within the redevelopment project area under Section 9-222 of the Public Utilities Act, [FN7] over and above the aggregate of such charges as certified by the Department of Revenue and paid by owners and tenants, other than residential customers, of properties within the redevelopment project area during the base year, which shall be the calendar year immediately prior to the year of the adoption of the ordinance authorizing tax increment allocation financing.

(k) "Net State Utility Tax Increment" means the sum of the following: (a) 80% of the first \$100,000 of State Utility Tax Increment annually generated by a redevelopment project area; (b) 60% of the amount in excess of \$100,000 but not exceeding \$500,000 of the State Utility Tax Increment annually generated by a redevelopment project area; and (c) 40% of all amounts in excess of \$500,000 of State Utility Tax Increment annually generated by a redevelopment project area. For the State Fiscal Year 1999, and every year thereafter until the year 2007, for any municipality that has not entered into a contract or has not issued bonds prior to June 1, 1988 to finance redevelopment project costs within a redevelopment project area, the Net State Utility Tax Increment shall be calculated as follows: By multiplying the Net State Utility Tax Increment by 90% in the State Fiscal Year 1999; 80% in the State Fiscal Year 2000; 70% in the State Fiscal Year 2001; 60% in the State Fiscal Year 2002; 50% in the State Fiscal Year 2003; 40% in the State Fiscal Year 2004; 30% in the State Fiscal Year 2005; 20% in the State Fiscal Year 2006; and 10% in the State Fiscal Year 2007. No payment shall be made for the State Fiscal Year 2008 and thereafter.

Municipalities that issue bonds in connection with the redevelopment project during the period from June 1, 1988 until 3 years after the effective date of this Amendatory Act of 1988 shall receive the Net State Utility Tax Increment, subject to appropriation, for 15 State Fiscal Years after the issuance of such bonds. For the 16th through the 20th State Fiscal Years after issuance of the bonds, the Net State Utility Tax Increment shall be calculated as follows: By multiplying the Net State Utility Tax Increment by 90% in year 16; 80% in year 17; 70% in year 18; 60% in year 19; and 50% in year 20. Refunding of any bonds issued prior to June 1, 1988, shall not alter the revised Net State Utility Tax Increment payments set forth above.

(l) "Obligations" mean bonds, loans, debentures, notes, special certificates or other evidence of indebtedness issued by the municipality to carry out a redevelopment project or to refund outstanding obligations.

(m) "Payment in lieu of taxes" means those estimated tax revenues from real prop-

erty in a redevelopment project area acquired by a municipality which according to the redevelopment project or plan is to be used for a private use which taxing districts would have received had a municipality not adopted tax increment allocation financing and which would result from levies made after the time of the adoption of tax increment allocation financing to the time the current equalized value of real property in the redevelopment project area exceeds the total initial equalized value of real property in said area.

(n) "Redevelopment plan" means the comprehensive program of the municipality for development or redevelopment intended by the payment of redevelopment project costs to reduce or eliminate those conditions the existence of which qualified the redevelopment project area as a "blighted area" or "conservation area" or combination thereof or "industrial park conservation area," and thereby to enhance the tax bases of the taxing districts which extend into the redevelopment project area. Each redevelopment plan shall set forth in writing the program to be undertaken to accomplish the objectives and shall include but not be limited to estimated redevelopment project costs, the sources of funds to pay costs, the nature and term of the obligations to be issued, the most recent equalized assessed valuation of the redevelopment project area, an estimate as to the equalized assessed valuation after redevelopment and the general land uses to apply in the redevelopment project area, a commitment to fair employment practices and an affirmative action plan and if it concerns an industrial park conservation area shall also include a general description of any proposed developer, user and tenant of any property, a description of the type, structure and general character of the facilities to be developed, a description of the type, class and number of new employees to be employed in the operation of the facilities to be developed, and if property is to be annexed to the municipality the terms of the annexation agreement. No redevelopment plan shall be adopted unless a municipality complies with all of the following requirements:

(1) The municipality finds that the redevelopment project area on the whole has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of the redevelopment plan.

(2) The municipality finds that the redevelopment plan and project conform to the comprehensive plan for the development of the municipality as a whole, or, for municipalities with a population of 100,000 or more, regardless of when the redevelopment plan and project was adopted, the redevelopment plan and project either: (i) conforms to the strategic economic development or redevelopment plan issued by the designated planning authority of the municipality, or (ii) includes land uses that have been approved by the planning commission of the municipality.

(3) The redevelopment plan establishes the estimated dates of completion of the redevelopment project and retirement of obligations issued to finance redevelopment project costs. Those dates shall not be more than 23 years from the adoption of the ordinance approving the redevelopment project area if the ordinance was adopted on or after January 15, 1981, and not more than 35 years if the ordinance was adopted before January 15, 1981, or if the ordinance was adopted in April, 1984, or if the municipality is subject to the Local Government Financial Planning and Supervision Act. [FN8] However, for redevelopment project areas for which bonds were issued before July 29, 1991, in connection with a redevelopment project in the area within the State Sales Tax Boundary, the estimated dates of completion of the rede-

velopment project and retirement of obligations to finance redevelopment project costs may be extended by municipal ordinance to December 31, 2013. The extension allowed by this amendatory Act of 1993 shall not apply to real property tax increment allocation financing under Section 11-74.4-8.

(4) The municipality finds, in the case of an industrial park conservation area, also that the municipality is a labor surplus municipality and that the implementation of the redevelopment plan will reduce unemployment, create new jobs and by the provision of new facilities enhance the tax base of the taxing districts that extend into the redevelopment project area.

(5) If any incremental revenues are being utilized under Section 8(a)(1) or 8(a)(2) of this Act in redevelopment project areas approved by ordinance after January 1, 1986, the municipality finds: (a) that the redevelopment project area would not reasonably be developed without the use of such incremental revenues, and (b) that such incremental revenues will be exclusively utilized for the development of the redevelopment project area.

(o) "Redevelopment project" means any public and private development project in furtherance of the objectives of a redevelopment plan.

(p) "Redevelopment project area" means an area designated by the municipality, which is not less in the aggregate than 1 1/2 acres and in respect to which the municipality has made a finding that there exist conditions which cause the area to be classified as an industrial park conservation area or a blighted area or a conservation area, or a combination of both blighted areas and conservation areas.

(q) "Redevelopment project costs" mean and include the sum total of all reasonable or necessary costs incurred or estimated to be incurred, and any such costs incidental to a redevelopment plan and a redevelopment project. Such costs include, without limitation, the following:

(1) Costs of studies, surveys, development of plans, and specifications, implementation and administration of the redevelopment plan including but not limited to staff and professional service costs for architectural, engineering, legal, marketing, financial, planning or other services, provided however that no charges for professional services may be based on a percentage of the tax increment collected;

(2) Property assembly costs, including but not limited to acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;

(3) Costs of rehabilitation, reconstruction or repair or remodeling of existing public or private buildings and fixtures;

(4) Costs of the construction of public works or improvements;

(5) Costs of job training and retraining projects;

(6) Financing costs, including but not limited to all necessary and incidental

expenses related to the issuance of obligations and which may include payment of interest on any obligations issued hereunder accruing during the estimated period of construction of any redevelopment project for which such obligations are issued and for not exceeding 36 months thereafter and including reasonable reserves related thereto;

(7) All or a portion of a taxing district's capital costs resulting from the redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs;

(8) Relocation costs to the extent that a municipality determines that relocation costs shall be paid or is required to make payment of relocation costs by federal or State law;

(9) Payment in lieu of taxes;

(10) Costs of job training, advanced vocational education or career education, including but not limited to courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more taxing districts, provided that such costs (i) are related to the establishment and maintenance of additional job training, advanced vocational education or career education programs for persons employed or to be employed by employers located in a redevelopment project area; and (ii) when incurred by a taxing district or taxing districts other than the municipality, are set forth in a written agreement by or among the municipality and the taxing district or taxing districts, which agreement describes the program to be undertaken, including but not limited to the number of employees to be trained, a description of the training and services to be provided, the number and type of positions available or to be available, itemized costs of the program and sources of funds to pay for the same, and the term of the agreement. Such costs include, specifically, the payment by community college districts of costs pursuant to Sections 3-37, 3-38, 3-40 and 3-40.1 of the Public Community College Act [FN9] and by school districts of costs pursuant to Sections 10-22.20a and 10-23.3a of The School Code; [FN10]

(11) Interest cost incurred by a redeveloper related to the construction, renovation or rehabilitation of a redevelopment project provided that:

(A) such costs are to be paid directly from the special tax allocation fund established pursuant to this Act; and

(B) such payments in any one year may not exceed 30% of the annual interest costs incurred by the redeveloper with regard to the redevelopment project during that year;

(C) if there are not sufficient funds available in the special tax allocation fund to make the payment pursuant to this paragraph (11) then the amounts so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and

(D) the total of such interest payments paid pursuant to this Act may not exceed

30% of the total (i) cost paid or incurred by the redeveloper for the redevelopment project plus (ii) redevelopment project costs excluding any property assembly costs and any relocation costs incurred by a municipality pursuant to this Act.

(12) Unless explicitly stated herein the cost of construction of new privately-owned buildings shall not be an eligible redevelopment project cost.

If a special service area has been established pursuant to the Special Service Area Tax Act, [FN11] then any tax increment revenues derived from the tax imposed pursuant to the Special Service Area Tax Act may be used within the redevelopment project area for the purposes permitted by that Act as well as the purposes permitted by this Act.

(r) "State Sales Tax Boundary" means the redevelopment project area or the amended redevelopment project area boundaries which are determined pursuant to subsection (9) of Section 11-74.4-8a of this Act. The Department of Revenue shall certify pursuant to subsection (9) of Section 11-74.4-8a the appropriate boundaries eligible for the determination of State Sales Tax Increment.

(s) "State Sales Tax Increment" means an amount equal to the increase in the aggregate amount of taxes paid by retailers and servicemen, other than retailers and servicemen subject to the Public Utilities Act, on transactions at places of business located within a State Sales Tax Boundary pursuant to the Retailers' Occupation Tax Act, the Use Tax Act, the Service Use Tax Act, and the Service Occupation Tax Act, except such portion of such increase that is paid into the State and Local Sales Tax Reform Fund, the Local Government Distributive Fund, the Local Government Tax Fund and the County and Mass Transit District Fund, for as long as State participation exists, over and above the Initial Sales Tax Amounts, Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts for such taxes as certified by the Department of Revenue and paid under those Acts by retailers and servicemen on transactions at places of business located within the State Sales Tax Boundary during the base year which shall be the calendar year immediately prior to the year in which the municipality adopted tax increment allocation financing, less 3.0% of such amounts generated under the Retailers' Occupation Tax Act, Use Tax Act and Service Use Tax Act and the Service Occupation Tax Act, which sum shall be appropriated to the Department of Revenue to cover its costs of administering and enforcing this Section. For purposes of computing the aggregate amount of such taxes for base years occurring prior to 1985, the Department of Revenue shall compute the Initial Sales Tax Amount for such taxes and deduct therefrom an amount equal to 4% of the aggregate amount of taxes per year for each year the base year is prior to 1985, but not to exceed a total deduction of 12%. The amount so determined shall be known as the "Adjusted Initial Sales Tax Amount". For purposes of determining the State Sales Tax Increment the Department of Revenue shall for each period subtract from the tax amounts received from retailers and servicemen on transactions located in the State Sales Tax Boundary, the certified Initial Sales Tax Amounts, Adjusted Initial Sales Tax Amounts or Revised Initial Sales Tax Amounts for the Retailers' Occupation Tax Act, the Use Tax Act, the Service Use Tax Act and the Service Occupation Tax Act. For the State Fiscal Year 1989 this calculation shall be made by utilizing the calendar year 1987 to determine the tax amounts received. For the State Fiscal Year 1990, this calculation shall be made by utilizing the period from January 1, 1988, until September 30, 1988, to determine the tax amounts received from retailers and servicemen, which shall have deducted therefrom nine-

twelfths of the certified Initial Sales Tax Amounts, Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts as appropriate. For the State Fiscal Year 1991, this calculation shall be made by utilizing the period from October 1, 1988, until June 30, 1989, to determine the tax amounts received from retailers and servicemen, which shall have deducted therefrom nine-twelfths of the certified Initial State Sales Tax Amounts, Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts as appropriate. For every State Fiscal Year thereafter, the applicable period shall be the 12 months beginning July 1 and ending on June 30, to determine the tax amounts received which shall have deducted therefrom the certified Initial Sales Tax Amounts, Adjusted Initial Sales Tax Amounts or the Revised Initial Sales Tax Amounts. Municipalities intending to receive a distribution of State Sales Tax Increment must report a list of retailers to the Department of Revenue by October 31, 1988 and by July 31, of each year thereafter.

(t) "Taxing districts" means counties, townships, cities and incorporated towns and villages, school, road, park, sanitary, mosquito abatement, forest preserve, public health, fire protection, river conservancy, tuberculosis sanitarium and any other municipal corporations or districts with the power to levy taxes.

(u) "Taxing districts' capital costs" means those costs of taxing districts for capital improvements that are found by the municipal corporate authorities to be necessary and directly result from the redevelopment project.

(v) As used in subsection (a) of Section 11-74.4-3 of this Act, "vacant land" means any parcel or combination of parcels of real property without industrial, commercial<<+, +>> and residential buildings which has not been used for commercial agricultural purposes within 5 years prior to the designation of the redevelopment project area, unless <<+the+>> <<-such->> parcel is included in an industrial park conservation area or <<+the+>> <<- such->> parcel has been subdivided<<+; provided that if the parcel was part of a larger tract that has been divided into 3 or more smaller tracts that were accepted for recording during the period from 1950 to 1990, then the parcel shall be deemed to have been subdivided, and all proceedings and actions of the municipality taken in that connection with respect to any previously approved or designated redevelopment project area or amended redevelopment project area are hereby validated and hereby declared to be legally sufficient for all purposes of this Act+>>.

(w) "Annual Total Increment" means the sum of each municipality's annual Net Sales Tax Increment and each municipality's annual Net Utility Tax Increment. The ratio of the Annual Total Increment of each municipality to the Annual Total Increment for all municipalities, as most recently calculated by the Department, shall determine the proportional shares of the Illinois Tax Increment Fund to be distributed to each municipality.

<<+(Source: P.A. 86-928; 86-1028; 86-1398; 86-1419; 87-1; 87-435; 87- 813; 87-853; 87-895; 87-958; 87-1258; 87-1272.)+>>

[FN1] 35 ILCS 120/1 et seq.

[FN2] 35 ILCS 105/1 et seq.

[FN3] 35 ILCS 110/1 et seq.

[FN4] 35 ILCS 115/1 et seq.

[FN5] 65 ILCS 5/8-11-1, 5/8-11-1.3.

[FN6] 65 ILCS 5/8-11-1.4, 5/8-11-5.

[FN7] 220 ILCS 5/9-222.

[FN8] 50 ILCS 320/1 et seq.

[FN9] 110 ILCS 805/3-37, 805/3-38, 805/3-40, 805/3-40.1.

[FN10] 105 ILCS 5/10-22.20A, 5/10-23.3A.

[FN11] 35 ILCS 235/0.01 et seq.

Section 16. The School Code is amended by changing Sections 3-1.1 and 6-5 as follows:

<< IL ST CH 105 § 5/3-1.1 >>

[S.H.A. 105 ILCS 5/3-1.1] (105 ILCS 5/3-1.1) (from Ch. 122, par. 3-1.1)

§ 3-1.1. Eligible voters. Whenever a <<+unit+>> school district is located in more than one educational service region <<-but all public schools and attendance centers of that school district are located exclusively in only one of those educational service regions->>, <<+a+>> qualified <<+ elector+>> <<-electors->> residing in that <<+unit+>> school district but outside of the educational service region <<+administered by the regional superintendent of schools having supervision and control over that unit school district+>> <<-in which all public schools and attendance centers of that school district are located->> shall <<-nevertheless->> be eligible to vote in any election held to elect the regional superintendent of schools of the educational service region <<+that is administered by the regional superintendent of schools who has supervision and control over+>> <<-in which all public schools and attendance centers of->> that <<+unit+>> school district <<-are located->>, but <<+the elector+>> <<-they->> shall not also be eligible to vote in the election held to elect the regional superintendent of schools of the educational service region in which <<+the elector resides+>> <<-they reside->>.

<<+Not less than 100 days before each general primary election, the regional superintendent of schools shall certify to the State Board of Elections a list of each unit school district under his or her supervision and control and each county in which all or any part of each of those districts is located. The State Board of Elections shall certify each of those unit school districts and counties to the appropriate election authorities within 20 days after receiving the list certified by the regional superintendent of schools.+>>

<<+The election authority in a single county educational service region whose regional superintendent of schools exercises supervision and control over a unit school district that is located in that single county educational service region and in one or more other educational service regions shall certify to the election authority of each of those other educational service regions in which the unit school district is located the candidates for the office of the regional superintendent of schools exercising supervision and control over that unit school district.+>>

<<+(Source: P.A. 87-328.)+>>

<< IL ST CH 105 § 5/6-5 >>

[S.H.A. 105 ILCS 5/6-5] (105 ILCS 5/6-5) (from Ch. 122, par. 6-5)

§ 6-5. <<+Qualifications and+>> eligibility of voters.

<<+A+>> <<-Any->> person is <<+qualified+>> <<-eligible->> to vote at <<+an+>> <<-any->> election for members of the regional board of school trustees who is a registered voter as provided in the Election Code and has resided within the State and in the voting precinct for 28 days immediately preceding the election, and who is a citizen of the United States and has attained the age of 18 years.

<<+Whenever a unit school district is located in more than one educational service region, a qualified elector residing in that unit school district but outside of the educational service region administered by the regional superintendent of schools having supervision and control over that unit school district shall be eligible to vote in any election held to elect members of the regional board of school trustees for the educational service that is administered by the regional superintendent of schools who has supervision and control over that unit school district, but the elector shall not also be eligible to vote in the election held to elect the members of the regional board of school trustees for the educational service region in which the elector resides.+>>

<<+Not less than 100 days before each nonpartisan election, the regional superintendent of schools shall certify to the State Board of Elections a list of each unit school district under his or her supervision and control and each county in which all or any part of each of those districts is located. The State Board of Elections shall certify each of those unit school districts and counties to the appropriate election authorities within 20 days after receiving the list certified by the regional superintendent of schools.+>>

<<+The election authority in a single county educational service region whose regional superintendent of schools exercises supervision and control over a unit school district that is located in that single county educational service region and in one or more other educational service regions shall certify to the election authority of each of those other educational service regions in which the unit school district is located the candidates for members of the regional board of school trustees for the educational service region that is administered by the regional superintendent of schools exercising supervision and control over that unit

school district.+>>

<<+(Source: P.A. 78-514; 78-1279.)+>>

Section 16.1. The School Code is amended by changing or adding Sections 1B-21 and 34-8.5 as follows:

<< IL ST CH 105 § 5/1B-21 >>

[S.H.A. 105 ILCS 5/1B-21] (105 ILCS 5/1B-21 new)

<<+\$ 1B-21. Dissolution and annexation. Any school district that before the effective date of this amendatory Act of 1994 has received approval from its regional board of school trustees to dissolve and annex to an adjoining district and that has had the appointment of a Financial Oversight Panel under this Article 1B to assist its continued operation during the appeal of the decision of the regional board of school trustees shall be dissolved and annexed to the adjoining district approved in the decision of the regional board of school trustees, effective July 1, 1994. Except as otherwise provided by this amendatory Act of 1994, the dissolution and annexation shall be governed by Article 7 of the School Code [FN1] and be treated as if the dissolution and annexation had taken effect pursuant to the decision of the regional board of school trustees. The annexing district's supplementary State aid payable under Section 18-8.3 of the School Code [FN2] shall be calculated as of June 30 prior to the date of the decision of the regional board of school trustees.+>>

[FN1] 105 ILCS 5/7-01 et seq.

[FN2] 105 ILCS 5/18-8.3.

<< IL ST CH 105 § 5/34-8.5 >>

[S.H.A. 105 ILCS 5/34-8.5] (105 ILCS 5/34-8.5)

§ 34-8.5. Chicago Learning Zone. The General Assembly finds that:

(1) All schools should be organized based upon the premise that all students can learn and achieve educational excellence. The system of education or school district should be organized and structured in a manner that best enhances the learning and performance of students.

(2) Additional reform in the system and structure of public education in the City of Chicago may bring about improved student performance.

(3) Reform of the educational system in Chicago requires more than building-specific improvements in student learning.

(4) Large urban educational systems are highly structured by statutes, rules, regulations, procedures and policies designed at the state and central board of education levels. These prescriptive approaches to structuring education may serve

to inhibit the flexibility necessary to assure that local schools are organized and operate to maximize learning and student improvement.

(5) The system of education in Chicago should assure that the goals for student performance are set for each building and that the flexible means for attaining these goals are, to the maximum extent feasible, available to individual school buildings.

(6) A well designed educational system requires building-level innovation and flexibility. This can best be attained with a supportive administrative and regulatory structure that maintains set, clear learning outcome goals for students and rigorously monitors schools in the attainment of those goals, while allowing for individual buildings to maximize their flexibility of resource allocation to attain learning goals.

In consideration of these findings, the General Assembly should consider the development of a "Learning Zone" for the City of Chicago, defined as a significant portion of the Chicago Public School System that operates as an administrative entity, serves approximately 10% of public school students, and includes a cluster of contiguous schools. Subject to the report of the Chicago Learning Zone Advisory Committee created by this Section 34-8.5, the General Assembly shall consider additional enabling legislation to create the Chicago Public Schools Learning Zone.

To achieve this purpose, there is hereby created the Chicago Learning Zone Advisory Committee composed of the following members: the Governor or his or her staff designee, the State Superintendent of Education, the President of the Board of Education, and the Mayor of Chicago or his or her designee. In addition the Governor shall appoint two representatives selected in consultation with the Chicago Teachers' Union, two representatives selected in consultation with other Chicago Board of Education unions, one representative of the Chicago principals, two representatives of the local school councils or council organizations, and two representatives from the Chicago community or civic organizations concerned with school reform. The President of the Illinois Senate, the Minority Leader of the Senate, the Speaker of the House and the Minority Leader of the House shall each appoint one legislative member. The Governor shall designate the Chairperson of the Committee from his or her appointees.

The Committee shall develop a proposal for the creation of a Learning Zone for the City of Chicago to give Chicago schools flexibility in educating Chicago children. The Committee shall work with State and local officials, the Education Commission of the States, and officials of the United States Department of Education and other federal officials to develop a plan for a Learning Zone project model, which may include recommendations for expanding waiver procedures concerning State laws, rules and regulations where appropriate to permit innovation and flexibility in the Learning Zone, shall suggest the location and size of such a learning zone, and shall offer any other relevant suggestions related to the reform of urban schools.

The Committee may also develop recommendations for waivers of budgeting, policies, contractual agreement provisions, work rules and other procedures and rules and regulations of the Chicago Board of Education, designed or intended to assist in the fostering of a Learning Zone that places primary emphasis on improving the stu-

dent performance within the public schools of the Learning Zone.

In the discharge of its duties, the Committee may provide recommendations for an administrative structure for the Learning Zone that protects the interests of students and promotes the maximum attainment of educational improvement by students.

In exercising its responsibilities under this Section, the Committee shall receive such assistance and support from the staff and facilities of the Governor's office and the State Board of Education as are reasonably necessary.

The Committee shall report back to the Governor, the General Assembly, the Chicago Board of Education and the Chicago School Finance Authority with its specific recommendations and suggestions by <<+April+>> <<-January->> 1, 1994.

<<+(Source: P.A. 88-200.)+>>

Section 17. The Family Practice Residency Act is amended by changing Section 10 as follows:

<< IL ST CH 110 § 935/10 >>

[S.H.A. 110 ILCS 935/10] (110 ILCS 935/10) (from Ch. 144, par. 1460)

§ 10. Scholarship recipients who fail to fulfill the obligation described in subsection (d) of Section 3.07 of this Act shall pay to the Department a sum equal to 3 times the amount of the annual scholarship grant for each year the recipient fails to fulfill such obligation. The amounts paid to the Department under this Section shall be deposited into the Community Health Center Care Fund and shall be used by the Department to improve access to primary health care services as authorized by Section 55.53<<+(a)+>> of The Civil Administrative Code of Illinois. [FN1]

<<+The Department may transfer to the Illinois Development Finance Authority, into an account outside the State treasury, moneys in the Community Health Center Care Fund as needed, but not to exceed an amount established, by rule, by the Department to establish a reserve or credit enhancement escrow account to support a financing program or a loan or equipment leasing program to provide moneys to support the purposes of Section 55.53(a) of the Civil Administrative Code of Illinois. The disposition of moneys at the conclusion of any financing program under this Section shall be determined by an interagency agreement.+>>

<<+(Source: P.A. 86-1187; 87-655.)+>>

[FN1] 20 ILCS 2310/55.53.

Section 17.5. The Illinois Migrant Labor Camp Law is amended by changing Section 11 and by adding Section 18 as follows:

<< IL ST CH 210 § 110/11 >>

[S.H.A. 210 ILCS 110/11] (210 ILCS 110/11) (from Ch. 111 1/2 , par. 185.11)

§ 11. In case the holder of any license under the provisions of this Act fails to maintain and operate a Migrant Labor Camp in accordance with the provisions of this Act and the rules and regulations of the Department relating thereto, the Department may revoke or suspend the license for the operation and maintenance of such camp. The Department shall first serve upon the licensee a notice specifying the manner in which the licensee has failed to comply with provisions of this Act or such rules and regulations of the Department and shall fix a time not less than ten days, within which the objectionable condition or conditions must be removed or corrected. If the licensee fails to remove or correct such objectionable condition or conditions within the time fixed by the Department, the Department may revoke or suspend such license. However, if the objectionable condition or conditions are such as to endanger the health or well-being of the inhabitants of such camp, the Department may immediately suspend such license.

<<+The Department shall assess administrative fines against a person who provides housing for migrant workers for violations of this Act or the rules promulgated under this Act. The fines shall be established by the Department by rule. The Department shall provide written notification of violations and allow a minimum of 10 days for correction before imposing administrative fines.+>>

<<+(Source: Laws 1961, p. 3904.)+>>

<< IL ST CH 210 § 110/18 >>

[S.H.A. 210 ILCS 110/18] (210 ILCS 110/18 new)

<<+\$ 18. The Department shall deposit all fees and fines collected under this Act into the Facility Licensing Fund. Moneys in the Fund shall be used for the enforcement of this Act.+>>

Section 18. The Illinois Insurance Code is amended by changing Sections 3.1, 86, 91, 98, 105, and 173.1 as follows:

<< IL ST CH 215 § 5/3.1 >>

[S.H.A. 215 ILCS 5/3.1] (215 ILCS 5/3.1) (from Ch. 73, par. 615.1)

§ 3.1. Definitions of admitted assets. "Admitted Assets" includes the investments authorized or permitted by this Code, the credit for reinsurance allowed by this Code, and in addition thereto, only the following:

(a) Petty cash and other cash funds in the company's principal or any official branch office and under the control of the company.

(b) Immediately withdrawable funds on deposit in demand accounts, in a bank or trust company as defined in Section 124.7c or like funds actually in the principal or any official branch office at statement date, and, in transit to such bank or trust company with authentic deposit credit given prior to the close of business on the fifth bank working day following the statement date.

(c) The amount fairly estimated as recoverable on cash deposited in a closed bank or trust company, if qualifying under the provisions of this Section prior to the suspension of such bank or trust company.

(d) Bills and accounts receivable collateralized by securities of the kind in which the company is authorized to invest.

(e) Bills receivable not past due covering uncollected premiums taken by a company in the transaction of business described in Class 3 of Section 4, in an amount not to exceed the unearned premium reserve liability calculated on each respective policy.

(f) Gross premium or premium deposits in course of collection, excluding group accident and health business, for in force insurance coverages written by fire, casualty and reciprocal companies, not more than 90 days past due, less commissions due thereon to agents.

(g) Net amount of uncollected premiums on group life and group accident and health policies, not more than 90 days past due.

(h) Due and uncollected accident and health premiums on in force individual policies, on insurance written by Class 1, Section 4 companies, less commissions due thereon to agents; not exceeding in the aggregate the premium reserve liability computed on such business.

(i) Premium notes, policy loans and liens, and the net amount of uncollected and deferred premiums on individual life insurance policies, not in excess of the liability for the legal reserves specified in Sections 223 or 281 of this Code on such individual life insurance policies.

(j) Premium and assessment notes, certificate loans and liens, and the gross amount less loading, of premiums or assessments actually collected by subordinate lodges not yet turned over to the Supreme Lodge on individual life insurance certificates not in excess of the liability for the legal reserves specified in Sections 288 or 297 on such individual life insurance certificates.

(k) Mortuary assessments due and unpaid on last call made within 60 days, on insurance in force and for which notices have been issued, not in excess of the liability for the unpaid claims which are to be paid by the proceeds.

(l) Amounts fairly estimated as recoverable from advances made on contracts under surety bonds.

(m) Amounts receivable from insurance companies authorized to do business in this State and from associations or bureaus owned or controlled by five or more separate and nonaffiliated, by ownership or management, insurance companies of which a majority thereof are authorized to transact business in this State. The amount of those receivables allowed as admitted assets may not exceed the lesser of 5% of the company's total admitted assets or 10% of the company's surplus as regards policy-

holders. Amounts receivable from insurance companies or associations or bureaus not meeting the preceding standards of this Section if collateralized or approved in the manner prescribed by Section 173.1.

(n) Tax refunds due from the United States or any state<<+, +>> <<- and->> the Government of Canada or any province<<+, or+>> <<-and->> the Commonwealth of Puerto Rico <<+or amounts due to a subsidiary from a parent under a tax allocation agreement that conforms with rules adopted by the Director+>>.

(o) The interest accrued on mortgage loans conforming to this Code, not exceeding an aggregate amount on an individual loan of one year's total due and accrued interest.

(p) The rents accrued and owing to the company on real and personal property, directly or beneficially owned, not exceeding on each individual property the amount of one year's total due and accrued rent.

(q) Interest or rents accrued on conditional sales agreements, security interests, chattel mortgages and real or personal property under lease to other corporations, all conforming to this Code, and not exceeding on any individual investment, the amount of one year's total due and accrued interest or rent.

(r) The fixed and required interest due and accrued on bonds and other like evidences of indebtedness, conforming to this Code, and not in default.

(s) Dividends receivable on shares of stock conforming to this Code; provided that the market price taken for valuation purposes does not include the value of the dividend.

(t) The interest or dividends due and payable, but not credited, on deposits in banks and trust companies or on accounts with savings and loan associations.

(u) Interest accrued on secured loans conforming to this Code, not exceeding the amount of one year's interest on any loan.

(v) Interest accrued on tax anticipation warrants.

(w) The value of electronic computer or data processing machines or systems purchased for use in connection with the business of the company, if such machines or systems whenever purchased have an aggregate original cost to the company of at least \$75,000. The amortized value of such machines or systems at the end of any calendar year shall not be greater than the original purchase price less 10% for each completed year, or pro rata portion for any fraction thereof, after such purchase, with the total admissible value at any statement date to be limited to an amount not exceeding 2% of the company's admitted assets at such statement date.

(x) Amounts, other than premium, receivable from affiliates, not outstanding for more than 3 months, and arising under, management contracts or service agreements which meet the requirements of Section 141.1 of the Illinois Insurance Code to the extent that the affiliate has liquid assets sufficient to pay the balance. The

amount of those receivables included in admitted assets may not exceed the lesser of 5% of the company's admitted assets or 10% of the company's surplus as regards policyholders. For purposes of this subsection, "affiliate" has the meaning given that term in Article VIII 1/2 of the Illinois Insurance Code.

<<+(Source: P.A. 88-364.)+>>

<< IL ST CH 215 § 5/86 >>

[S.H.A. 215 ILCS 5/86] (215 ILCS 5/86) (from Ch. 73, par. 698)

§ 86. Scope of Article.

(1) This Article <<+applies+>> <<-shall apply->> to all <<+groups including incorporated and individual unincorporated underwriters+>> <<- individuals and aggregations of individuals->> transacting an insurance business in this State through an attorney-in-fact under the name Lloyds or under a Lloyds plan of operation. <<+Groups that meet the requirements of subsection (3) are referred to in this Code as "Lloyds", and incorporated and individual unincorporated underwriters are referred to as "underwriters".+>> <<-Such individuals and aggregations of individuals are referred to in this Code as "Lloyds".->>

(2) As used in this Code "Domestic Lloyds" means a Lloyds having its home office in this State; "Foreign Lloyds" means a Lloyds having its home office in any state of the United States other than this State; and "Alien Lloyds" means a Lloyds having its home office or principal place of business in any country other than the United States.

<<+(3) A domestic Lloyds must: (i) be established pursuant to a statute or written charter; (ii) provide for governance by a board of directors or similar body; and (iii) establish and monitor standards of solvency of its underwriters. A foreign or alien Lloyds must be subject to requirements of its state or country of domicile. Those requirements must be substantially similar to those required of domestic Lloyds.+>>

<<+(Source: Laws 1937, p. 696.)+>>

<< IL ST CH 215 § 5/91 >>

[S.H.A. 215 ILCS 5/91] (215 ILCS 5/91) (from Ch. 73, par. 703)

§ 91. Declaration of domestic Lloyds. The attorney-in-fact for underwriters who desire to form a domestic Lloyds under this Article shall sign and acknowledge before an officer authorized to take acknowledgments, a declaration in duplicate. When the attorney-in-fact is a corporation the declaration shall be acknowledged by an officer of such corporation. The declaration shall set forth

(a) the name of the attorney-in-fact, and the name or designation under which contracts are to be effected;

(b) the location of the office of the attorney-in-fact;

(c) the names and addresses, including streets and numbers, if any, of the <<- individual->> underwriters;

(d) the class or classes of insurance which such Lloyds proposes to transact and the kinds of insurance in each class which it proposes to write;

(e) such other provisions not inconsistent with law which may be deemed by the attorney-in-fact or the underwriters to be necessary or advisable.

<<+(Source: Laws 1937, p. 696.)+>>

<< IL ST CH 215 § 5/98 >>

[S.H.A. 215 ILCS 5/98] (215 ILCS 5/98) (from Ch. 73, par. 710)

§ 98. Maximum single risk.

(1) The net maximum amount of insurance to be assumed by an <<- individual->> underwriter of a domestic Lloyds upon any single risk for each kind of insurance shall not exceed ten per centum of the value of the cash and securities deposited in trust by such underwriter plus the share of admitted assets other than underwriters' deposits of such Lloyds belonging to such underwriter less the share of liabilities and reserves of such Lloyds allocable to such underwriter, but in no event shall it exceed ten per centum of the value of the cash or securities deposited in trust by such underwriter.

(2) Whenever the Director shall so require, the attorney-in-fact of a domestic Lloyds shall file with the Director a verified statement setting forth

(a) the names and addresses of all underwriters;

(b) a description of the cash and securities deposited in trust by each underwriter;

(c) the maximum amount of insurance assumed by each underwriter upon any single risk for each kind of insurance; and

(d) That the maximum amount of insurance assumed or made upon any single risk for each kind of insurance by any underwriter does not exceed the limitation set forth in subsection (1) of this section.

<<+(Source: Laws 1937, p. 696.)+>>

<< IL ST CH 215 § 5/105 >>

[215 ILCS 5/105] (215 ILCS 5/105) (from Ch. 73, par. 717)

§ 105. Director as agent<<+;+>> service of process.

(1) The attorney-in-fact of every Lloyds transacting business in this State shall file with the Director a duly executed instrument whereby such Lloyds shall appoint and constitute the Director, his successor or successors in office, the true and lawful agent of such Lloyds upon whom all lawful process in any action or legal proceeding against such Lloyds may be served, and shall agree that any lawful process against such Lloyds which may be served upon said agent shall be of the same force and validity as if served upon the attorney-in-fact, and that the authority thereof shall continue in force irrevocably so long as any liability of such Lloyds in this State shall remain outstanding.

(2) In any suit instituted against any domestic, foreign or alien Lloyds transacting business in this State, it shall not be necessary to name the <<- individual->> underwriters as parties defendant, but such Lloyds may be named as the party defendant in any such suit and service may be had upon all the underwriters by service upon the last appointed attorney-in-fact or by service upon the Director, and not otherwise. Any such suit may be brought in the county in which the cause of action arises or in which the claimant resides. When such process is served upon the Director as agent to accept service, duplicate copies of such process shall be delivered to him and he shall immediately forward one copy of each such process to the last appointed attorney-in-fact by certified or registered mail, postage prepaid, giving the day and hour of such service.

<<+(Source: P.A. 83-598.)+>>

<< IL ST CH 215 § 5/173.1 >>

[S.H.A. 215 ILCS 5/173.1] (215 ILCS 5/173.1) (from Ch. 73, par. 785.1)

§ 173.1. Credit allowed a domestic ceding insurer.

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an admitted asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (1)(A) or (B) or (C) or (D). If meeting the requirements of subsection (1)(C), the requirements of subsection (1)(E) must also be met.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this State.

(B) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:

(1) files with the Director evidence of its submission to this State's jurisdiction;

(2) submits to this State's authority to examine its books and records;

(3) is licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(4) files annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(5) Maintains a surplus as regards policyholders in an amount that is not less than \$20,000,000 and whose accreditation has been approved by the Director. No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the Director after notice and hearing.

(C) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subsection 3(B), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Director information substantially the same as that required to be reported on the NAIC Annual statement form by licensed insurers to enable the Director to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000. In the case of a group <<+including incorporated and+>> <<-of->> individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States, and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; <<+the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members;+>> and the group shall make available to the Director an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(2) In the case of a group of incorporated insurers under common administration that complies with the filing requirements contained in the previous paragraph, that has continuously transacted an insurance business outside the United States for at least 3 years immediately before making application for accreditation and submits to this State's authority to examine its books and records and bears the expense of the examination, and that has aggregate policyholders' surplus of \$10,000,000,000, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group, plus the group shall maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group, and each member of the group shall make available to the Director an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(3) The trust shall be established in a form approved by the Director. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Director. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(4) No later than February 28 of each year the trustees of the trust shall report to the Director in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(D) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (1)(A), (B), or (C) but only with respect to the insurance of risks located in jurisdictions where that reinsurance is required by applicable law or regulation of that jurisdiction.

(E) If the assuming insurer is not licensed to transact insurance in this State or an accredited reinsurer in this State, the credit permitted by subsection (1)(C) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(2) To designate the Director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation to arbitrate is created in the agreement.

(2) A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (1) shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection (3)(B). This security may be in the form of:

(A) Cash.

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners that conform to the requirements of Article VIII of this Code. [FN1]

(C) Clean, irrevocable, unconditional, letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection (3)(A). The letters of credit shall be issued or confirmed no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing due date of its annual statement, which letters of credit shall be for an original term of not less than one year. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

(3)(A) For purposes of subsection 2(C), a "qualified United States financial institution" means an institution that:

(1) is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies;

(3) has been designated by the Securities Valuation Office of the National Association of Insurance Commissioners as meeting its credit standards for issuing or confirming letter of credit; and

(4) is not affiliated with the assuming company.

(B) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) is organized or, in the case of the U.S. branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers;

(2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) is not affiliated with the assuming company, however, if the subject of the reinsurance contract is insurance written pursuant to Section 155.51 of this Code, the financial institution may be affiliated with the assuming company with the prior approval of the Director.

<<+(Source: P.A. 86-632; 87-108; 87-1090.)+>>

[FN1] 215 ILCS 5/124 et seq.

Section 19. The Private Detective, Private Alarm, and Private Security Act of 1993 is amended by changing Section 30 as follows:

<< IL ST CH 225 § 446/30 >>

[S.H.A. 225 ILCS 446/30] (225 ILCS 446/30)

§ 30. Exemptions. This Act does not apply to:

(1) An officer or employee of the United States, this State, or any political subdivision of either while the officer or employee is engaged in the performance of his or her official duties within the course and scope of his or her employment with the United States, this State, or any political subdivision of either. However, any person who offers his or her services as a private detective or private security contractor, or any title when similar services are performed for compensation, fee, or other valuable consideration, whether received directly or indirectly, is subject to this Act and its licensing requirements.

(2) An attorney-at-law licensed to practice in Illinois while engaging in the practice of law.

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

(i) Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer.

(ii) Information for employment purposes.

(iii) Information for the underwriting of insurance involving the consumer.

(4) Insurance adjusters legally employed <<+or under contract+>> as adjusters and who engage in no other investigative activities other than those directly connected with adjustment of claims against an insurance company <<+ or self-insured by which they are employed or with which they have a contract. No insurance adjuster or company may utilize the term "investigation" or any derivative thereof in its company name or in its advertising other than for the handling of insurance claims.+>> <<- when there exists an employer/employee relationship.->>

<<+For the purposes of this Code, "insurance adjuster" includes any person expressly authorized to act on behalf of an insurance company or self-insured and any employee thereof who acts or appears to act on behalf of the insurance company or self-insured in matters relating to claims, including but not limited to independent contractors while performing claim services at the direction of the company.+>>

(5) A person engaged exclusively and employed by a person, firm, association, or corporation in the business of transporting persons or property in interstate commerce and making an investigation related to the business of that employer.

(6) Any person, watchman, or guard employed exclusively and regularly by one employer in connection with the affairs of that employer only and there exists an employer/employee relationship.

(7) Any law enforcement officer, as defined in the Illinois Police Training Act, who has successfully completed the requirements of basic law enforcement and firearms training as prescribed by the Illinois Local Governmental Law Enforcement Officers Training Board, employed by an employer in connection with the affairs of that employer, provided he or she is exclusively employed by the employer during the hours or times he or she is scheduled to work for that employer, and there exists an employer and employee relationship.

In this subsection an "employee" is a person who is employed by an employer who has the right to control and direct the employee who performs the services in question, not only as to the result to be accomplished by the work, but also as to the details and means by which the result is to be accomplished; and an "employer" is any person or entity, with the exception of a private detective, private detective agency, private security contractor, private security contractor agency, private alarm contractor, or private alarm contractor agency, whose purpose it is to hire persons to perform the business of a private detective, private detective agency, private security contractor, private security contractor agency, private alarm contractor, or private alarm contractor agency.

(8) A person who sells burglar alarm systems and does not install, monitor, maintain, alter, repair, service, or respond to burglar alarm systems at protected premises or premises to be protected, provided:

(i) The burglar alarm systems are approved either by Underwriters Laboratories or another authoritative source recognized by the Department and are identified by a federally registered trademark.

(ii) The owner of the trademark has expressly authorized the person to sell the trademark owner's products, and the person provides proof of this authorization upon the request of the Department.

(iii) The owner of the trademark maintains, and provides upon the Department's request, a certificate evidencing insurance for bodily injury or property damage arising from faulty or defective products in an amount not less than \$1,000,000 combined single limit; provided that the policy of insurance need not relate exclusively to burglar alarm systems.

(9) A person who sells, installs, maintains, or repairs automobile alarm systems.

(10) A person, firm, or corporation engaged in fire protection engineering, including the design, testing, and inspection of fire protection systems.

(11) The practice of professional engineering as defined in the Professional Engineering Practice Act of 1989. [FN1]

(12) The practice of structural engineering as defined in the Structural Engineering Licensing Act of 1989. [FN2]

(13) The practice of architecture as defined in the Illinois Architecture Practice Act of 1989. [FN3]

(14) The activities of persons or firms licensed under the Illinois Public Accounting Act [FN4] if performed in the course of their professional practice.

<<+(Source: P.A. 88-363.)+>>

[FN1] 225 ILCS 325/1 et seq.

[FN2] 225 ILCS 340/1 et seq.

[FN3] 225 ILCS 305/1 et seq.

[FN4] 225 ILCS 450/0.01 et seq.

Section 19.5. The Real Estate License Act of 1983 is amended by changing Section 18.2a as follows:

<< IL ST CH 225 § 455/18.2a >>

[S.H.A. 225 ILCS 455/18.2a] (225 ILCS 455/18.2a) (from Ch. 111, par. 5818.2a)

§ 18.2a. Exclusive representation. A broker entering into an agreement with any person for the listing of property or for the purpose of representing any person in the buying, selling, exchanging, renting, or leasing of real estate may specifically designate those salespersons employed by or affiliated with the broker who will be acting as legal agents of that person to the exclusion of all other salespersons employed by or affiliated with the broker. A broker entering into an agreement under the provisions of this Section shall not be considered to be acting for more than one party in a transaction if the salespersons specifically designated as legal agents of a person are not representing more than one party in a transaction.

<<+No licensee shall be considered a dual agent nor shall the licensee be liable for acting as an undisclosed dual agent merely by performing licensed services in accordance with the provisions of this Section.+>>

<<+(Source: P.A. 87-1278.)+>>

Section 20. The Liquor Control Act of 1934 is amended by changing Sections 5-1 and 6-8 as follows:

<< IL ST CH 235 § 5/5-1 >>

[S.H.A. 235 ILCS 5/5-1] (235 ILCS 5/5-1) (from Ch. 43, par. 115)

§ 5-1. Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

(a) Manufacturer's license--Class 1. Distiller, Class 2. Rectifier, Class 3. Brewer, Class 4. First Class Wine Manufacturer, Class 5. Second Class Wine Manufacturer, Class 6. First Class Winemaker, Class 7. Second Class Winemaker, Class 8. Limited Wine Manufacturer,

(b) Distributor's license,

(c) Importing Distributor's license,

(d) Retailer's license,

(e) Special Event Retailer's license<<-,->> (not-for-profit),

(f) Railroad license,

(g) Boat license,

(h) Non-Beverage User's license,

(i) Wine-maker's retail license,

(j) Airplane license,

(k) Foreign importer's license,

(l) Broker's license,

(m) Non-resident dealer's license,

(n) Brew Pub license,

(o) Auction liquor license,

(p) Caterer retailer license,

(q) Special use permit license.

Nothing in this provision, nor in any subsequent provision of this Act shall be interpreted as forbidding an individual or firm from concurrently obtaining and holding a Winemaker's and a Wine manufacturer's license.

(a) A manufacturer's license shall allow the manufacture, importation in bulk,

storage, distribution and sale of alcoholic liquor to persons without the State, as may be permitted by law and to licensees in this State as follows:

Class 1. A Distiller may make sales and deliveries of alcoholic liquor to distillers, rectifiers, importing distributors, distributors and non-beverage users and to no other licensees.

Class 2. A Rectifier, who is not a distiller, as defined herein, may make sales and deliveries of alcoholic liquor to rectifiers, importing distributors, distributors, retailers and non-beverage users and to no other licensees.

Class 3. A Brewer may make sales and deliveries of beer to importing distributors, distributors, <<-retailers->> and to non-licensees, <<+and to retailers provided the brewer obtains an importing distributor's license or distributor's license+>> in accordance with the provisions of this Act.

Class 4. A first class wine-manufacturer may make sales and deliveries of between 40,000 and 50,000 gallons of wine to manufacturers, importing distributors and distributors, and to no other licensees.

Class 5. A second class Wine manufacturer may make sales and deliveries of more than 50,000 gallons of wine to manufacturers, importing distributors and distributors and to no other licensees.

Class 6. A first-class wine-maker's license shall allow the manufacture of less than 20,000 gallons of wine per year, and the storage and sale of such wine to distributors and retailers in the State and to persons without the State, as may be permitted by law.

Class 7. A second-class wine-maker's license shall allow the manufacture of up to 50,000 gallons of wine per year, and the storage and sale of such wine to distributors in this State and to persons without the State, as may be permitted by law.

Class 8. A limited wine-manufacturer may make sales and deliveries not to exceed 40,000 gallons of wine per year to distributors, and to non-licensees in accordance with the provisions of this Act.

<<+(a-1) A manufacturer which is licensed in this State to make sales or deliveries of alcoholic liquor and which enlists agents, representatives, or individuals acting on its behalf who contact licensed retailers on a regular and continual basis in this State must register those agents, representatives, or persons acting on its behalf with the State Commission.+>>

<<+Registration of agents, representatives, or persons acting on behalf of a manufacturer is fulfilled by submitting a form to the Commission. The form shall be developed by the Commission and shall include the name and address of the applicant, the name and address of the manufacturer he or she represents, the territory or areas assigned to sell to or discuss pricing terms of alcoholic liquor, and any other questions deemed appropriate and necessary. All statements in the forms required to be made by law or by rule shall be deemed material, and any person who

knowingly misstates any material fact under oath in an application is guilty of a Class B misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions, or suppression of material facts in the securing of a registration are grounds for suspension or revocation of the registration.+>>

(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.

(c) An importing distributor's license may be issued to and held by those only who are duly licensed distributors, upon the filing of an application by a duly licensed distributor, with the Commission and the Commission shall, without the payment of any fee, immediately issue such importing distributor's license to the applicant, which shall allow the importation of alcoholic liquor by the licensee into this State from any point in the United States outside this State, and the purchase of alcoholic liquor in barrels, casks or other bulk containers and the bottling of such alcoholic liquors before resale thereof, but all bottles or containers so filled shall be sealed, labeled, stamped and otherwise made to comply with all provisions, rules and regulations governing manufacturers in the preparation and bottling of alcoholic liquors. The importing distributor's license shall permit such licensee to purchase alcoholic liquor from Illinois licensed non-resident dealers and foreign importers only.

(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.

(e) A special event retailer's license (not-for-profit) shall permit the licensee to purchase alcoholic liquors from an Illinois licensed distributor, 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.

(f) A railroad license shall permit the licensee to import alcoholic liquors into

this State from any point in the United States outside this State and to store such alcoholic liquors in this State; to make wholesale purchases of alcoholic liquors directly from manufacturers, foreign importers, distributors and importing distributors from within or outside this State; and to store such alcoholic liquors in this State; provided that the above powers may be exercised only in connection with the importation, purchase or storage of alcoholic liquors to be sold or dispensed on a club, buffet, lounge or dining car operated on an electric, gas or steam railway in this State; and provided further, that railroad licensees exercising the above powers shall be subject to all provisions of Article VIII of this Act [FN1] as applied to importing distributors. A railroad license shall also permit the licensee to sell or dispense alcoholic liquors on any club, buffet, lounge or dining car operated on an electric, gas or steam railway regularly operated by a common carrier in this State, but shall not permit the sale for resale of any alcoholic liquors to any licensee within this State. A license shall be obtained for each car in which such sales are made.

(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, which boat maintains a public dining room or restaurant thereon.

(h) A non-beverage user's license shall allow the licensee to purchase alcoholic liquor from a licensed manufacturer or importing distributor, without the imposition of any tax upon the business of such licensed manufacturer or importing distributor as to such alcoholic liquor to be used by such licensee solely for the non-beverage purposes set forth in subsection (a) of Section 8-1 of this Act, and such licenses shall be divided and classified and shall permit the purchase, possession and use of limited and stated quantities of alcoholic liquor as follows:

Class 1, not to exceed	500 gallons
Class 2, not to exceed	1,000 gallons
Class 3, not to exceed	5,000 gallons
Class 4, not to exceed	10,000 gallons
Class 5, not to exceed	50,000 gallons

(i) A wine-maker's retail license shall allow the licensee to sell and offer for sale at retail in the premises specified in such license not more than 50,000 gallons of wine per year for use or consumption, but not for resale in any form; this license shall be issued only to a person licensed as a first-class or second-class wine-maker.

(j) An airplane license shall permit the licensee to import alcoholic liquors into this State from any point in the United States outside this State and to store such alcoholic liquors in this State; to make wholesale purchases of alcoholic liquors directly from manufacturers, foreign importers, distributors and importing distributors from within or outside this State; and to store such alcoholic liquors in this State; provided that the above powers may be exercised only in connection with the importation, purchase or storage of alcoholic liquors to be sold or dispensed on an airplane; and provided further, that airplane licensees exercising the above powers shall be subject to all provisions of Article VIII of this Act as applied to importing distributors. An airplane licensee shall also permit the sale or dispensing of alcoholic liquors on any passenger airplane regularly operated by

a common carrier in this State, but shall not permit the sale for resale of any alcoholic liquors to any licensee within this State. A single airplane license shall be required of an airline company if liquor service is provided on board aircraft in this State. The annual fee for such license shall be as determined in Section 5-3.

(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.

(l) A broker's license shall be required of all brokers who solicit orders for, offer to sell or offer to supply alcoholic liquor to retailers in the State of Illinois, or who offer to retailers to ship or cause to be shipped or to make contact with distillers, rectifiers, brewers or manufacturers or any other party within or without the State of Illinois in order that alcoholic liquors be shipped to a distributor, importing distributor or foreign importer, whether such solicitation or offer is consummated within or without the State of Illinois.

No holder of a retailer's license issued by the Illinois Liquor Control Commission shall purchase or receive any alcoholic liquor, the order for which was solicited or offered for sale to such retailer by a broker unless the broker is the holder of a valid broker's license.

The broker shall, upon the acceptance by a retailer of the broker's solicitation of an order or offer to sell or supply or deliver or have delivered alcoholic liquors, promptly forward to the Illinois Liquor Control Commission a notification of said transaction in such form as the Commission may by regulations prescribe.

Such license shall not entitle the holder to buy or sell any alcoholic liquors for his own account or to take or deliver title to such alcoholic liquors.

This Subsection shall not apply to distributors, employees of distributors, or employees of a manufacturer who has registered the trademark, brand or name of the alcoholic liquor pursuant to Section 6-8 of this Act, and who regularly sells such alcoholic liquor in the State of Illinois only to its registrants thereunder.

(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.

(n) 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.

(o) A caterer retailer license shall allow the holder to serve alcoholic liquors as an incidental part of a food service that serves prepared meals which excludes the serving of snacks as the primary meal, either on or off-site whether licensed or unlicensed.

(p) An auction liquor license shall allow the licensee to sell and offer for sale at auction wine and spirits for use or consumption, or for resale by an Illinois liquor licensee in accordance with provisions of this Act. An auction liquor license will be issued to a person and it will permit the auction liquor licensee to hold the auction anywhere in the State. An auction liquor license must be obtained for each auction at least 14 days in advance of the auction date.

(q) A special use permit license shall allow an Illinois licensed retailer to transfer a portion of its alcoholic liquor inventory from its retail licensed premises to the premises specified in the license hereby created, and to sell or offer for sale at retail, only in the premises specified in the license hereby created, the transferred alcoholic liquor for use or consumption, but not for resale in any form. A special use permit license may be granted for the following time periods: one day or less; 2 or more days to a maximum of 15 days per location in any 12 month period. An applicant for the special use permit license must also submit with the application proof satisfactory to the State Commission that the applicant will provide dram shop liability insurance to the maximum limits and have local authority approval.

<<+(Source: P.A. 88-91; 88-303; revised.)+>>

[FN1] 235 ILCS 5/8-1 et seq.

<< IL ST CH 235 § 5/6-8 >>

[S.H.A. 235 ILCS 5/6-8] (235 ILCS 5/6-8) (from Ch. 43, par. 125)

§ 6-8. 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. <<-Nothing herein contained shall apply to or in any manner affect or prohibit importation of beer into the State of Illinois from any point in the United States outside this State by a duly licensed importing distributor and delivery thereof

directly to the premises of an Illinois retailer, without delivery to or unloading at the licensed importing distributor's warehouse, if all such beer shall be purchased by the Illinois retailer for sale and consumption and shall actually be sold and consumed upon the same licensed premises of the Illinois retailer.->>

<<+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.+>>

<<+(Source: P.A. 82-783.)+>>

Section 21. The Illinois Rural/Downstate Health Act is amended by changing Section 4 and adding Section 5.5 as follows:

<< IL ST CH 410 § 65/4 >>

[S.H.A. 410 ILCS 65/4] (410 ILCS 65/4) (from Ch. 111 1/2 , par. 8054)

§ 4. The Center shall have the authority:

- (a) To assist rural communities and communities in designated shortage areas by providing technical assistance to community leaders in defining their specific health care needs and identifying strategies to address those needs.
- (b) To link rural communities and communities in designated shortage areas with other units in the Department or other State agencies which can assist in the solution of a health care access problem.
- (c) To maintain and disseminate information on innovative health care strategies, either directly or indirectly.
- (d) To administer State or federal grant programs relating to rural health or medically underserved areas established by State or federal law for which funding has been made available.
- (e) To promote the development of primary care services in rural areas and designated shortage areas. Subject to available appropriations, the Department may annually award grants of up to \$300,000 each to enable the health services in those areas to offer multi-service comprehensive ambulatory care, thereby improving access to primary care services. Grants may cover operational and facility construction and renovation expenses, including but not limited to the cost of personnel, medical supplies and equipment, patient transportation, and health provider recruitment. The Department shall prescribe by rule standards and procedures for the provision of local matching funds in relation to each grant application. Grants provided under this paragraph (e) shall be in addition to support and assistance

provided under Section 55.53<<+(a)>> of the Civil Administrative Code of Illinois. [FN1] Eligible applicants shall include, but not be limited to, community-based organizations, hospitals, local health departments, and Community Health Centers as defined in Section 4.1 of the Illinois Rural Health Act. [FN2]

(f) To annually provide grants from available appropriations to hospitals located in medically underserved areas or health manpower shortage areas as defined by the United States Department of Health and Human Services, whose governing boards include significant representation of consumers of hospital services residing in the area served by the hospital, and which agree not to discriminate in any way against any consumer of hospital services based upon the consumer's source of payment for those services. Grants that may be awarded under this paragraph (f) shall be limited to \$500,000 and shall not exceed 50% of the total project need indicated in each application. Expenses covered by the grants may include but are not limited to facility renovation, equipment acquisition and maintenance, recruitment of health personnel, diversification of services, and joint venture arrangements.

(g) To establish a recruitment center which shall actively recruit physicians and other health care practitioners to participate in the program, maintain contacts with participating practitioners, actively promote health care professional practice in designated shortage areas, assist in matching the skills of participating medical students with the needs of community health centers in designated shortage areas, and assist participating medical students in locating in designated shortage areas.

(h) To assist communities in designated shortage areas find alternative services or temporary health care providers when existing health care providers are called into active duty with the armed forces of the United States.

<<+(i) To develop, in cooperation with the Illinois Development Finance Authority, financing programs whose goals and purposes shall be to provide moneys to carry out the purpose of this Act, including, but not limited to, revenue bond programs, revolving loan programs, equipment leasing programs, and working cash programs. The Department may transfer to the Illinois Development Finance Authority, into an account outside of the State treasury, moneys in special funds of the Department for the purposes of establishing those programs. The disposition of any moneys so transferred shall be determined by an interagency agreement.>>>

<<+(Source: P.A. 86-965; 86-1187; 87-633.)>>>

[FN1] 20 ILCS 2310/55.53.

[FN2] 410 ILCS 65/4.1

<< IL ST CH 410 § 65/5.5 >>

[S.H.A. 410 ILCS 65/5.5] (410 ILCS 65/5.5 new)

<<+\$ 5.5. Rural/Downstate Health Access Fund. The Rural/Downstate Health Access Fund is created as a special fund in the State treasury. Moneys from gifts,

grants, or donations made to the Center for Rural Health shall be deposited into the Fund. Subject to appropriation, moneys in the Fund shall be used in the following manner for rural health programs authorized under this Act: 60.2% shall be distributed to the Department of Public Health, 26.3% shall be distributed to the Board of Trustees of Southern Illinois University, and 13.5% shall be distributed to the Board of Trustees of the University of Illinois.+>>

Section 22. The Firearm Owners Identification Card Act is amended by changing Section 3.1 as follows:

<< IL ST CH 430 § 65/3.1 >>

[S.H.A. 430 ILCS 65/3.1] (430 ILCS 65/3.1) (from Ch. 38, par. 83-3.1)

(This Section is scheduled to be repealed on September 1, 1994.)

§ 3.1. Dial up system. The Department of State Police shall provide a dial up telephone system which shall be used by any federally licensed firearm dealer who is to transfer a firearm under the provisions of this Act. The Department of State Police shall utilize existing technology which allows the caller to be charged a fee equivalent to the cost of providing this service but not to exceed \$2. Fees collected by the Department of State Police shall be deposited in the State Police Services Fund and used to provide the service.

Upon receiving a request from a federally licensed firearm dealer, the Department of State Police shall immediately approve, or within the time period established by Section 24-3 of the Criminal Code of 1961 [FN1] regarding the delivery of firearms, notify the inquiring dealer of any objection that would disqualify the transferee from acquiring or possessing a firearm. In conducting the inquiry, the Department of State Police shall initiate and complete an automated search of its criminal history record information files and those of the Federal Bureau of Investigation and of the files of the Department of Mental Health and Developmental Disabilities to obtain any felony conviction or patient hospitalization information which would disqualify a person from obtaining or require revocation of a currently valid Firearm Owner's Identification Card.

The Department of State Police shall promulgate rules to implement this system.

The Governor shall appoint a 9 member Committee that shall consist of the following: the Director of the Department of State Police, who shall serve as its chairman; the Mayor of Chicago, or his representative; a State's Attorney; an individual representing a private organization that opposes strict regulation of firearms; an individual representing a private organization that supports strict regulation of firearms; 4 members of the General Assembly, one each nominated by the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. The Committee shall study and make recommendations to the Governor and the General Assembly regarding the continuation or abolition of the "dial up system" or the "Firearm Owners Identification Card Act" [FN2] or any combination thereof<<-, no later than December 31, 1993->>. The Committee shall submit an interim report, which shall be due no later than December 31, 1992, at which time a recommendation may be made, if appropriate.

This Section is repealed September 1, 1994.

<<+(Source: P.A. 87-299.)+>>

[FN1] 720 ILCS 5/24-3.

[FN2] 430 ILCS 65/0.01 et seq.

Section 23. The Chain O Lakes--Fox River Waterway Management Agency Act is amended by changing Section 12 and adding Section 2.1 as follows:

<< IL ST CH 615 § 90/2.1 >>

[S.H.A. 615 ILCS 90/2.1] (615 ILCS 90/2.1 new)

<<+§ 2.1. Referendum; Agency continuation. The question of whether the Chain O Lakes--Fox River Waterway Management Agency shall be continued shall be submitted to the voters of the territory of the Agency at a referendum held at either the general primary election or the general election in 1994.+>>

<<+The State Board of Elections shall certify the proposition to the county clerk of each member county within 15 days after the effective date of this amendatory Act of 1994. If this certification occurs at least 30 days before the 1994 general primary election, the referendum shall be held at that election; otherwise, the referendum shall be held at the 1994 general election.+>>

<<+The proposition shall be placed on the ballot in substantially the following form:+>>

<<+"Shall the Chain O Lakes--Fox River Waterway Management Agency be continued?">>

<<+The votes shall be recorded as "Yes" or "No". If a majority of the voters voting on the proposition vote "Yes", the Chain O Lakes--Fox River Waterway Management Agency shall continue.+>>

<<+Within 7 days after the referendum is held, the county clerk of each member county shall transmit the returns of the votes on the proposition to the State Board of Elections. Within 20 days after the referendum is held, the Board shall canvass the returns and proclaim the results.+>>

<< IL ST CH 615 § 90/12 >>

[S.H.A. 615 ILCS 90/12] (615 ILCS 90/12) (from Ch. 19, par. 1222)

§ 12. <<+Repealer.+>> This Act is repealed January 1, 1995<<+, unless a majority of the voters voting at the referendum provided for in Section 2.1 are in favor of continuing the Chain O Lakes--Fox River Waterway Management Agency+>>.

<<+(Source: P.A. 83-1121.)+>>

Section 25. The Illinois Vehicle Code is amended by changing Sections 15-112 and 16-105 as follows:

<< IL ST CH 625 § 5/15-112 >>

[S.H.A. 625 ILCS 5/15-112] (625 ILCS 5/15-112) (from Ch. 95 1/2 , par. 15-112)

§ 15-112. Officers to weigh vehicles and require removal of excess loads.

(a) Any police officer having reason to believe that the weight of a vehicle and load is unlawful shall require the driver to stop and submit to a weighing of the same either by means of a portable or stationary scales. If such scales are not available at the place where such vehicle is stopped, the police officer shall require that such vehicle be driven to the nearest available scale that has been tested and approved by the Illinois Department of Agriculture. Notwithstanding any provisions of the Weights and Measures Act [FN1] or the United States Department of Commerce NIST handbook 44, multi or single draft weighing is an acceptable method of weighing by law enforcement for determining a violation of Chapter 3 or 15 of this Code. [FN2] Law enforcement is exempt from the requirements of commercial weighing established in NIST handbook 44.

(b) Whenever an officer, upon weighing a vehicle and the load, determines that the weight is unlawful, such officer shall require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the weight of the vehicle to the limit permitted under this Chapter, or to the limit permitted under the terms of a permit issued pursuant to Sections 15-301 through 15-318 and shall forthwith arrest the driver or owner. All material so unloaded shall be cared for by the owner or operator of the vehicle at the risk of such owner or operator; however, whenever a 3 or 4 axle vehicle with a tandem axle dimension greater than 72 inches, but less than 96 inches and registered as a Special Hauling Vehicle is transporting asphalt or concrete in the plastic state that exceeds axle weight or gross weight limits by less than 4,000 pounds, the owner or operator of the vehicle shall accept the arrest ticket or tickets for the alleged violations under this Section and proceed without shifting or reducing the load being transported or may shift or reduce the load under the provisions of subsection (d) or (e) of this Section, when applicable. Any fine imposed following an overweight violation by a vehicle registered as a Special Hauling Vehicle transporting asphalt or concrete in the plastic state shall be paid <<- to the entity with jurisdiction over the highway upon which the violation occurred->> as provided in subsection 4 of paragraph (a) of Section 16-105 of this Code.

(c) The Department of Transportation may, at the request of the Department of State Police, erect appropriate regulatory signs on any State highway directing second division vehicles to a scale. The Department of Transportation may also, at the direction of any State Police officer, erect portable regulating signs on any highway directing second division vehicles to a portable scale. Every such vehicle, pursuant to such sign, shall stop and be weighed.

(d) Whenever any axle load of a vehicle exceeds the axle or tandem axle weight limits permitted by paragraph (a) or (f) of Section 15-111 by 2000 pounds or less, the owner or operator of the vehicle must shift or remove the excess so as to comply with paragraph (a) or (f) of Section 15-111. No overweight arrest ticket shall be issued to the owner or operator of the vehicle by any officer if the gross weight is shifted or removed as required by this paragraph.

(e) Whenever the gross weight of a vehicle with a registered gross weight of 73,280 pounds or less exceeds the weight limits of paragraph (b) or (f) of Section 15-111 of this Chapter by 2000 pounds or less, the owner or operator of the vehicle must remove the excess. Whenever the gross weight of a vehicle with a registered gross weight of 73,281 pounds or more exceeds the weight limits of paragraph (b) or (f) of Section 15-111 by 1,000 pounds or less, the owner or operator of the vehicle must remove the excess. In either case no arrest ticket for any overweight violation of this Code shall be issued to the owner or operator of the vehicle by any officer if the excess weight is removed as required by this paragraph.

(f) Whenever an axle load of a vehicle exceeds axle weight limits allowed by the provisions of a permit an arrest ticket shall be issued, but the owner or operator of the vehicle may shift the load so as to comply with the provisions of the permit. Where such shifting of a load to comply with the permit is accomplished, the owner or operator of the vehicle may then proceed.

(g) Any driver of a vehicle who refuses to stop and submit his vehicle and load to weighing after being directed to do so by an officer or removes or causes the removal of the load or part of it prior to weighing is guilty of a business offense and shall be fined not less than \$500 nor more than \$2,000.

<<+(Source: P.A. 88-403; 88-476; revised.)+>>

[FN1] 225 ILCS 470/1 et seq.

[FN2] 625 ILCS 5/3-100 et seq. or 5/15-100 et seq.

<< IL ST CH 625 § 5/16-105 >>

[S.H.A. 625 ILCS 5/16-105] (625 ILCS 5/16-105) (from Ch. 95 1/2 , par. 16-105)

§ 16-105. Disposition of fines and forfeitures.

(a) Except as provided in Section 16-104a of this Act and except for those amounts required to be paid into The Traffic and Criminal Conviction Surcharge Fund in the State Treasury pursuant to Section 9.1 of the Illinois Police Training Act [FN1] and Section 5-9-1 of the Unified Code of Corrections [FN2] and except those amounts subject to disbursement by the circuit clerk under Section 27.5 of the Clerks of Courts Act, [FN3] fines and penalties recovered under the provisions of Chapters 11 through 16 inclusive of this Code [FN4] shall be paid and used as follows:

1. For offenses committed upon a highway within the limits of a city, village, or incorporated town or under the jurisdiction of any park district, to the treasurer

of the particular city, village, incorporated town or park district, if the violator was arrested by the authorities of the city, village, incorporated town or park district, provided the police officers and officials of cities, villages, incorporated towns and park districts shall seasonably prosecute for all fines and penalties under this Code. If the violation is prosecuted by the authorities of the county, any fines or penalties recovered shall be paid to the county treasurer. Provided further that if the violator was arrested by the State Police, fines and penalties recovered under the provisions of paragraph (a) of Section 15-113 of this Code or paragraph (e) of Section 15-316 of this Code shall be paid over to the Department of State Police which shall thereupon remit the amount of the fines and penalties so received to the State Treasurer who shall deposit the amount so remitted in the special fund in the State treasury known as the Road Fund except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office and the balance shall be paid over to the Department of State Police for remittance to and deposit by the State Treasurer as hereinabove provided.

2. <<+Except as provided in paragraph 4,+>> for offenses committed upon any highway outside the limits of a city, village, incorporated town or park district, to the county treasurer of the county where the offense was committed except if such offense was committed on a highway maintained by or under the supervision of a township, township district, or a road district to the Treasurer thereof for deposit in the road and bridge fund of such township or other district; Provided, that fines and penalties recovered under the provisions of paragraph (a) of Section 15-113, paragraph (c) of Section 3-401, or paragraph (e) of Section 15-316 of this Code shall be paid over to the Department of State Police which shall thereupon remit the amount of the fines and penalties so received to the State Treasurer who shall deposit the amount so remitted in the special fund in the State treasury known as the Road Fund except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office and the balance shall be paid over to the Department of State Police for remittance to and deposit by the State Treasurer as hereinabove provided.

3. Notwithstanding subsections 1 and 2 of this paragraph, for violations of overweight and overload limits found in Sections 15-101 through 15-203 of this Code, which are committed upon the highways belonging to The Illinois State Toll Highway Authority, fines and penalties shall be paid over to The Illinois State Toll Highway Authority for deposit with the State Treasurer into that special fund known as The Illinois State Toll Highway Authority Fund, except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office and the balance shall be paid over to The Illinois State Toll Highway Authority for remittance to and deposit by the State Treasurer as hereinabove provided.

4. <<+With regard to violations of overweight and overload limits found in Sections 15-101 through 15-203 of this Code committed by operators of vehicles registered as Special Hauling Vehicles, for offenses committed upon a highway within the limits of a city, village, or incorporated town or under the jurisdiction of any park district, all fines and penalties shall be paid over or retained as required in paragraph 1. However, with regard to the above offenses committed by operators of vehicles registered as Special Hauling Vehicles upon any highway outside the

limits of a city, village, incorporated town or park district, fines and penalties shall be paid over or retained by the entity having jurisdiction over the road or highway upon which the offense occurred, except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office.+>> <<-Notwithstanding subsections 1 and 2 of this paragraph, for violations of overweight and overload limits found in Sections 15-101 through 15-203 of this Code committed by operators of vehicles registered as Special Hauling Vehicles, fines and penalties shall be paid over to or retained by the entity having jurisdiction over the road or highway upon which the offense occurred.->>

(b) Failure, refusal or neglect on the part of any judicial or other officer or employee receiving or having custody of any such fine or forfeiture either before or after a deposit with the proper official as defined in paragraph (a) of this Section, shall constitute misconduct in office and shall be grounds for removal therefrom.

<<+(Source: P.A. 87-670; 88-403; 88-476; revised.)+>>

[FN1] 50 ILCS 705/9.1.

[FN2] 730 ILCS 5/5-9-1.

[FN3] 705 ILCS 105/27.5.

[FN4] 625 ILCS 5/11-100 to 5/16-101 et seq.

Section 39. The Business Corporation Act of 1983 is amended by changing Sections 3.05 and 13.05 as follows:

<< IL ST CH 805 § 5/3.05 >>

[S.H.A. 805 ILCS 5/3.05] (805 ILCS 5/3.05) (from Ch. 32, par. 3.05)

§ 3.05. Purposes. Corporations for profit may be organized under this Act for any lawful purpose or purposes, except for the purpose of banking or insurance; provided, however, that corporations may be organized under this Act for the purpose of buying, selling, or otherwise dealing in notes (not including the discounting of bills and notes and not including the buying and selling of bills of exchange), open accounts, and other similar evidences of debt, <<-or->> for the purpose of carrying on the business of a syndicate or limited syndicate under Article V 1/2 of the Illinois Insurance Code<<+, [FN1] or for the purpose of carrying on business as a member of a group including incorporated and individual unincorporated underwriters when the Director of Insurance finds that the group meets the requirements of subsection (3) of Section 86 of the Illinois Insurance Code [FN2] and the corporations, if insolvent, are subject to liquidation by the Director of Insurance under Article XIII of the Illinois Insurance Code+>>. [FN3]

<<-(a)->> Medical corporations, as authorized by <<+the+>> <<- "The->> Medical Corporation Act<<-", approved, August 30, 1963, as now or hereafter amended->>, may

be organized under this Act.

<<-(b)->> Professional Service Corporations, as authorized by <<+ the+>> <<-"The->> Professional Service Corporation Act<<-" , [FN4] approved September 15, 1969, as now or hereafter amended->>, may be organized under this Act.

<<+(Source: P.A. 84-796.)+>>

[FN1] 215 ILCS 5/107.01 et seq.

[FN2] 215 ILCS 5/86.

[FN3] 215 ILCS 5/187 et seq.

[FN4] 805 ILCS 10/1 et seq.

<< IL ST CH 805 § 5/13.05 >>

[S.H.A. 805 ILCS 5/13.05] (805 ILCS 5/13.05) (from Ch. 32, par. 13.05)

§ 13.05. Admission of foreign corporation. A foreign corporation organized for profit, before it transacts business in this State, shall procure a certificate of authority so to do from the Secretary of State. A foreign corporation organized for profit, upon complying with the provisions of this Act, may secure from the Secretary of State a certificate of authority to transact business in this State, but no foreign corporation shall be entitled to procure a certificate of authority under this Act to act as trustee, executor, administrator, administrator to collect, or guardian, or in any other like fiduciary capacity in this State or to transact in this State the business of banking, insurance, suretyship, or a business of the character of a building and loan corporation; provided, however, that a foreign corporation may obtain a certificate of authority under this Act for the purpose of carrying on the business of a syndicate or limited syndicate under Article V 1/2 [FN1] of the Illinois Insurance Code <<+or for the purpose of carrying on business as a member of a group including incorporated and individual unincorporated underwriters under Article V of the Illinois Insurance Code+>>. [FN2] A foreign professional service corporation may secure a certificate of authority to transact business in this State from the Secretary of State upon complying with this Act and demonstrating compliance with the Act regulating the professional service to be rendered by the professional service corporation. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization or the internal affairs of such corporation.

<<+(Source: P.A. 88-143.)+>>

[FN1] 215 ILCS 5/107.01 et seq.

[FN2] 215 ILCS 5/86 et seq.

Section 40. "An Act to authorize the transfer of certain State land to the Chicago Park District for use as a public park; and to authorize the transfer of certain other State land to the City of Chicago for use as a highway; and to authorize the transfer of certain other State lands in Madison County and repealing "An Act authorizing the sale of certain real property in Madison County", approved July 2, 1970, and also known as Public Act 76-2541", approved January 21, 1975, (Public Act 78-1290) is amended by changing Sections 5 and 9 as follows:

(Public Act 78-1290, Sec. 5)

Sec. 5. The Director of the Department of Mental Health on behalf of the State of Illinois is authorized and directed to convey by quitclaim deed to the Bethalto Community Unit School District No. 8 in Madison County the 32 acres described in Section 4 hereof, and to Wood River Township in Madison County the 18.04 acres described in Section 5 hereof, and to the City of Alton, Illinois the 645.32 acres described in Section 6 hereof. The consideration for the conveyances authorized by this Section <<+to Bethalto Community Unit School District No. 8 and to the City of Alton+>> shall be that the land conveyed shall be used for public purposes.

(Public Act 78-1290, Sec. 9)

Sec. 9. Bethalto Community Unit School District No. 8<<- , Wood River Township->> and the City of Alton shall agree that the purpose of the lands respectively conveyed to them shall at all times be used for public purposes.

Section 41. Upon payment of the sum of \$1, the State of Illinois, by and through the Department of Mental Health and Developmental Disabilities, shall, without condition or reservation, convey by quitclaim deed all right, title, and interest of the State of Illinois in and to the following described real estate to Wood River Township in Madison County:

A tract of land in the West 1/2 Southwest 1/4 of Section 3, Township 5 North, Range 9 West of the Third Principal Meridian described as follows: Beginning at a point on the North line of said Southwest 1/4 , said point being 185.1 feet West of the Northeast corner thereof; thence North 89 degrees, 56 minutes West along the North line of said quarter-section, a distance of 566.70 feet to a point; thence South 3 degrees, 33 minutes East, a distance of 1258.63 feet to a point; thence East a distance of 609.50 feet to a point on the West right-of-way line of the easement for the improvement of Stanley Road, granted by the Legislature of the State of Illinois by passage of H.B. 2249, approved August 3rd, 1965; thence North along the West line of said easement, a distance of 794.90 feet to a point; thence continuing along said West line North 14 degrees, 36 minutes West a distance of 475.60 feet to the POINT OF BEGINNING containing 18.04 Acres.

Section 42. Notwithstanding any other provision of law, the Board of Trustees of Wood River Township in Madison County may transfer and convey, without appraisal or other requirement and for a consideration of \$1, the real property described in Section 41 to Community Hope Center, Inc., a not-for-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986. [FN1]

[FN1] 26 U.S.C.A. § 501.

Section 43. The Director of Mental Health and Developmental Disabilities shall obtain a certified copy of the portions of this Act containing the title, the enacting clause, the effective date, the appropriate Section or Sections containing the land descriptions of property to be transferred by the Department of Mental Health and Developmental Disabilities, and this Section within 60 days after its effective date and, upon receipt of the payment where payment is required by this Act, shall record the certified document in the Recorder's Office in the County in which the land is located.

Section 44. Land transaction.

(a) The Director of Central Management Services is authorized to convey and release to the County of Macon, a political subdivision of the State of Illinois, by quitclaim deed, upon receipt of \$1, all right, title, and interest of the State of Illinois, in and to that real property legally described as follows:

Tract I: Beginning at a point on the South line of the Southeast 1/4 of Section Twenty-five (25), Township Seventeen (17) North, Range Two (2) East of the 3rd P.M., said point being 343.21 feet Easterly of the Southwest corner of said Southeast 1/4 as measured on said South line, proceed North 01 degrees 41 minutes 18 seconds West, 435.60 feet; thence North 88 degrees 18 minutes 41 seconds East, 400.00 feet; thence South 01 degrees 41 minutes 18 seconds East, 435.60 feet to the South line aforesaid; thence on said South line South 88 degrees 18 minutes 41 seconds West, 400.00 feet to the point of beginning. Situated in Macon County, Illinois. Subject to the right of the public to that portion off of the South side of said tract as used by and dedicated to the public roadway purposes.

Tract II: Beginning at the Southeast corner of the West 1/2 of the Southeast 1/4 of Section Twenty-five (25), Township Seventeen (17) North, Range Two (2) East of the 3rd P.M. proceed on the South line of said Southeast 1/4 88 degrees 18 minutes 41 seconds West, 581.14 feet; thence North 01 degrees 41 minutes 18 seconds West, 1082.61 feet; thence South 88 degrees 18 minutes 41 seconds West 400.00 feet; thence North 01 degrees 41 minutes 18 seconds West, 681.21 feet; thence North 88 degrees 18 minutes 41 seconds East, 1026.26 feet to the East line of the West 1/2 of the Southeast 1/4 of Section 25 aforesaid; thence on said East line South 00 degrees 13 minutes 23 seconds East, 1764.39 feet to the point of beginning. Situated in Macon County, Illinois. Subject to the right of the public to that portion off of the South side of said tract as used by and dedicated to the public roadway purposes. Also subject to the easement over the East 30 feet of the above described tract for roadway purposes.

Tract III: Commencing at the Southeast corner of the Southwest 1/4 of Section Twenty-five (25), Township Seventeen (17) North, Range Two (2) East of the 3rd P.M. proceed on the South line of said Southeast 1/4 South 88 degrees 18 minutes 41 seconds West, 512.25 feet; thence North 00 degrees 13 minutes 23 seconds West, 2114.50 feet to the point of beginning; thence North 88 degrees 18 minutes 41 seconds East, 1836.61 feet to the East line of the West 1/2 of the Southeast 1/4 of Section 25 aforesaid; thence on said East line South 00 degrees 13 minutes 23 seconds East, 350.11 feet; thence South 88 degrees 18 minutes 41 seconds West,

1836.61 feet; thence North 00 degrees 13 minutes 23 seconds West, 35.11 feet to the point of beginning. Situated in Macon County, Illinois, subject to the easement over the East 30 feet of the above described tract for roadway purposes.

(b) The Director of Central Management Services shall obtain a certified copy of the portions of this Act containing the title, the enacting clause, the effective date, and this Section within 60 days after its effective date and, upon receipt of the payment as required by this Section, shall record the certified document in the Recorder's Office in the county in which the land is located.

Section 50. The State Mandates Act is amended by adding Section 8.18 as follows:

<< IL ST CH 30 § 805/8.18 >>

[S.H.A. 30 ILCS 805/8.18] (30 ILCS 805/8.18 new)

<<+§ 8.18. Notwithstanding Sections 6 and 8 of this Act, no reimbursement by the State is required for the implementation of any mandate created by this amendatory Act of 1994.+>>

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

Approved: January 26, 1994

Effective: January 26, 1994

IL LEGIS 88-535 (1994)

END OF DOCUMENT



Analysis

As of: Sep 07, 2012

ANHEUSER-BUSCH, INC., ET AL., Plaintiffs, v. STEPHEN B. SCHNORF, ET AL., Defendants.

Case No.: 10-cv-1601

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

738 F. Supp. 2d 793; 2010 U.S. Dist. LEXIS 91732

**September 3, 2010, Decided
September 3, 2010, Filed**

SUBSEQUENT HISTORY: Stay denied by *Anheuser-Busch, Inc. v. Schnorf*, 2011 U.S. Dist. LEXIS 68 (N.D. Ill., Jan. 3, 2011)

LexisNexis(R) Headnotes

CASE SUMMARY:

OVERVIEW: Out-of-state brewers sought partial summary judgment seeking a declaration that the Illinois Liquor Control Commission's construction of the Illinois Liquor Control Act of 1934 violated the *Commerce Clause* because it favored in-state brewers. The court held that Illinois could not permit in-state brewers to distribute their products directly to retailers while withholding that privilege from out-of-state brewers. Without showing a need for such discrimination, Illinois' system prevented out-of-state brewers from competing on equal terms with in-state brewers and violated the *Commerce Clause*.

OUTCOME: Partial summary judgment granted. Enforcement of order stayed.

CORE TERMS: out-of-state, distributor's, brewer, in-state, producer, license, beer, liquor, winery, beverage, discriminate, importing, retailer, interstate commerce, discriminatory, Control Act, amici, wine, state law, distribute, alcohol, non-resident, entity, temperance, collection, invalidity, alcoholic, licensing, consumer, dealer

Governments > State & Territorial Governments > Licenses

[HN1] Illinois regulates the production, importation, distribution, and sale of alcoholic beverages through a three-tier licensing system. The function performed at each of the tiers (i.e., production, distribution/wholesale, and retail) requires separate licensing and compliance with regulations specific to that tier. Pursuant to the Illinois Liquor Control Act, to distribute beer in Illinois, it is necessary to hold a distributor's license, and to import beer from out-of-state for distribution in Illinois, it is necessary to hold an importing distributor's license. In-state beer producers may hold a brewer's license, which entitles them to hold distributor's and importing distributor's licenses. 235 ILCS 5/5-1(a) states that a brewer may make sales and deliveries of beer to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of the Act.

*Civil Procedure > Summary Judgment > Evidence
Civil Procedure > Summary Judgment > Standards > Appropriateness*

EXHIBIT D

[HN2] Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Fed. R. Civ. P. 56(c)*. In determining whether there is a genuine issue of fact, the court must construe the facts and draw all reasonable inferences in the light most favorable to the nonmoving party.

Civil Procedure > Summary Judgment > Burdens of Production & Proof > Absence of Essential Element of Claim

Civil Procedure > Summary Judgment > Burdens of Production & Proof > Nonmovants

Civil Procedure > Summary Judgment > Burdens of Production & Proof > Scintilla Rule

Civil Procedure > Summary Judgment > Standards > Genuine Disputes

[HN3] To avoid summary judgment, the opposing party must go beyond the pleadings and set forth specific facts showing that there is a genuine issue for trial. A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. The party seeking summary judgment has the burden of establishing the lack of any genuine issue of material fact. Summary judgment is proper against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. The non-moving party must do more than simply show that there is some metaphysical doubt as to the material facts. In other words, the mere existence of a scintilla of evidence in support of the non-movant's position will be insufficient; there must be evidence on which the jury could reasonably find for the non-movant.

Governments > State & Territorial Governments > Licenses

[HN4] The Illinois Liquor Control Act's definition of "distributor" specifically excludes non-resident dealers: 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. *235 ILCS 5/1-3.15*.

Governments > State & Territorial Governments > Licenses

[HN5] A brewer may make sales and deliveries of beer to retailers provided that the brewer obtains an importing

distributor's license or distributor's license in accordance with the provisions of the Illinois Liquor Control Act. *235 ILCS 5/5-1(a)*.

Civil Procedure > Justiciability > Standing > Injury in Fact

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation > General Overview

Constitutional Law > The Judiciary > Case or Controversy > Standing > Elements

[HN6] Standing exists when the plaintiff suffers an actual or impending injury, no matter how small; when that injury is caused by the defendant's acts; and when a judicial decision in the plaintiff's favor would redress that injury. Injury need not be certain. In addition, although a pre-enforcement suit entails some element of chance because some intervening event may occur to steer parties away from what appears to be a likely collision course, pre-enforcement challenges nonetheless are within U.S. Const. art. III. Where threatened action by government is concerned, the court does not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat, for example, the constitutionality of a law threatened to be enforced.

Constitutional Law > State Autonomy > General Overview

[HN7] The *Eleventh Amendment* prohibits a federal court from ordering state officials to conform their conduct to state law.

Constitutional Law > State Autonomy > General Overview

[HN8] The court may not exercise pendent jurisdiction to adjudicate claims that state officials are violating state law because such claims are barred in federal courts by the *Eleventh Amendment*.

Constitutional Law > State Autonomy > General Overview

[HN9] A federal judge must assume that the state officials' interpretation is right, not necessarily because it is correct but because errors in the interpretation of state law do not supply a basis for federal relief. Constitutional adjudication tests the power of a state to act in a particular way; whether the state indeed wishes to act in that way is a question of its domestic law. The Constitution does not require states to administer their laws correctly.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN10] To avoid economic balkanization and a proliferation of trade zones among the states, the *Commerce Clause* imposes a dormant or negative constraint on the power of states to enact legislation that interferes with or burdens interstate commerce. Under this doctrine, in all but the narrowest circumstances, 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.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN11] Laws that discriminate explicitly against interstate commerce, that is, laws that by their own terms favor in-state economic interests over out-of-state interests, are per se invalid, unless the state demonstrates that the discrimination advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN12] Laws that discriminate explicitly sometimes are described as discriminatory on their face. A law also is considered discriminatory if it is neutral on its face (i.e., does not by its terms favor in-state interests over out-of-state interests) but discriminates in purpose or has a substantial discriminatory effect on interstate commerce. All three varieties of discrimination are analyzed under the per se rule of invalidity.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN13] Under *Commerce Clause* jurisprudence, laws are analyzed under one of two standards, depending on whether the law discriminates against interstate commerce or whether it regulates evenhandedly with only incidental effects on interstate commerce. If the law discriminates against interstate commerce, whether it discriminates explicitly, has a discriminatory purpose, or has substantial discriminatory effects, the law is subject to a rule of virtual per se invalidity. If a restriction on commerce is discriminatory, it is virtually per se invalid. A state law that discriminates on its face, in purpose, or in effect engenders strict scrutiny under the jurisprudence of the dormant *commerce clause*. To avoid the per se rule

of invalidity, the state must demonstrate that the law advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. On the other hand, a law that regulates evenhandedly with only incidental effects on interstate commerce is valid unless the challenger meets the balancing test set forth in *Pike* pursuant to which a law is invalid only if the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN14] A law discriminates explicitly against interstate commerce if by its own terms it regulates disparately out-of-state and in-state economic interests and favors the in-state interests.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce > Governments > State & Territorial Governments > Licenses

[HN15] Although a state's three-tier system for controlling alcohol beverage distribution is "unquestionably legitimate" under the *Twenty-first Amendment*, the regulation of alcohol is limited by the nondiscrimination principle of the *Commerce Clause*. The *Twenty-first Amendment* did not give states the authority to pass non-uniform laws in order to discriminate against out-of-state goods. In other words, the *Twenty-first Amendment* does not permit states to enact laws that discriminate against out-of-state liquor producers or their goods. State policies are protected under the *Twenty-first Amendment* when they treat liquor produced out of state the same as its domestic equivalent.

Constitutional Law > Prohibition

[HN16] *U.S. Const. amend. 21, § 2* provides that the transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN17] A state has the burden of demonstrating that discrimination against interstate commerce is demonstrably justified because concrete record evidence

showed that nondiscriminatory alternatives will prove unworkable.

***Constitutional Law > Prohibition
Governments > State & Territorial Governments > Licenses***

[HN18] Although the states have broad power to regulate liquor under *U.S. Const. amend. 21, § 2*, this power 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.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

Governments > State & Territorial Governments > Licenses

[HN19] To distribute beer in Illinois it is necessary to hold a distributor's license and to import beer from out-of-state as part of this function it is necessary also to hold an importing distributor's license. In-state beer producers may hold a brewer's license, which entitles them to hold distributor's and importing distributor's licenses. 235 ILCS 5/5-1(a) provides that a brewer may make sales and deliveries of beer to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of the Illinois Liquor Control Act. Yet an out-of-state beer producer is ineligible to hold distributor's and importing distributor's licenses. The bottom line is that in-state brewers are permitted to perform the distribution function in Illinois, while out-of-state brewers are precluded from doing the same. The Illinois Liquor Control Commission's construction of Illinois law also does not permit an out-of-state brewer to own or be affiliated with a licensed Illinois distributor or importing distributor. Put differently, the basis for determining whether a brewer can distribute beer in Illinois turns on the brewer's residency; an in-state brewer is eligible, while an out-of-state brewer is not. Thus, by its own terms, this law explicitly discriminates against out-of-state brewers.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

Constitutional Law > Prohibition

[HN20] Only when discrimination against out-of-state producers is not at issue, does the *Twenty-first Amendment* permit states to enact laws that distinguish between retailers and distributors based on the location of their operations.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN21] A law that discriminates in favor of in-state producers or products will only be upheld if it reasonably advances state interests that cannot be adequately served by reasonable nondiscriminatory alternatives.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN22] There is no de minimis exception for a law that explicitly discriminates against interstate commerce.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN23] Actual discrimination against interstate commerce, wherever it is found, is impermissible, and the magnitude and scope of the discrimination have no bearing on the determinative question whether discrimination has occurred.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN24] Where discrimination against interstate commerce is patent, neither a widespread advantage to in-state interests nor a widespread disadvantage to out-of-state competitors need be shown.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN25] There is no de minimis exception when evaluating whether a law is discriminatory against interstate commerce on its face.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN26] A law that mandates discriminatory treatment against interstate commerce by its own terms is invalid even if there are no in-state businesses that currently benefit from the discrimination.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

Governments > State & Territorial Governments > Licenses

[HN27] Under *Granholm*, a state may not permit an in-state producer to operate at more than one tier of the state's alcohol beverage licensing system or to bypass one or more of those tiers, without according the same right to out-of-state entities.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN28] Where a state law discriminates by its own terms, the second step of the *Commerce Clause* analysis requires the court to determine whether the law meets the very narrow exception to the virtual per se rule of invalidity by advancing a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. The burden is on the state to show that the discrimination is demonstrably justified. Satisfying this standard is no easy feat; the state's burden of justification is so heavy that facial discrimination by itself may be a fatal defect. Regulations that facially discriminate or have a discriminatory effect on interstate commerce rarely pass the elevated scrutiny test. To meet this standard, the state must come forward with concrete record evidence, rather than mere speculation.

Constitutional Law > Prohibition

[HN29] The *Twenty-first Amendment* Enforcement Act gives state attorneys general the power to sue alcohol producers in federal court to enjoin violations of state law. 27 U.S.C.S. § 122a(b).

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

[HN30] The burden is on the state to show that the discrimination against interstate commerce is demonstrably justified.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > Prohibition of Commerce

Constitutional Law > Prohibition

[HN31] *Granholm* mandates that the states treat in-state and out-of-state brewers in an evenhanded manner.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation > General Overview

Governments > Legislation > Extension & Revival

[HN32] When a district court is faced with a "constitutionally underinclusive" statute, it has two remedial alternatives: it may either declare the statute a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion.

Civil Procedure > Judicial Officers > Judges > Discretion

Civil Procedure > Remedies > General Overview

[HN33] Fashioning the appropriate remedy in a case lies within a court's zone of discretion.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation > General Overview

Governments > Legislation > Extension & Revival

[HN34] Although the choice between "extension" and "nullification" is within the constitutional competence of a federal district court faced with a "constitutionally underinclusive" statute, and ordinarily extension, rather than nullification, is the proper course, the court should not use its remedial powers to circumvent the intent of the legislature and should therefore measure the intensity of commitment to the residual policy and consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation.

Governments > State & Territorial Governments > Licenses

[HN35] See 235 ILCS 5/1-2.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation

[HN36] A court accords substantial weight and deference to an agency's interpretation of a statute because agencies are an informed source for ascertaining the legislature's intent and while that interpretation is not binding on the court, it is considered relevant.

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation

Governments > State & Territorial Governments > Licenses

[HN37] The Illinois Liquor Control Commission's interpretation of the statute it was created to enforce is entitled to great weight.

Governments > State & Territorial Governments > Licenses

[HN38] 235 ILCS 5/3-12 confers broad powers and duties on the Illinois Liquor Control Commission.

COUNSEL: [**1] For Anheuser-Busch, Inc., Wholesaler Equity Development Corporation, Plaintiffs: Edward Michael Crane, LEAD ATTORNEY, Albert Lee Hogan, III, Andrew J Fuchs, Mark Edward Rakoczy, Nathan Andrew Shev, Skadden, Arps, Slate, Meagher & Flom, LLP CH, Chicago, IL.

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For Stephen B Schnorf, John M Aguilar, Sam Esteban, Michael F McMahon, Martin Mulcahey, Donald O'Connell, Commissioners, of the Illinois Liquor Control Commission, in their official capacities, Richard R Haymaker, Chief Legal Counsel of the Illinois Liquor Control Commission, in his official capacity, The Illinois Liquor Control Commission Defendants: Shirley Ann Walls, LEAD ATTORNEY, Michael T. Dierkes, Illinois Attorney General's Office (100 W), Chicago, IL.

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Funkhouser Vegosen Liebman & Dunn, Ltd., Chicago, IL.

JUDGES: Robert M. Dow, Jr., United States District Judge.

OPINION BY: Robert M. Dow, Jr.

OPINION

[*795] MEMORANDUM OPINION AND ORDER

Plaintiffs have filed a lawsuit challenging the Illinois Liquor Control Commission's ("Commission" or "ILCC") construction of the Illinois Liquor Control Act of 1934 ("Act") on several federal constitutional grounds. The lawsuit was spurred by Plaintiffs' contention that the Commission's action unlawfully blocked a "significant and important business transaction" --namely, the [**3] acquisition by Anheuser Busch, Inc. (an out-of-state brewer of beer) of City Beverages (an in-state distributor of beer).

Currently before the Court is Plaintiffs' motion for partial summary judgment [28], seeking a declaration that the Commission's construction of the Act violates the *Commerce Clause*. The Court granted Plaintiffs' request for expedited briefing on that claim (a request that the State Defendants, represented by the Illinois Attorney General, did not oppose) and heard oral argument on June 16, 2010. The Court also has granted the motions of several interested parties to participate as *amici curiae*: the Wine and Spirits Distributors Association ("WSDI"), the Association of Beer Distributors of Illinois ("ABDI"), and the Illinois Craft Brewers Guild, Ltd. ("Guild").¹

1 One of those parties, WSDI, sought to participate as an intervenor. The Court denied the motion to intervene in a written decision [89], but accepted the WSDI's memorandum [76-2] as an *amicus* brief.

Having carefully considered the arguments of the parties and *amici*, both orally and in writing, the Court grants Plaintiffs' motion for partial summary judgment [28] on the *Commerce Clause* claim. In regard to the [**4] remedy that follows from the Court's *Commerce Clause* ruling, the parties [**796] and *amici* agree that the Court, in the exercise of its discretion, must choose one of two alternatives: either "extension" or "nullification" of the unconstitutional in-state benefit. In the particular circumstances of this case, the Court concludes that "nullification" -- that is, withdrawing self-distribution privileges from in-state brewers rather than extending those privileges to out-of-state brewers -- does the "minimum damage" to the legislative and regulatory scheme under the Illinois Liquor Control Act, and

thus is the appropriate remedy. Finally, because the Court's choice of remedy rests on judgments as to the intent of the Illinois General Assembly and implicates matters of public policy as to which the General Assembly is the ultimate arbiter, the Court temporarily stays enforcement of its ruling to provide the General Assembly an opportunity to act definitively on this matter if it chooses to do so.

I. Background

A. The Liquor Control Act

Like many states, [HN1] Illinois regulates the production, importation, distribution, and sale of alcoholic beverages through a three-tier licensing system. The function performed [**5] at each of the tiers (*i.e.*, production, distribution/wholesale,² and retail) requires separate licensing and compliance with regulations specific to that tier. Pursuant to the Liquor Control Act, to distribute beer in Illinois, it is necessary to hold a Distributor's License, and to import beer from out-of-state for distribution in Illinois, it is necessary to hold an Importing Distributor's License. In-state beer producers may hold a Brewer's License, which entitles them to hold Distributor's and Importing Distributor's Licenses. See 235 ILCS 5/5-1(a) ("A Brewer may make sales and deliveries of beer * * * to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act."). According to the Commission, an out-of-state beer producer is ineligible to hold Distributor's and Importing Distributor's Licenses. However, out-of-state producers are not precluded from selling their product within the State. Indeed, in 2008, Plaintiff Anheuser-Busch, Inc. distributed more than 38 million gallons of beer within Illinois through various distributors. But, according to the Commission, an out-of-state producer must [**6] go through an in-state distributor. In other words, in-state brewers are permitted to perform the distribution function in Illinois, while out-of-state brewers are precluded from doing the same. Taking this one step further, on account of its non-resident status, an out-of-state brewer may not possess an ownership interest in a licensed Illinois distributor.

2 The terms "distribution" and "wholesale" are used interchangeably throughout this opinion.

Prior to 1982, the Illinois Attorney General had opined that all brewers could self-distribute under the Liquor Control Act. In 1982, the General Assembly amended the statute to provide that out-of-state brewers must hold Non-Resident Dealer Licenses.³ Because the Act did not specifically authorize non-resident dealers to distribute, the Commission has interpreted the Act to

prohibit non-resident dealers from holding a Distributor's or Importing Distributor's License.⁴

3 According to Plaintiffs, the Commission did not begin enforcing this provision in earnest until 2000.

4 As explained below, the history of the Commission's licensing of companies affiliated with Plaintiff Anheuser-Busch, Inc. is in considerable tension with the Commission's current [**7] construction of the statutory scheme. At oral argument, counsel for Defendants candidly characterized the Commission's prior treatment of the licensing of those companies as a "mistake" that involved "some sort of *de facto* grandfathering in" of the situation that existed prior to the 1982 amendment. June 16 Trans. at 9. For purposes of the motion now before Court, the parties have agreed that, notwithstanding any prior "mistakes," the Commission's current interpretation of the Act is the one that matters for purposes of Plaintiffs' declaratory judgment claim. For reasons that have to do with the limitations on a federal court's authority to instruct state actors (like Defendants here) how to comply with state law (see *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)), the parties' position is correct, and the efforts by some of the *amici* to resist that proposition by offering a competing construction are directed to the wrong tribunal.

[*797] B. The Current Dispute

Plaintiff Anheuser-Busch, Inc. ("AB Inc.") is a wholly owned subsidiary of Anheuser-Busch Companies, Inc. AB Inc. does not brew or produce beer within Illinois and has not done so at any time relevant to this matter. [**8] At all times relevant to this matter, AB Inc. has exported beer produced elsewhere in the United States into Illinois for distribution within the state.

Each year during the period from 1982 through 2005, the Illinois Liquor Control Commission⁵ issued to AB Inc., in its own name, one or more Illinois Distributor's and Importing Distributor's Licenses. During much of the period from 1982 through 2005, one or more affiliates of AB Inc. also held one or more Distributor's and Importing Distributor's Licenses. From 2005 through the present, AB Inc. affiliate Wholesaler Equity Development Corporation ("WEDCO") has maintained an ownership interest in an entity that held one or more Distributor's and Importing Distributor's Licenses. Plaintiff WEDCO is a wholly-owned subsidiary of Anheuser-Busch Companies, Inc. From the formation of Plaintiff City Beverage --Illinois LLC in 2005 through

the present, WEDCO has maintained a thirty percent ownership interest in City Beverage. Plaintiffs SD of Illinois, Inc. ("SDI") and Double Eagle Distributing Company ("Double Eagle") (SDI and Double Eagle are referred to collectively as the "Soave Entities") each have owned a thirty-five percent interest in [**9] City Beverage. City Beverage is the parent company of City Bloomington, City Chicago, and City Markham. City Bloomington, City Chicago, and City Markham have held from 2005 through the present both Illinois Distributor's and Importing Distributor's Licenses in various names.

5 Defendants in this case are affiliated with the Commission. Stephen Schnorf is the Acting Chair and a Commissioner of the ILCC and Defendants John Aguilar, Daniel Downes, Sam Esteban, Michael McMahon, Martin Mulcahey, and Donald O'Connell are Commissioners of the ILCC. Defendant Richard Haymaker is Chief Legal Counsel of the ILCC. Defendants are named in this suit in their official capacities. See *Ex parte Young*, 209 U.S. 123, 157-60, 28 S. Ct. 441, 52 L. Ed. 714 (1908); *Entertainment Software Ass'n v. Blagojevich*, 469 F.3d 641, 644-45 (7th Cir. 2006).

In December 2009, WEDCO reached an agreement with the Soave Entities to purchase the Soave Entities' combined seventy percent interest in CITY Beverage. The transaction was scheduled to close on February 12, 2010. On January 6, 2010, AB Inc. and WEDCO notified the Commission that WEDCO planned to purchase a distributor in Illinois. From January 6 through January 17, the Commission requested information [**10] from Plaintiffs regarding the ownership of WEDCO. On January 27, 2010, AB Inc. and WEDCO notified the Commission that WEDCO (a wholly owned subsidiary of AB Inc.) planned to acquire the additional seventy percent interest in CITY Beverage.

The parties prepared to close on the transaction on February 12. On February [**798] 11, 2010, Ivan Fernandez, legal counsel for the Commission, e-mailed to Nancy Kamp of AB Inc. a letter from Defendant Haymaker stating that it would be unlawful for WEDCO to complete the acquisition of City Beverage. After receipt of Defendant Haymaker's letter, AB Inc. and WEDCO postponed the purchase of City Beverage that otherwise appeared poised to close on February 12, because Mr. Haymaker's letter stated that it would violate Illinois law to do so. To date, the parties have not completed the transaction.

On March 2, 2010, the Commission held a "Special Session" on the question of whether an Illinois non-resident dealer may hold an Illinois Distributor Li-

cense. On March 10, 2010, the Commission issued a ruling in which it stated that the Illinois Liquor Control Act "prohibits an Illinois-licensed Non-Resident Dealer from possessing an ownership interest in a licensed [**11] Illinois distributor." In support of its decision, the Commission explained that the three-tier system promotes temperance by protecting against "vertical monopolies and economies of scale that would lead to the introduction of cheap alcohol liquor into the marketplace." In support of its ruling, the Commission also cited the State's interest in tax collection, an orderly market, and public safety. The ruling permitted WEDCO to retain its current minority interest in CITY Beverage due to the "history and facts surrounding this case." The declaratory ruling added that the Commission would "renew said CITY Beverage distributors licenses upon their expiration and as currently owned absent any other license disqualifying factors. This factual determination is limited solely to the history and facts surrounding this case and will have no bearing on future legal declarations or rulings from the [Commission]." On April 1, 2010, the Commission issued its annual renewal of CITY Bloomington's Distributor's and Importing Distributor's Licenses.

Currently, only two in-state brewers -- Argus and Big Muddy -- hold distribution rights, and they are limited to distributing their own products. "Neither [**12] has held its distributors' license for long; Big Muddy was licensed in June 2009, while Argus obtained its license in February 2010. A third in-state brewer, Goose Island Beer Co., holds a distributor's license but currently does not self distribute. AB Inc. has an ownership interest in Goose Island.

6 For purposes of this motion, the parties do not dispute that Argus and Big Muddy are relatively small producers.

II. Legal Standard on Summary Judgment

[HN2] Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. In determining whether there is a genuine issue of fact, the Court "must construe the facts and draw all reasonable inferences in the light most favorable to the nonmoving party." *Foley v. City of Lafayette*, 359 F.3d 925, 928 (7th Cir. 2004).

[HN3] To avoid summary judgment, the opposing party must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). [**13] A genuine

issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 248. The party seeking summary judgment [*799] has the burden of establishing the lack of any genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Summary judgment is proper against "a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* at 322. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). In other words, the "mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252.

III. Analysis

AB Inc. currently holds a Non-Resident Dealer's License and proposes to become a distributor by acquiring a 100% ownership interest in Illinois distributor City Beverage. But [HN4] the Act's definition [**14] of "distributor" specifically excludes non-resident dealers: "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." 235 ILCS 5/1-3.15. Common ownership or affiliation between out-of-state brewers and entities that hold distribution licenses also is illegal according to Defendants, and thus Defendants have stated that WEDCO's acquisition of CITY Beverage would be unlawful under the Commission's interpretation of the Act. However, the Commission interprets the Act to permit in-state brewers to act as distributors: [HN5] "[A] brewer may make sales and deliveries of beer * * * to retailers provided that the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act." 235 ILCS 5/5-1(a). Plaintiffs seek a declaratory judgment invalidating the prohibition against out-of-state brewers holding the licenses necessary to distribute beer in Illinois on the ground that the prohibition discriminates in favor of in-state [**15] (and against out-of-state) entities in violation of the *Commerce Clause*.

A. Threshold Issues

Before turning to the merits of Plaintiffs' constitutional claim, the Court first must address a few threshold issues that have been raised primarily by the *amici*.

Amicus WSDI contends that this Court lacks subject matter jurisdiction over Plaintiffs' *Commerce Clause* claim, which WSDI insists does not belong in federal court at this time "under the rubric of either standing or ripeness." WSDI Br. at 9. WSDI's jurisdictional argument rests on constructions of (i) the Illinois Liquor Control Act and (ii) the Commission's authority that are not shared by the Commission itself. WSDI argues that, properly understood, the Act does not discriminate between in-state and out-of-state economic interests, and thus Plaintiffs have not suffered any injury that is traceable to a *Commerce Clause* violation. See WSDI Br. at 5 ("WSDI's construction of the Act is proper in light of the Act's plain language and removes any claim that the Act is unconstitutional on its face"); *id.* (urging this Court to adopt WSDI's "plain language" construction to avoid reaching the constitutional question asserted by Plaintiffs). [**16] WSDI also submits that the Commission lacked authority to issue the declaratory ruling that gave rise, at least in part, to this lawsuit. And following from that assertion, WSDI reasons that the declaratory [*800] ruling "is a legal nullity" that "does not a case or controversy make." *Id.* at 7.

Like WSDI, *amicus* ABDI also takes issue with the Commission's interpretation of the Liquor Control Act and urges the Court, under the doctrine of constitutional avoidance, to adopt a contrary statutory construction that "ABDI submits removes any constitutional issue, preserves Illinois' orderly, accountable, and stable regulatory system, and gives effect to all provisions of the Act." ABDI Br. at 7-8. *Amicus* Guild disagrees with the interpretation of the Act set forth by what it calls the "distributor *amici*" and devotes most of its brief to demonstrating why, in its view, WSDI and ABDI are misreading the statutory scheme. See Guild Br. at 2-4.

WSDI's first contention -- that Plaintiffs cannot show an injury that is traceable to a *Commerce Clause* violation -- challenges Plaintiffs' standing to maintain a lawsuit at all, for if WSDI were correct, there may not be a case or controversy sufficient to invoke [**17] this Court's jurisdiction under Article III. As the Seventh Circuit recently has reiterated, [HN6] "[s]tanding exists when the plaintiff suffers an actual or impending injury, no matter how small; when that injury is caused by the defendant's acts; and when a judicial decision in the plaintiff's favor would redress that injury." *Brandt v. Village of Winnetka*, 612 F.3d 647, 2010 WL 2813648, at *2 (7th Cir. July 20, 2010). The court of appeals further stressed that "[i]njury need not be certain." *Id.* In addition, and particularly apt in the circumstances of this case, the court observed that although a "pre-enforcement suit entails some element of chance" because some intervening event may occur to steer parties away from what appears to be a likely collision

course, "pre-enforcement challenges nonetheless are within Article III." *Id.*; see also *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29, 127 S. Ct. 764, 166 L. Ed. 2d 604 (2007) ("where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat -- for example, the constitutionality of a law threatened to be enforced") (emphasis in original).

Here, the record **[**18]** indicates that shortly before Plaintiffs planned to close on the City Beverage transaction, Defendant Haymaker, on behalf of the Commission, advised Plaintiffs that it would be unlawful to consummate the transaction under the Commission's current interpretation of the Liquor Control Act. Based on that guidance from the Commission, Plaintiffs were concerned that proceeding may subject them to administrative, civil, and criminal penalties, and so they stepped back from completing the deal. As Plaintiffs correctly observe, their legal dispute with Defendants concerning whether the Act bars Plaintiffs from completing the once-imminent deal to acquire City Beverage is sufficiently "definite and concrete" and "real and substantial" to confer standing, whether or not the Declaratory Ruling is void, as WSDI contends. Had Plaintiffs proceeded with what Defendants considered to be unlawful action, Plaintiffs potentially faced penalties, sanctions, and a significantly diminished asset if Defendants followed through on their (credible) threat to enforce their interpretation of the Act. That is an ample showing of injury -- again, the injury "need not be certain." *Brandt*, 612 F.3d 647, 2010 WL 2813648, at *2. **[**19]** And because that injury is traceable to the Defendants' conduct and redressable by a decision in Plaintiffs' favor in this litigation, Plaintiffs have standing to sue. See *id.*

The contention by certain *amici* that the Court should reject the Commission's construction of the Act and, under the constitutional avoidance doctrine, adopt *amici's* alternative construction **[*801]** overlooks certain fundamental limitations on the authority of federal courts to impose their views of state law on state officials. At least since *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 103-23, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984), it has been "well established that **[HN7]** the *Eleventh Amendment* prohibits a federal court from ordering state officials to conform their conduct to state law." *Komyatti v. Bayh*, 96 F.3d 955, 959 (7th Cir. 1996); see also *Mitchell v. Clayton*, 995 F.2d 772, 775 (7th Cir. 1993) (noting that under *Pennhurst*, **[HN8]** "we may not exercise pendent jurisdiction to adjudicate claims that state officials are violating state law because such claims are barred in federal courts by the *Eleventh Amendment*"). In *Burgess v. Ryan*, 996 F.2d 180, 184 (7th Cir. 1993), the Seventh Circuit addressed both com-

prehensively and succinctly the **[**20]** reasons why this Court may not entertain the alternative statutory construction argument advanced by the *amici*:

Behind many of Burgess's arguments lies a conclusion that employees of Illinois misunderstand Illinois law * * * * Yet it is not appropriate for a federal court, hearing a case under § 1983, to upbraid state officials for a supposed error of state law. Burgess was free to take his contentions to state court * * * * **[HN9] A federal judge, by contrast, must assume that the state officials' interpretation is right -- not necessarily because it is correct * * * but because errors in the interpretation of state law do not supply a basis for federal relief.** Constitutional adjudication tests the *power* of a state to act in a particular way; whether the state indeed wishes to act in that way is a question of its domestic law. **The Constitution does not require states to administer their laws correctly.**

(Italics in original, bold added for additional emphasis.) Thus, as the parties acknowledged at oral argument (see June 16 Trans. at 11-12), under *Pennhurst* and its progeny, the only construction of the Act that matters for purposes of the *Commerce Clause* claim on which Plaintiffs have sought **[**21]** partial summary judgment is the Commission's.

The Court hastens to add that *amici* are not alone in viewing this state of affairs as "an unhappy result." *Citizens for John W. Moore Party v. Board of Election Commissioners of the City of Chicago*, 781 F.2d 581, 585 (7th Cir. 1986) (Easterbrook, J., dissenting); see also David P. Currie, *Sovereign Immunity and Suits Against Government Officers*, 1984 SUP. CT. REV. 149, 164-67; David L. Shapiro, *Wrong Turns: The Eleventh Amendment and the Pennhurst Case*, 98 HARV. L. REV. 61 (1984). For, as Judge Easterbrook explained, "[c]ourts ordinarily struggle to find ways to avoid resolving constitutional questions; the interpretation of the *Eleventh Amendment* adopted in *Pennhurst* may force a federal court to reach the constitutional issues even though plausible state-law grounds are available for decision." *Id.*; see also *Rogers v. Okin*, 738 F.2d 1, 4 (1st Cir. 1984) (noting the irony that "two years after the Supreme Court returned this case to us in furtherance [of] the Court's 'settled policy' of avoiding unnecessary constitutional questions, *Pennhurst* requires us to face those questions"). Indeed, Plaintiffs themselves plainly are less than

comfortable [**22] proceeding in this Court on the basis of what they contend is a "highly questionable interpretation of the Act" (Pl. Br. at 19) and at times appear to want to resist that interpretation (see, e.g., *id.* at 2 n.2 (describing the Commission's current interpretation as "a reversal of long-standing Illinois law")). Yet, at the end of the day, Plaintiffs correctly point out that the alternative interpretation offered by *amici* -- and, indeed, any interpretation other than the Commission's -- is "irrelevant." Pl. Resp. to *Amici* at 6; see [**802] also *id.* at 7 ("The interpretation and enforcement regime that matters to Plaintiffs' *Commerce Clause* claim is that which the ILCC has adopted"). In the words of the Seventh Circuit, to the extent that Plaintiffs, *amici*, or anyone else desires to challenge the correctness -- as opposed to the constitutionality -- of Defendants' construction of the Act, they are "free to take [their] contentions to state court." *Burgess*, 996 F.2d at 184.

B. Discrimination Under The *Commerce Clause*

[HN10] To avoid "economic balkanization" and "a proliferation of trade zones" among the states, the *Commerce Clause* imposes a "dormant" or "negative" constraint on the power of states to enact [**23] legislation that interferes with or burdens interstate commerce. *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality of Or.*, 511 U.S. 93, 98, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994); *Granholm v. Heald*, 544 U.S. 460, 472-73, 125 S. Ct. 1885, 161 L. Ed. 2d 796 (2005). Under this doctrine, "in all but the narrowest circumstances, 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*, 544 U.S. at 472; *Nat'l Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1131 (7th Cir. 1995) (explaining that laws that discriminate against interstate commerce are "treated as all but *per se* unconstitutional"). [HN11] Laws that discriminate explicitly against interstate commerce -- that is, laws that by their own terms favor in-state economic interests over out-of-state interests -- are *per se* invalid, unless the state demonstrates that the discrimination "advanc[es] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." ⁷ *Granholm*, 544 U.S. at 476, 489. Plaintiffs contend that Defendants' construction of the Act discriminates explicitly against out-of-state brewers, noting that the determination of [**24] whether a brewer is permitted to perform the wholesale function in Illinois turns on whether the producer brews its beer in-state or out-of-state.

7 [HN12] Laws that discriminate explicitly sometimes are described as discriminatory "on their face." See, e.g., *Baude v. Heath*, 538 F.3d 608, 611 (7th Cir. 2008), cert. denied, 129 S. Ct.

2382, 173 L. Ed. 2d 1293 (2009); *Nat'l Paint*, 45 F.3d at 1130. A law also is considered discriminatory if it is neutral on its face (*i.e.*, does not by its terms favor in-state interests over out-of-state interests) but discriminates in purpose or has a substantial discriminatory effect on interstate commerce. *Family Winemakers of Cal. v. Jenkins*, 592 F.3d 1, 9-10, 13 (1st Cir. 2010) (reviewing discriminatory purpose and effect of facially neutral law under *per se* standard of invalidity); *Nat'l Paint*, 45 F.3d at 1131. All three varieties of discrimination are analyzed under the *per se* rule of invalidity.

[HN13] Under *Commerce Clause* jurisprudence, laws are analyzed under one of two standards, depending on whether the law discriminates against interstate commerce or whether it regulates evenhandedly with only incidental effects on interstate commerce. If the law discriminates against interstate [**25] commerce -- whether it discriminates explicitly, has a discriminatory purpose, or has substantial discriminatory effects -- the law is subject to a rule of virtual *per se* invalidity. *Or. Waste Sys.*, 511 U.S. at 99 ("If a restriction on commerce is discriminatory, it is virtually *per se* invalid"); *Nat'l Paint*, 45 F.3d at 1131 (same); *Cherry Hill Vineyard, LLC v. Baldacci*, 505 F.3d 28, 33 (1st Cir. 2007) (noting that a state law that discriminates "on its face, in purpose, or in effect" engenders strict scrutiny under the jurisprudence of the dormant *commerce clause*). To avoid the "*per se* rule of invalidity," the state must demonstrate that the [**803] law "advanc[es] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." See, e.g., *Or. Waste Sys.*, 511 U.S. at 101. On the other hand, a law that regulates evenhandedly with only incidental effects on interstate commerce is valid unless the challenger meets the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970), pursuant to which a law is invalid only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." ⁸ *Or. Waste Sys.*, 511 U.S. at 99 [**26] (quoting *Pike*, 397 U.S. at 142); *Baude*, 538 F.3d at 611.

8 In *Pike*, an Arizona regulation required that all cantaloupes grown in the state and offered for sale be packed in particular shipping containers before transportation. *Pike*, 397 U.S. at 138. The plaintiff cantaloupe grower sued because it was prevented from using its packing and shipping center in a nearby state to sort, inspect, pack, and ship its cantaloupes prior to sale. *Id.* at 139-40. Because the law did not treat out-of-state firms any differently from local firms, but had only an incidental effect on interstate commerce, the

Court applied a simple balancing test (ultimately holding that the regulation's burden on interstate commerce outweighed its benefits). *Id.* at 144-45.

[HN14] A law discriminates explicitly against interstate commerce if by its own terms it regulates disparately out-of-state and in-state economic interests and favors the in-state interests. See, e.g., *Granholm*, 544 U.S. at 467 ("The differential treatment between in-state and out-of-state wineries constitutes explicit discrimination against interstate commerce"); *Or. Waste Sys.*, 511 U.S. at 100 (holding that "[i]n making that geographic distinction, the surcharge [**27] patently discriminates against interstate commerce" and thus is "facially discriminatory"); cf. *Nat'l Paint*, 45 F.3d at 1131 ("Chicago's law does not fall into this category, however; it bans all spray paint without regard to its source."); *Baude*, 538 F.3d at 611 (finding that law was not explicitly discriminatory because the challenged "rule applies to every winery, no matter where it is located."). In *Granholm*, the Supreme Court held to be explicitly discriminatory (and struck down pursuant to the dormant *Commerce Clause*) Michigan and New York alcohol beverage laws that favored in-state producers over out-of-state producers. 544 U.S. at 493. The challenged Michigan law allowed in-state wineries to bypass Michigan's three-tier system and ship wine directly to consumers subject only to a licensing requirement. *Id.* at 473-74. Out-of-state wineries were prohibited from doing the same, regardless of whether they were licensed, and thus their wine had to pass through a wholesaler and retailer before reaching a consumer. *Id.* at 474. The challenged New York law allowed both in-state and out-of-state wineries to ship wine to New York consumers, but out-of-state wineries were required to open [**28] a branch office and maintain a physical presence in the State. *Id.* at 474. Unless out-of-state wineries met this residency requirement, their wine had to pass through the wholesaler and retailer levels of New York's three-tier system to reach consumers. *Id.* at 474.

The Supreme Court held that both state laws were unenforceable violations of the *Commerce Clause*. *Granholm*, 544 U.S. at 476. The *Granholm* Court described as "obvious" the "discriminatory character" of the Michigan system because the "differential treatment requir[ed] all out-of-state wine, but not all in-state wine, to pass through an in-state wholesaler and [**804] retailer before reaching consumers." *Id.* at 473-74. With respect to the New York law, the Court found it to be "an indirect way of subjecting out-of-state wineries, but not local ones, to the three-tier system" and "grants in-state wineries access to the State's consumers on preferential terms." *Id.* at 474. Consequently, New York's in-state presence requirement ran afoul of *Commerce Clause* jurisprudence that prohibits states from requiring "an

out-of-state firm 'to become a resident in order to compete on equal terms.'" *Id.* at 475 (quoting *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72, 83 S. Ct. 1201, 10 L. Ed. 2d 202 (1963)). [**29] For those reasons, the Court stated that it had "no difficulty concluding" that New York's and Michigan's laws discriminated against interstate commerce and thus were subject to the "virtually *per se* rule of invalidity." *Granholm*, 544 U.S. at 476 (quoting *Philadelphia v. New Jersey*, 437 U.S. 617, 98 S. Ct. 2531, 57 L. Ed. 2d 475 (1978)).

The *Granholm* Court rejected the contention that the *Twenty-first Amendment*⁹ saves laws that discriminate against out-of-state alcohol producers or products from the traditional *per se* invalidity standard. [HN15] Although a state's three-tier system for controlling alcohol beverage distribution is "unquestionably legitimate" under the *Twenty-first Amendment*, *Granholm*, 544 U.S. at 488-89, the "regulation of alcohol is limited by the non-discrimination principle of the *Commerce Clause*." *Id.* at 487 (citing *Bacchus*, 468 U.S. at 276; *Brown-Forman Distillers*, 476 U.S. 573, 106 S. Ct. 2080, 90 L. Ed. 2d 552; *Healy*, 491 U.S. 324, 109 S. Ct. 2491, 105 L. Ed. 2d 275); see also *Granholm*, 544 U.S. at 484-85 ("The [Twenty-first] Amendment did not give states the authority to pass non-uniform laws in order to discriminate against out-of state goods."). In other words, the *Twenty-first Amendment* does not permit states to enact laws that discriminate against out-of-state liquor [**30] producers or their goods. *Id.* at 473-76, 489 ("State policies are protected under the *Twenty-first Amendment* when they treat liquor produced out of state the same as its domestic equivalent."). The Michigan and New York laws were invalid under a traditional *Commerce Clause* analysis because they "involve[d] straightforward attempts to discriminate in favor of local producers." *Granholm*, 544 U.S. at 489.

9 [HN16] *Section 2 of the Twenty-first Amendment* provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited."

The Court then considered whether either of the challenged state regimes was saved because it advanced a legitimate local purpose that could not be adequately served by reasonable nondiscriminatory alternatives. *Granholm*, 544 U.S. at 489. Characterizing that test as one that [HN17] places on the state the burden of demonstrating that the discrimination is "demonstrably justified" because "concrete record evidence" showed that nondiscriminatory alternatives "will prove unworkable," the Court determined that neither Michigan nor New York had [**31] satisfied this "exacting standard."

Id. at 492-93 (citations and quotations omitted). The Court concluded with the observation that [HN18] although the states have broad power to regulate liquor under *Section 2 of the Twenty-first Amendment*, "[t]his power * * * 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." [*805] *Id.* at 493. "Without demonstrating the need for discrimination, New York and Michigan [had] enacted regulations that disadvantage[d] out-of-state wine producers." *Id.* On that basis, the Court held that under *Commerce Clause* jurisprudence, the challenged state laws could not stand. *Id.*; see also *Action Wholesale Liquors v. Oklahoma Alcoholic Beverage Laws Enforcement Com'n*, 463 F. Supp. 2d 1294, 1300-01 (W.D. Okla. 2006).

A number of courts have applied *Granholm* to hold that state alcoholic beverage laws that discriminate against out-of-state producers are unconstitutional.¹⁰ For example, *Costco Wholesale Corp. v. Hoen*, 407 F. Supp. 2d 1247 (W.D. Wash. 2005), involved Washington statutes that permitted domestic breweries and wineries to be licensed as distributors under the [**32] state's three-tier system, but did not permit out-of-state brewers and wineries to perform the wholesale function, and mandated that out-of-state brewers and wineries sell their product to a distributor, which in turn sold the product to a retailer. *Id.* at 1249. The Court held that the discriminatory nature of Washington's system was "obvious," because the privilege of in-state producers to distribute directly to retailers "provides clear advantages to in-state wineries and breweries that out-of-state producers do not enjoy." *Id.* at 1251. Accordingly, the Court held that Washington's system discriminated against out-of-state producers in violation of the *Commerce Clause*. *Id.* at 1252.

¹⁰ See, e.g., *Jelovsek v. Bredesen*, 545 F.3d 431 (6th Cir. 2008) (holding that certain preferences for in-state wineries violated the *Commerce Clause*, including a residency requirement and a provision allowing wineries to serve free wine samples when a winery used at least 75 percent in-state agricultural products), cert. denied, 130 S. Ct. 199, 175 L. Ed. 2d 127 (2009); *Huber Winery v. Wilcher*, 488 F. Supp. 2d 592, 597 (W.D. Ky. 2006) (holding that Kentucky's farm and small winery direct sale exceptions violated the *Commerce Clause* [**33] because they favored in-state wineries); *Action Wholesale Liquors*, 463 F. Supp. 2d at 1305 (holding that a law violated the *Commerce Clause* because it allowed in-state wineries to ship directly to retailers while prohibiting out-of-state wineries from doing the same); see also *Baude*, 538 F.3d 608 (invalidating an In-

diana law that prevented an out-of-state winery from obtaining a permit to ship to Indiana consumers if the out-of-state winery also held a distributor's license in its own state).

1. Application of the per se invalidity standard in this case

In the instant case, [HN19] to distribute beer in Illinois it is necessary to hold a Distributor's License and to import beer from out-of-state as part of this function it is necessary also to hold an Importing Distributor's License. In-state beer producers may hold a Brewer's License, which entitles them to hold Distributor's and Importing Distributor's Licenses. See 235 ILCS 5/5-1(a) ("A Brewer may make sales and deliveries of beer * * * to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act."). Yet an out-of-state beer producer is ineligible to hold [**34] Distributor's and Importing Distributor's Licenses. The bottom line is that in-state brewers are permitted to perform the distribution function in Illinois, while out-of-state brewers are precluded from doing the same. Defendants' construction of Illinois law also does not permit an out-of-state brewer to own or be affiliated with a licensed Illinois Distributor or Importing Distributor. Put differently, the basis for determining whether a brewer can distribute beer in Illinois turns on the brewer's residency; an in-state brewer is eligible, while an out-of-state brewer is not. Thus, by its own terms, this law explicitly discriminates against out-of-state brewers (or, in *Granholm* terms, out-of-state "producers").

[*806] Defendants acknowledge that *Granholm* prohibits discrimination against out-of-state liquor producers but attempt to portray this case as one that involves the question of "who can be a distributor." To that end, Defendants contend that the discrimination at issue affects AB Inc. "only insofar as it wants to act as a distributor" and that the discrimination does not affect AB Inc. "in its capacity as producer." Defendants then proceeded under a *Twenty-first Amendment* "core concerns" [**35] analysis, which according to Defendants has been applied in three post-*Granholm* cases to conclude that discrimination is constitutional so long as it has some connection to the distributor or retailer tiers of the three-tier system.

The discrimination against out-of-state producers under Defendants' construction of state law cannot be cured through semantics. The cases cited by Defendants do not support Defendants' view that discrimination against out-of-state producers is permissible if the state is determining "who can be a distributor." Rather, those cases hold that [HN20] only when discrimination against out-of-state producers is not at issue, does the *Twen-*

ty-first Amendment permit states to enact laws that distinguish between retailers and distributors based on the location of their operations. See, e.g., *Siesta Vill. Mkt. LLC v. Steen*, 595 F.3d 249, 258 (5th Cir. 2010) (noting that although *Granholm* prohibits discrimination against out-of-state alcohol products or their producers, "[s]uch discrimination among producers is not the question today"); *Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185, 191 (2d Cir. 2009) ("Because New York's three-tier system * * * does not discriminate against [**36] out-of-state products or producers, we need not analyze the regulation further under *Commerce Clause* principles."); *Brooks v. Vassar*, 462 F.3d 341, 352-54 (4th Cir. 2006) ("[Defendants'] argument must be that in-state retailers are favored over out-of-state retailers * * * [T]his argument is foreclosed * * * because the dormant *Commerce Clause* only prevents a State from enacting regulation that favors in-state producers"). The laws at issue in those cases did not involve producers or distributors, but rather involved discrimination against retailers that sought to sell and deliver liquor from outside the state to consumers. *Arnold's Wines*, 571 F.3d at 190; *Siesta*, 595 F.3d at 256, 260; *Brooks*, 462 F.3d at 352. These cases also confirm that [HN21] a law that "discriminates in favor of in-state producers or products * * * will only be upheld if it reasonably advances state interests that cannot be adequately served by reasonable nondiscriminatory alternatives." *Arnold's Wines*, 571 F.3d at 189; see also *Siesta Village*, 595 F.3d at 258 ("At least as to producers, the [*Granholm*] Court held that the [Twenty-first] amendment does not supersede other provisions of the Constitution") (emphasis added); [**37] *Brooks*, 462 F.3d at 354. ¹¹ Defendants admit that the Liquor Control Act uses the geographic location of brewers (producers) to determine "who can be a distributor." In other words, in-state beer producers are eligible to enjoy the advantages of distributing beer in Illinois, while out-of-state producers are not. The upshot of this disparate treatment is that an out-of-state brewer's beer must flow through an unaffiliated distributor [**807] to reach retailers and thus cannot access the Illinois market on equal terms with in-state brewers, who may sell their beer directly to retailers. In short, under the Commission's construction of the Act, Plaintiff AB Inc. "cannot act as a distributor in Illinois' three-tier system" (Def. Br. at 16) because it is an out-of-state producer.

11 The *Brooks* case originally involved Virginia laws that permitted in-state wineries and breweries to deliver wine and beer to retailers (described as an in-state "distribution privilege") but prohibited out-of-state wineries and breweries from doing the same. 462 F.3d at 346. The Fourth Circuit did not need to rule on the constitutionality of the in-state "distribution privilege,"

however, because *Granholm* was decided [**38] in the middle of the case, after which "Virginia conceded that [the in-state "distribution privilege" was] unconstitutional under *Granholm*." *Id.* at 347.

Defendants also attempt to distinguish *Granholm* on the ground that AB Inc. seeks to act on multiple tiers of the three-tier system, rather than bypass the three-tier system entirely. Yet as Justice Thomas pointed out in his dissent in *Granholm*, describing a producer as "bypassing the three-tier system" is just another way of saying that the producer is acting as its own wholesaler and retailer. *Granholm*, 544 U.S. at 524 (Thomas, J., dissenting). Either formulation has the same result: an out-of-state producer's product must flow through an unaffiliated distributor to reach retailers and thus cannot access the Illinois market on equal terms with in-state producers who may sell their product directly to retailers. See *Costco*, 407 F. Supp. 2d at 1251-52 (in holding that a provision of Washington law that permitted domestic breweries and wineries to be licensed as distributors under the state's three-tier system was unconstitutional under *Granholm*, the court recognized that laws like the one at issue here involve unconstitutional discrimination [**39] against producers); *Brooks*, 462 F.3d at 346-47 (conceding that the laws that permitted wine and beer producers to enjoy a "distribution privilege" were unconstitutional under *Granholm*).

Defendants also assert that the *per se* invalidity standard is inapplicable because Plaintiffs do not establish that the law at issue here has a discriminatory purpose or effect. With respect to discriminatory effect, Defendants concede that the acquisition of the remainder of the CITY Beverage business would permit AB Inc. to realize the same common advantages that in-state brewers may achieve by distributing beer. Yet Defendants argue that Plaintiffs must demonstrate that they are "effectively blocked" from the market or are "struggling to survive." The Court must reject that argument, because [HN22] there is no *de minimis* exception for a law that explicitly discriminates against interstate commerce. *Associated Indus. of Mo. v. Lohman*, 511 U.S. 641, 650, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994) (noting that [HN23] "actual discrimination, wherever it is found, is impermissible, and the magnitude and scope of the discrimination have no bearing on the determinative question whether discrimination has occurred"); *New Energy Co. v. Limbach*, 486 U.S. 269, 276, 108 S. Ct. 1803, 100 L. Ed. 2d 302 (1988) [**40] ([HN24] "[W]here discrimination is patent * * * neither a widespread advantage to in-state interests nor a widespread disadvantage to out-of-state competitors need be shown"); *Jelovsek v. Bredesen*, 545 F.3d 431, 437 (6th Cir. 2008) ([HN25] "[T]here is no *de minimis* exception when eval-

uating whether a law is discriminatory on its face."), cert. denied, 130 S. Ct. 199, 175 L. Ed. 2d 127 (2009).

The absence of a *de minimis* exception for explicitly discriminatory laws also dooms Defendants' argument that there is no significant discriminatory impact here because "only two small in-state brewers actually act as distributors." The degree to which the discriminatory provision is currently utilized by in-state brewers (*i.e.*, "only two small in-state brewers" actually act as distributors) is irrelevant to the constitutional analysis; under Supreme Court precedent [HN26] a law that mandates discriminatory treatment by its own terms is invalid even if there are *no* in-state businesses that currently benefit from the discrimination. See *Healy v. Beer Inst.*, 491 U.S. 324, 326 n.2, 340-41, 109 S. Ct. 2491, 105 L. Ed. 2d 275 (1989) (holding that, despite [*808] the fact that Connecticut had no brewers of its own or local businesses that actually benefited from the law, the statute [**41] violated the *Commerce Clause* because "[o]n its face, the statute discriminate[d] against brewers and shippers of beer engaged in interstate commerce.").

The result of this discrimination against out-of-state brewers is to restrict the ability of out-of-state beer producers to market and sell their beer on equal terms with in-state beer producers. [HN27] Under *Granholm*, a state may not permit an in-state producer to operate at more than one tier of the state's alcohol beverage licensing system or to bypass one or more of those tiers, without according the same right to out-of-state entities. *Granholm*, 544 U.S. at 473-76. As construed by Defendants, the Liquor Control Act does not evenhandedly regulate the economic interests of in-state and out-of-state beer producers. This "differential treatment" of in-state and out-of-state brewers is *per se* invalid unless the state meets its burden of "advanc[ing] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Granholm*, 544 U.S. at 476, 489.

2. Legitimate local purpose for discrimination against interstate commerce

[HN28] Given that the Liquor Control Act discriminates by its own terms, the second step of [**42] the *Commerce Clause* analysis requires the Court to determine whether the law meets the very narrow exception to the "virtual[] *per se* rule of invalidity" by "advanc[ing] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Granholm*, 544 U.S. at 476, 489; *Or. Waste Sys.*, 511 U.S. at 101; *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278, 108 S. Ct. 1803, 100 L. Ed. 2d 302 (1988). "The burden is on the State to show that the *discrimination* is demonstrably justified * * *." *Granholm*, 544 U.S. at 492 (emphasis in original); *Or. Waste Sys.*, 511 U.S. at

100-101. Satisfying this standard is no easy feat; the Supreme Court has noted that "[t]he State's burden of justification is so heavy that facial discrimination by itself may be a fatal defect." ¹² *Or. Waste Sys.*, 511 U.S. at 101 (citation omitted); *Island Silver & Spice, Inc. v. Islamorada*, 542 F.3d 844, 847 n.3 (11th Cir. 2008) ("Regulations that facially discriminate or have a discriminatory effect on interstate commerce rarely pass the elevated scrutiny test.").

12 The parties have cited only one case in which a state has satisfied its burden under the *per se* standard. See *Maine v. Taylor*, 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986); *cf. Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 582 n.16, 117 S. Ct. 1590, 137 L. Ed. 2d 852 (1997) [**43] (noting that the dissent points to a single case in which the Court found that the State actually met the *per se* standard). In *Taylor*, Maine banned shipments into the state of certain types of baitfish that might contain parasites potentially harmful to in-state baitfish and that might inadvertently contain non-native species that could negatively affect Maine's aquatic ecology. *Taylor*, 477 U.S. at 142. The Court held that the statute explicitly discriminated against out-of-state interests, but that protection of the State's aquatic environment was a legitimate local purpose and that no non-discriminatory alternatives existed because, based on evidence the State presented, a ban was the only means of preventing the introduction of parasites and threatening species into Maine's waters. *Id.* at 140-41.

To meet this standard, the State must come forward with concrete record evidence, rather than mere speculation. See *Granholm*, 544 U.S. at 492-93. The Court in *Granholm* rejected the proffered justifications of keeping alcohol [*809] out of the hands of minors, facilitating tax collection, facilitating orderly market conditions, protecting public health and safety, and ensuring regulatory accountability. [**44] *Id.* at 489-93. The Court held that the states presented insufficient evidence to establish that these concerns were tangible, and further recognized that the states' aims could be achieved through non-discriminatory means. *Id.* at 491-92 ("These objectives can * * * be achieved through the alternative of an even-handed licensing requirement"); see also *Costco*, 407 F. Supp. 2d at 1252-54 (rejecting similar rationales to those proffered in *Granholm*); *Glazer's Wholesale Drug Co. v. Kansas*, 145 F. Supp. 2d 1234 (D. Kan. 2001) (rejecting "minimiz[ing] the infiltration of criminal elements in the [state] liquor industry" as a justification).

Defendants primarily defend their position by arguing that the *per se* invalidity standard does not apply here, rather than addressing their burden of demonstrating that the discrimination advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. See June 16 Trans. at 40 (counsel for Defendants acknowledging that if the Court finds *per se* discrimination, "we fall right to the remedy"). However, in the context of explaining why they contend that Plaintiffs' position in this case amounts to an attack [**45] on the three-tier system, Defendants discuss reasons why allowing AB Inc. to act as a distributor would undermine the three-tier system. Essentially, Defendants contend that AB Inc.'s exclusion from the distributor tier is justified (i) by the relative size of the current in-state brewers compared with AB Inc. and (ii) by "the importance of local regulatory control and risk of tax evasion."

Two initial points: First, the arguments that Defendants present are similar, if not identical, to those that have been presented and rejected in other alcohol beverage discrimination cases. See, e.g., *Granholm*, 544 U.S. at 490-93; *Beskind v. Easley*, 325 F.3d 506, 516-18 (4th Cir. 2003); *Action Wholesale Liquors*, 463 F. Supp. 2d at 1303; *Costco*, 407 F. Supp. 2d at 1255. Defendants have not attempted to distinguish this case from the other cases in which courts have held that the state failed to meet its burden. Second, Defendants' reliance on the affidavit of Pamela Erickson to support portions of their arguments is problematic. The thrust of Ms. Erickson's affidavit is that permitting *any* brewer to distribute beer, especially *any* large brewer, undermines the three-tier system. Consequently, Ms. [**46] Erickson's opinions do not explain the need for Illinois to bar only *out-of-state* brewers from distributing beer, which constitutes the discrimination actually at issue in this case.

Turning to Defendants' specific arguments, Defendants contend that the in-state brewers that currently distribute beer "are so small, and produce such a limited volume of beer [that] permitting them to self-distribute does not jeopardize the Act's goal of promoting temperance and competition," while AB Inc.'s "size and significant market presence * * * would be a fundamental alteration to the three-tier system." This argument fails to address the fact that the Liquor Control Act permits *all* in-state brewers to hold Distributor's and Importing Distributor's Licenses, not just small in-state brewers, and prohibits *all* out-of-state brewers from holding Distributor's and Importing Distributor's Licenses, not just large ones. Nor does the argument support the proposition that allowing all in-state brewers to distribute beer while barring all out-of-state producers from doing the same furthers the State's purported goals of temperance and competition. And even if the need to promote temperance

[*810] and competition [**47] were advanced by barring all out-of-state brewers from distributing beer, the argument would fail because Defendants do not attempt to prove that non-discriminatory means would be unworkable to accomplish the State's objectives. Defendants do not address the non-discriminatory alternatives or establish that they would not be effective. Cf. *44 Liquormart, Inc. v. R.I.*, 517 U.S. 484, 507, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996) (explaining that higher prices to promote the goal of temperance can be "maintained by direct regulation or taxation" and that educational campaigns also might prove effective).¹³

13 Defendants also do not raise their goals of "temperance" and "competition" above the speculative level, such as, for example, addressing the price at which liquor sales would lead to greater alcohol consumption or why AB Inc.'s presence in the distributor market would result in reduced competition.

Defendants next argue that "it is more difficult for state regulatory agencies with limited budgets and resources to exert control over out-of-state licensees" and that "there is an increased risk of tax evasion when a producer and distributor affiliate." As an initial matter, this argument does not justify the discrimination [**48] against out-of-state producers because Defendants admit that the purported tax collection problem would apply to *all* producers that act as distributors, regardless of where they are located. Instead, Defendants contend that the purported tax collection problem would be compounded by the fact that AB Inc. is an out-of-state producer. "As with Defendants first argument, Defendants fails to cite record evidence for this proposition. See, e.g., *Granholm*, 544 U.S. at 490-93 ("[T]he States provide little concrete evidence * * * * Our *Commerce Clause* cases demand more than mere speculation to support discrimination against out-of-state goods."); *Chemical Waste*, 504 U.S. at 343 ("[O]nly rhetoric, and not explanation, emerges as to why Alabama targets *only* interstate hazardous waste to meet these goals.") (emphasis in original). Moreover, this tax collection justification fails for the same reason that it failed in *Granholm* and various other cases -- Defendants do not establish that this regulatory objective cannot be achieved through reasonable non-discriminatory means. See *Granholm*, 544 U.S. at 491-93 (holding that the tax collection objectives could "be achieved without discriminating against [**49] interstate commerce" because states did not establish that alternative means would be "unworkable"); see also *Costco*, 407 F. Supp. 2d at 1254 (holding that Defendants' argument on tax collection was "speculative and conclusory at best"); cf. *Baude*, 538 F.3d at 612 (rejecting tax collection justification even under lower *Pike* standard and stating that "[a]ll the [defendants] can mus-

ter in support of the statute is that the three-tier system may help a state collect taxes and monitor the distribution of alcoholic beverages").

14 Defendants also admit that post-acquisition CITY Beverage would remain subject to local regulatory control as an in-state operation and thus Illinois' regulatory control over CITY Beverage would not change. In any case, *Granholm* found it to be of particular importance that [HN29] the *Twenty-first Amendment* Enforcement Act gives state attorneys general the power to sue alcohol producers in federal court to enjoin violations of state law. *Granholm*, 544 U.S. at 492; 27 U.S.C. § 122a(b). Defendants do not address this statute or explain why it would be ineffective to exert regulatory control over entities that are not local.

In sum, Defendants have not articulated a legitimate [**50] local purpose that justifies their discrimination. Although Defendants have come forward with acceptable [**811] reasons why alcohol regulations in general and the three-tier system are valid (protecting the three tier system; aiding tax collection; maintaining an orderly market; protecting the public against unsafe alcoholic liquor; promoting temperance; and protecting against vertical monopolies and the introduction of cheap liquor into the marketplace), none of those reasons justifies the discrimination -- namely, allowing in-state brewers to act as distributors but prohibiting out-of-state brewers from doing the same -- that follows from Defendants' construction of the Act. As the Supreme Court has made clear, [HN30] "[t]he burden is on the State to show that the *discrimination* is demonstrably justified" (*Granholm*, 544 U.S. at 492 (emphasis in original)), and that burden has not been met here.

C. Remedy

[HN31] *Granholm* mandates that the states treat in-state and out-of-state brewers in an evenhanded manner. Concluding that Defendants' construction of the challenged Illinois laws fails to do so, the Court must fashion the most appropriate remedy. In *Heckler v. Mathews*, 465 U.S. 728, 738, 104 S. Ct. 1387, 79 L. Ed. 2d 646 (1984), the Supreme [**51] Court stated that [HN32] when a district court is faced with a "constitutionally underinclusive" statute, it has "two remedial alternatives: [it] may either declare [the statute] a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion." Applying that guidance to this case, the constitutional infirmities of Illinois' system may be remedied by two possible approaches: (1) allowing

out-of-state brewers to distribute directly to retailers; or (2) prohibiting in-state brewers from distributing directly to retailers. In addition, whichever course a court adopts, the court may stay its ruling at least long enough to permit the state legislature to adopt amendatory legislation if it chooses to do so. See *Costco*, 407 F. Supp. 2d at 1256. As the parties have acknowledged, [HN33] fashioning the appropriate remedy in this case lies within a court's "zone of discretion" (June 16 Trans. at 48; see also Pl. Reply Br. at 14-15) -- a position that is confirmed in the pertinent case law. See, e.g., *Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423, 434-35 (6th Cir. 2008) [**52] (reviewing district court's remedy for abuse of discretion); see also *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006) ("The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion."). Here, Plaintiffs request that the Court extend the in-state benefit to all brewers; Defendants advocate for the alternative of nullifying the in-state benefit and also ask the Court to temporarily stay its decision to allow the General Assembly time to act if it is so inclined.

In elaborating on the "extension" versus "nullification" dichotomy, the Supreme Court in *Heckler* stated as follows:

[HN34] Although the choice between "extension" and "nullification" is within the "constitutional competence of a federal district court," and ordinarily "extension, rather than nullification, is the proper course," the court should not, of course, "use its remedial powers to circumvent the intent of the legislature," and should therefore "measure [**53] the intensity of commitment to the residual policy and consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation."

Id. at 739 n. 5 (internal citations omitted). Both sides focus the Court's attention on *Heckler*, but for different reasons. Plaintiffs highlight the [**812] language from *Heckler* stating that "extension, rather than nullification" ordinarily is the proper way to remedy an underinclusive statute. In turn, Defendants stress *Heckler's* admonition that courts should not use their remedial powers "to circumvent the intent of the legislature."

Plaintiffs insist that the Illinois General Assembly already has voiced a clear preference for extension of the in-state benefit to out-of-state interests by amending *Sec-*

tion 5/6-29 to conform to the *Granholm* decision.¹⁵ The Court is not persuaded by that argument. The specific problem involving discrimination against out-of-state wineries was obvious in the wake of *Granholm*, and there is no evidence that the General Assembly even considered any existing or potential issues concerning brewers at that time. In enacting economic legislation, the General Assembly may consider one issue [**54] at a time, and there is no basis for concluding that it was doing more than that in amending Section 5/6-29. Moreover, at the time that the amendment was enacted, no in-state brewers had been cleared to self-distribute; the record evidence is that the first such license was issued to Big Muddy in June 2009. The current controversy involving brewers thus appears to be of more recent vintage than the wine-shippers dispute that the Supreme Court resolved in *Granholm*. In short, the Court is not convinced that the amendment to Section 5/6-29 provides a clear basis for inferring how the General Assembly would deal with the public policy issue now before the Court.

15 The Liquor Control Act was amended to "authorize direct shipment of wine by an out-of-state maker of wine on the same basis permitted an in-state maker of wine * * * ." 235 ILCS 5/6-29 (a)(1) (2007) (emphasis added).

Plaintiffs also contend that the history and text of Illinois' licensing system also supports extension of the privilege of distribution to out-of-state brewers. According to Plaintiffs, the Liquor Control Act has expressed a preference for brewers to enjoy the right to distribute beer since 1947, and thus extension [**55] would recognize the practice in Illinois that for many years permitted out-of-state beer producers to hold Distributor's and Importing Distributor's Licenses. Defendants acknowledge that the Act did not prohibit out-of-state brewers from holding Distributor's and Importing Distributor's Licenses until 1982. Defendants also admit that each year during the period from 1982 through 2005, the Commission issued to AB Inc. in its own name one or more Distributor's and Importing Distributor's Licenses and that during much of the period from 1982 through 2005, one or more affiliates of AB Inc. also held one or more Distributor's and Importing Distributor's Licenses. Similarly, from 2005 through the present, WEDCO has owned a thirty percent stake in CITY Beverage. And the Declaratory Ruling specifically permits WEDCO to retain its current minority interest in CITY Beverage due to the "history and facts surrounding this case." In view of this history, Plaintiffs posit that the "strict separation" of tiers as to brewers has not necessarily existed in reality, and that in view of the Commission's concessions over the years, continued extension of the in-state benefit is the proper course.

Although [**56] counsel for Defendants acknowledged at oral argument that the Commission has made exceptions for AB Inc. in prior years, counsel explained that the Commission now views those concessions as having been a "mistake" and rests its current (and, for this litigation, controlling) construction of the Act on its reading of a 1982 amendment. In fact, Plaintiffs' statutory compilation confirms that the General Assembly has made many changes to Illinois' regulatory scheme over the [**813] years. While Plaintiffs rely on the legislative compilation to bolster their position that the legislative intent indicates a preference that all producers be allowed to act as distributors, the legislative and regulatory history in this area does not necessarily lead to that conclusion. The numerous changes to the Act over the years also can be viewed as a manifestation of the General Assembly's intent to continuously revisit the legislative framework and to exercise close oversight over the production, distribution, and sale of alcohol in Illinois. See [HN35] 235 ILCS 5/1-2 ("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 [**57] 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"). Finally, in considering the intent of the legislature, the Court must give due regard to the Commission's current construction of the Act -- both because the Commission has been charged under state law with administering the state's liquor laws and because that construction was rendered after considerable study of the issue, with the input of interested parties (including Plaintiffs and at least some of the *amici* in this action). See, e.g., *West Belmont, L.L.C. v. City of Chicago*, 349 Ill. App. 3d 46, 49, 811 N.E.2d 220, 284 Ill. Dec. 925 (1st Dist. 2004) ([HN36] "we accord substantial weight and deference to an agency's interpretation because agencies are an informed source for ascertaining the legislature's intent" and while that interpretation is "not binding on the court," it is "considered relevant"); *Erfor Corp. v. State Liquor Control Commission*, 47 Ill. App. 3d 72, 74, 361 N.E.2d 776, 5 Ill. Dec. 453 (1st Dist. 1977) ([HN37] "The Illinois Liquor Control Commission's interpretation of the statute it was created to enforce is entitled to great weight"); see also [HN38] 235 ILCS 5/3-12 [**58] (conferring broad powers and duties on the Commission).

After considering the arguments of the parties concerning possible manifestations of "the intent of the legislature" that can be drawn from the Act itself as it has been amended and interpreted over the years (*Heckler*, 465 U.S. at 739 n.5), the Court is left without any clear direction on how the General Assembly would address the specific matter before the Court. The Court thus turns to "the intensity of commitment to the residual policy"

and "the degree of potential disruption of the statutory scheme" (*id.*) in its effort to fashion an appropriate remedy.

A helpful analysis in that regard was provided in *Beskind v. Easley*, 325 F.3d 506 (4th Cir. 2003), a case involving a North Carolina law that allowed in-state wine producers to sell directly to consumers, while requiring out-of-state producers to sell through wholesalers. In *Beskind*, the court of appeals concluded that the district court had abused its discretion by extending a preference for in-state wineries. In explaining its reasoning, the court noted:

[W]e can accept a presumption that North Carolina would want to uphold and preserve all of its [Alcoholic Beverage Control] [**59] 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*. 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 [*814] in concluding that it causes less disruption to North Carolina's * * * 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. The court added that "[t]he local preference provision gave [plaintiffs] the opportunity to challenge the discrimination but not the right to dictate the course that cures the constitutional violation." *Id.* at 520; see also *Action Wholesale Liquors*, 463 F. Supp. 2d at 1305-07 [**60] (recognizing that regulation of the alcoholic beverage industry is a "quintessentially legislative function" implicating policy judgments that "courts are ill-equipped to make"); *Costco*, 407 F. Supp. 2d at 1256 (W.D. Wash. 2005) (determining that withdrawing self-distribution privileges from in-state wineries would

result in "minimum damage" to Washington's three-tier system).

In the Court's view, *Beskind* is particularly instructive because the "minimum damage" approach adopted in that case appears to be entirely consistent with the Supreme Court's admonition in *Heckler* to consider "the intensity of commitment to the residual policy" and "the degree of potential disruption of the statutory scheme" in fashioning a remedy for a *Commerce Clause* violation. That approach also stresses the importance of "comity and harmony" in undertaking the delicate task that federal courts from time to time must perform in conforming state law to federal constitutional commands. And in this case, all of those considerations point strongly in the direction of removing the exception for in-state brewers, rather than extending the exception for all brewers.

To begin with, the "commitment" to the "residual [**61] policy" of permitting in-state brewers to self-distribute is of short duration (since June 2009) and at this point affects only a small handful of entities (three craft brewers). In making that observation, the Court is cognizant that the craft brewers who presently hold distributor licenses value those licenses and have expressed their wish to retain them. See generally *Guild Br.* (explaining interests of craft brewers that presently hold distributors' licenses and may wish to do so in the future); *id.* at 3 (requesting leave to file *amicus* brief "so that the interests of the Guild's craft brewer members will be adequately represented in this litigation"). However, when viewed against the long history of the three-tier system in Illinois -- whether that system is rigid (as Defendants contend) or more relaxed (as Plaintiffs contend) -- the intensity of Illinois' commitment to allowing in-state (but not out-of-state) brewers to distribute (their own) beer cannot fairly be characterized as deep or lasting. Indeed, by its own admission, the Commission's current interpretation of the relevant provisions of the Act was adopted only recently and corrects an earlier "mistake[n]" construction.

In [**62] addition, removing the limited exception would eliminate the differential treatment that the Commission recently has permitted (the *Commerce Clause*'s only concern) while keeping intact most of the current three-tier system. It appears that Defendants' proposed remedy could be achieved simply by striking the italicized language from 235 ILCS 5/5-1: "Class 3. A Brewer may make sales and deliveries of beer to importing distributors, and to non-licensees, and to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of the Act. (emphasis added). By contrast, Plaintiffs' proposed remedy would significantly expand [*815] the exception far beyond the three licenses that the Commission has granted in the past fifteen months and the con-

cessions (or "mistakes") that the Commission has made to Anheuser-Busch-affiliated entities since 1982. ¹⁶For, in order to pass muster under the *Commerce Clause*, the right to self-distribute would need to be extended to *all* brewers, not just the three currently licensed craft brewers and the Anheuser-Busch affiliates who have enjoyed that benefit at various times in the past few decades. Finally, **[**63]** extending the self-distribution privilege to out-of-state producers also would require more significant efforts in regard to the State's licensing, enforcement, and tax collection scheme for beer than withdrawing the privilege from in-state producers.

16 As explained above, although Plaintiffs have "vigorously contest[ed]" the Commission's "highly questionable" interpretation of the Act, their federal dormant *Commerce Clause* claim accepts -- indeed, requires -- the Commission's interpretation. That point is pertinent to the Court's consideration of Plaintiffs' contention that they do not seek to modify any provisions of the Liquor Control Act (and consequently that accepting their remedy will not do violence to the statute) because the phrase "other than a manufacturer or non-resident dealer" in the definition of "Distributor" merely clarifies that manufacturers and non-resident dealers should not automatically be deemed Distributors if they engage in some of the same conduct that is used to define a Distributor. That argument assumes that the Commission's interpretation of the Act is not just unconstitutional, but also incorrect as a matter of statutory construction.

For all of these reasons, **[**64]** the Court concludes that the more appropriate remedy *from a judicial perspective* would be to withdraw the self-distribution privilege from in-state brewers, rather than extending the privilege to out-of-state brewers. It should be emphasized that the Court is not empowered to decide which alternative represents better public policy -- or, indeed, if either of the limited alternatives available to the Court is better or worse than a wide range of other options that the General Assembly of course is free to consider.

The Court recognizes that withdrawing the self-distribution privilege may impose financial hardships on Illinois brewers. The Court also is cognizant that the remedy selected by the Court will not materially advance Plaintiffs' ultimate goal in this litigation -- clearing the path to closing on the City Beverage transaction. ¹⁷But these are the consequences of the remedy that, in the Court's view, best comports with a fair assessment of the relevant criteria for fashioning a remedy under *Heckler* and court of appeals and district court cases that have arisen in similar circumstances.

17 As Defendants and *amici* have noted, instead of bringing this action in federal court, Plaintiffs **[**65]** might have chosen to pursue relief in state court, where Plaintiffs could have challenged not only the constitutionality of the Commission's construction of the Act, but also its correctness as a matter of state law. The Court will not speculate as to (i) whether Plaintiffs still may pursue a state court action, (ii) whether Plaintiffs have the better of the argument on the merits, or (iii) whether a ruling in Plaintiffs' favor may have allowed (or still conceivably could allow) their proposed transaction to proceed without any debate about the appropriate remedy.

Finally, Defendants contend that the Court should stay the enforcement of its order at least temporarily to provide an opportunity for the General Assembly to act on this matter if it so desires. The Court agrees. To begin with, the regulation of the distribution of liquor is a matter of public policy and a quintessential legislative function. State regulation of the alcoholic beverage industry involves legislative judgments with respect to temperance, public safety, taxation, licensing, and consumer protection, which courts are not **[*816]** as well equipped to make. In addition, legislative consideration of a remedy in this case need **[**66]** not be confined to the binary choice that this Court is called upon to make if it selects a remedy. As noted above, the legislative process offers more flexibility for solving the constitutional deficiency than is available judicially. For example, the legislative process could address the constitutional deficiency while simultaneously enacting other measures (not preferences) that would protect Illinois' small brewers. See *Action Wholesale Liquors*, 463 F. Supp. 2d at 1305-07. ¹⁸That flexibility, and the fact that these issues present policy questions rather than legal questions, suggests that a legislative solution, if one is forthcoming, may be preferable to a judicially-crafted one. See *Action Wholesale Liquors*, 463 F. Supp. 2d at 1307 (granting summary judgment on plaintiffs' *Commerce Clause* claim, opining that "it would be much less disruptive to Oklahoma's long-standing regulatory scheme to remove the exception to the three-tier system which is now unconstitutionally extended to in-state wineries, than it would be to extend the exception to all wineries," but staying entry of judgment in accordance with those rulings on the ground that "a legislative remedy is devoutly to be **[**67]** desired, if that can be accomplished within a reasonable time"); *Costco*, 407 F. Supp. 2d at 1256 (determining that withdrawing self-distribution privileges from in-state wineries would result in "minimum damage" to Washington's three-tier system but staying the order to give the legislature time to amend the statute).

18 As long as the state legislation does not impermissibly discriminate against interstate commerce, the power of the state to adopt legislation in the realm of economic regulation is near-plenary. Nothing in *Granholm* removed small wineries from favorable legislative consideration, as long as in-state and out-of-state small wineries receive essentially identical legislative treatment. For example, legislative discrimination on the basis of the *size* of commercial enterprises does not implicate interests that have enjoyed exacting judicial review. See, e.g., *Central State University v. American Ass'n of University Professors*, 526 U.S. 124, 127-28, 119 S. Ct. 1162, 143 L. Ed. 2d 227, (1999); *Exxon Corp. v. Eagerton*, 462 U.S. 176, 195, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983). The parties in fact have recognized some of the myriad options that the General Assembly could consider. See Pl. Reply. at 12 n.12 (noting that higher prices to promote **[**68]** the goal of temperance can be maintained by direct regulation or taxation) (citing *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996)); 6/16/10 Tr. at 24 (observing that the General Assembly could consider a "gallonage cap").

For all of these reasons, the Court concludes that a stay of enforcement of its decision selecting one of the two available judicial remedies to enable the General Assembly an opportunity to avail itself of a much broader range of solutions to the unconstitutionality of the current Illinois scheme is warranted. ¹⁹Accordingly, the **[*817]** Court will stay the enforcement of this ruling on Plaintiffs' *Commerce Clause* claim until March 31, 2011, to provide the Illinois General Assembly with an opportunity to act on this matter if it so chooses. ²⁰

19 In arriving at this conclusion, the Court recognizes Plaintiffs' concern about avoiding "needless delay because it is of the utmost urgency to Plaintiffs that this case be resolved quickly" given the suspension of "an extremely important business transaction for Plaintiffs." Pl. Reply at 23. Neither the Court nor Defendants nor *amici* have questioned the importance to Plaintiffs of the proposed transaction. However, balanced **[**69]** against that interest are the interests of all brewers, both in-state and out-of-state, and the general public in an orderly, consistent, and constitutional legislative and regulatory scheme at all three tiers of the system for liquor production, distribution, and sale. Given those competing interests, the Court respectfully concludes that giving the General Assembly an

opportunity to implement its vision of public policy for all of the concerned citizens and entities outweighs any need for this Court to give immediate effect to its effort to determine what the General Assembly would prefer from disparate sources and the totality of the circumstances. This exercise of this Court's discretion in that regard is only a second best outcome -- although it will be the disposition of this case should the General Assembly decline to act.

20 Based on the Court's examination of the General Assembly's web page (www.ilga.gov), it is the Court's understanding that the General Assembly does not convene again in Regular Session until January 2011. While the General Assembly has a Fall Veto Session that begins in November 2010, it is unclear whether it would (or could) consider the kind of legislation **[**70]** that would be necessary to remedy the constitutional violation at that time. Should the General Assembly act prior to the deadlines set in this opinion, the parties are directed to advise the Court promptly.

IV. Conclusion

In light of the Supreme Court's decision in *Granholm*, Illinois may not permit in-state brewers to distribute their products directly to retailers while withholding that privilege from out-of-state brewers. Without demonstrating the need for such discrimination, Illinois' system prevents out-of-state brewers from competing on equal terms with in-state brewers. Under the *Commerce Clause*, Illinois' policy favoring in-state brewers cannot stand. Therefore, the Court grants Plaintiffs' motion for partial summary judgment [28] on its *Commerce Clause* claim. However, the Court denies Plaintiffs' request to remedy the unconstitutionality of Illinois' system by extending the self-distribution privilege to out-of-state brewers. That remedy would be more disruptive to the existing statutory and regulatory scheme than the alternative remedy of withdrawing the self-distribution privilege from in-state brewers. Finally, in recognition of the General Assembly's ultimate authority **[**71]** over Illinois public policy, including a remedy for the constitutional defect identified in this legislation, the Court stays the enforcement of its ruling until March 31, 2011, in order to provide the General Assembly with sufficient time to act on this matter. The parties are directed to file a joint status report by March 15, 2011, advising the Court of the status of any legislative efforts to address the constitutional defect identified in this opinion, after which time the Court will determine whether to lift or extend the stay. See *Action Wholesale Liquors*, 463 F. Supp. 2d at 1307-08 (employing similar procedure).

Dated: September 3, 2010

/s/ Robert M. Dow, Jr.

Robert M. Dow, Jr.

United States District Judge

that at issue here, was unconstitutional. *Costco* involved a provision of Washington law that permitted domestic breweries and wineries to be licensed as distributors under the state's three-tier system. *Id.* In contrast, Washington law did not permit out-of-state brewers and wineries to perform the wholesale function and mandated that out-of-state brewers and wineries sell their product to a distributor, which in turn sold the product to a retailer. *Id.* at 1249. The Court held that the discriminatory nature of Washington's system was "obvious," as the *Granholm* Court noted of the Michigan system. *Id.* at 1251. The privilege of in-state producers to distribute directly to retailers "provides clear advantages to in-state wineries and breweries that out-of-state producers do not enjoy." *Id.* Accordingly, the Court held that Washington's system discriminated against out-of-state producers in violation of the Commerce Clause. *Id.* at 1252.

In the instant case, the discriminatory nature of the Liquor Control Act also is "obvious." To distribute beer in Illinois it is necessary to hold a Distributor's License and to import beer from out-of-state as part of this function it is necessary to hold an Importing Distributor's License. (Plfs.' LR 56.1 Stmt. ¶ 12.) In-state beer producers may hold a Brewer's License (*Id.* ¶ 14), which entitles them to hold Distributor's and Importing Distributor's Licenses. *See* 235 ILCS 5/5-1(a) ("A Brewer may make sales and deliveries of beer . . . to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act."). (Plfs.' LR 56.1 Stmt. ¶ 14.) On the other hand, an out-of-state beer producer is ineligible to hold Distributor's and Importing Distributor's Licenses. (*Id.* ¶ 15.) The bottom line to this web of licensing eligibility requirements is that in-state brewers are permitted to perform the distribution function in Illinois, while out-of-state brewers are precluded from

doing the same. (*Id.* ¶ 13.)⁷ Put differently, the basis for determining whether a brewer can distribute beer in Illinois turns on its residency; an in-state brewer is eligible, while an out-of-state brewer is not. (*Id.*) Thus, by its own terms this law explicitly discriminates against out-of-state brewers.

The result of this patent discrimination against out-of-state brewers is to restrict the ability of out-of-state beer producers to market and sell their beer on equal terms with in-state beer. Under *Granholm*, once a state law permits a producer to operate at more than one tier of the state's alcohol beverage licensing system or to bypass one or more of those tiers, out-of-state entities must be permitted that same right. *Granholm*, 544 U.S. at 473-76. Here, Plaintiffs seek only to be afforded the opportunity to distribute beer under the same conditions as in-state brewers, *i.e.*, subject to all State laws and regulations applicable to holders of Distributor's and Importing Distributor's Licenses and to all inspections, subpoenas, taxes, record retention requirements, and license sanctions that the State may impose.

By its very terms the Liquor Control Act does not evenhandedly regulate the economic interests of in-state and out-of-state beer producers. This "differential treatment" of in-state and out-of-state brewers is *per se* invalid unless the state meets its burden of "advanc[ing] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Granholm*, 544 U.S. at 476, 489.

⁷ As an extension of this unconstitutional discrimination against out-of-state brewers, Defendants do not permit an out-of-state brewer to even own or be affiliated with a licensed Illinois Distributor or Importing Distributor. (Plfs.' LR 56.1 Stmt. ¶ 15, 16, 23.)

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AN ACT concerning liquor.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Liquor Control Act of 1934 is amended by changing Sections 1-3.33, 3-12, 5-1, and 5-3 and by adding Section 1-3.38 as follows:

(235 ILCS 5/1-3.33)

Sec. 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 from the licensed premises, provided that a brew pub licensee shall not sell for off-premises consumption more than 50,000 gallons per year. A person who holds a brew pub license may simultaneously hold a craft brewer license if he or she otherwise qualifies for the craft brewer license and the craft brewer license is for a location separate from the brew pub's licensed premises.

(Source: P.A. 90-432, eff. 1-1-98.)

(235 ILCS 5/1-3.38 new)

Sec. 1-3.38. "Craft brewer" means a licensed brewer or licensed non-resident dealer who manufactures up to 465,000

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gallons of beer per year and who may make sales and deliveries to importing distributors and distributors and to retail licensees in accordance with the conditions set forth in paragraph (18) of subsection (a) of Section 3-12 of this Act.

(235 ILCS 5/3-12)

Sec. 3-12. Powers and duties of State 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. Except in the case of an action taken pursuant to a violation of Section 6-3, 6-5, or 6-9, any action by the State Commission to suspend or

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revoke a licensee's license may be limited to the license for the specific premises where the violation occurred.

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.

(2) To adopt such rules and regulations consistent with the provisions of this Act which shall be necessary to

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carry on its functions and duties 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 and to distribute copies of such rules and regulations to all licensees affected thereby.

(3) To call upon other administrative departments of the State, county and municipal governments, county and city police departments and upon prosecuting officers for such information and assistance as it deems necessary in the performance of its duties.

(4) To recommend to local commissioners rules and regulations, not inconsistent with the law, for the distribution and sale of alcoholic liquors throughout the State.

(5) To inspect, or cause to be inspected, any premises in this State where alcoholic liquors are manufactured, distributed, warehoused, or sold.

(5.1) Upon receipt of a complaint or upon having knowledge that any person is engaged in business as a manufacturer, importing distributor, distributor, or retailer without a license or valid license, to notify the local liquor authority, file a complaint with the State's Attorney's Office of the county where the incident occurred, or initiate an investigation with the appropriate law enforcement officials.

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(5.2) To issue a cease and desist notice to persons shipping alcoholic liquor into this State from a point outside of this State if the shipment is in violation of this Act.

(5.3) To receive complaints from licensees, local officials, law enforcement agencies, organizations, and persons stating that any licensee has been or is violating any provision of this Act or the rules and regulations issued pursuant to this Act. Such complaints shall be in writing, signed and sworn to by the person making the complaint, and shall state with specificity the facts in relation to the alleged violation. If the Commission has reasonable grounds to believe that the complaint substantially alleges a violation of this Act or rules and regulations adopted pursuant to this Act, it shall conduct an investigation. If, after conducting an investigation, the Commission is satisfied that the alleged violation did occur, it shall proceed with disciplinary action against the licensee as provided in this Act.

(6) To hear and determine appeals from orders of a local commission in accordance with the provisions of this Act, as hereinafter set forth. Hearings under this subsection shall be held in Springfield or Chicago, at whichever location is the more convenient for the majority of persons who are parties to the hearing.

(7) The commission shall establish uniform systems of

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accounts to be kept by all retail licensees having more than 4 employees, and for this purpose the commission may classify all retail licensees having more than 4 employees and establish a uniform system of accounts for each class and prescribe the manner in which such accounts shall be kept. The commission may also prescribe the forms of accounts to be kept by all retail licensees having more than 4 employees, including but not limited to accounts of earnings and expenses and any distribution, payment, or other distribution of earnings or assets, and any other forms, records and memoranda which in the judgment of the commission may be necessary or appropriate to carry out any of the provisions of this Act, including but not limited to such forms, records and memoranda as will readily and accurately disclose at all times the beneficial ownership of such retail licensed business. The accounts, forms, records and memoranda shall be available at all reasonable times for inspection by authorized representatives of the State commission or by any local liquor control commissioner or his or her authorized representative. The commission, may, from time to time, alter, amend or repeal, in whole or in part, any uniform system of accounts, or the form and manner of keeping accounts.

(8) In the conduct of any hearing authorized to be held by the commission, to appoint, at the commission's discretion, hearing officers to conduct hearings involving

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complex issues or issues that will require a protracted period of time to resolve, 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; 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, and to adopt rules to implement its powers under this paragraph (8).

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

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

(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

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other similar occurrence.

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

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

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

(13) On or before January 15, 1994, the Commission shall issue a written report to the Governor and General Assembly that is to be based on a comprehensive study of the impact on and implications for the State of Illinois of Section 1926 of the Federal ADAMHA Reorganization Act of 1992 (Public Law 102-321). This study shall address the extent to which Illinois currently complies with the provisions of P.L. 102-321 and the rules promulgated pursuant thereto.

As part of its report, the Commission shall provide the

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following essential information:

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

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

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

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

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

The Commission shall consult with the Department of Public Health, the Department of Human Services, the Illinois State Police and any other executive branch agency, and private organizations that may have

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information relevant to this report.

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

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

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

(B) The amount of licensing fees received.

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

(D) The number of alcohol compliance operations conducted.

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

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

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

(16) The Commission shall, in addition to notifying any appropriate law enforcement agency, submit notices of complaints or violations of Sections 6-29 and 6-29.1 by persons who do not hold a winery shipper's license under this amendatory Act to the Illinois Attorney General and to the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau.

(17) (A) A person licensed to make wine under the laws of another state who has a winery shipper's license under this amendatory Act and annually produces less than 25,000

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gallons of wine or a person who has a first-class or second-class wine manufacturer's license, a first-class or second-class wine-maker's license, or a limited wine manufacturer's license under this Act and annually produces less than 25,000 gallons of wine may make application to the Commission for a self-distribution exemption to allow the sale of not more than 5,000 gallons of the exemption holder's wine to retail licensees per year.

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

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

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wine; and (4) will not annually sell more than 5,000 gallons of its wine to retail licensees.

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

(E) Except in hearings for violations of this Act or amendatory Act or a bona fide investigation by duly sworn law enforcement officials, the Commission, or its agents, the Commission shall maintain the production and sales information of a self-distribution exemption holder as confidential and shall not release such information to any person.

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

(G) Nothing in this subsection (17) shall prohibit a self-distribution exemption holder from entering

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into or simultaneously having a distribution agreement with a licensed Illinois distributor.

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

(18) (A) A craft brewer licensee, who must also be either a licensed brewer or licensed non-resident dealer and annually manufacture less than 465,000 gallons of beer, may make application to the Commission for a self-distribution exemption to allow the sale of not more than 232,500 gallons of the exemption holder's beer to retail licensees per year.

(B) In the application, which shall be sworn under penalty of perjury, the craft brewer licensee shall state (1) the date it was established; (2) its volume of beer manufactured and sold for each year since its

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establishment; (3) its efforts to establish distributor relationships; (4) that a self-distribution exemption is necessary to facilitate the marketing of its beer; and (5) that it will comply with the alcoholic beverage and revenue laws of the United States, this State, and any other state where it is licensed.

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

(D) A self-distribution exemption holder shall annually certify to the Commission its manufacture of beer during the previous 12 months and its anticipated manufacture and sales of beer for the next 12 months. The Commission may fine, suspend, or revoke a self-distribution exemption after a hearing if it finds that the exemption holder has made a material

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misrepresentation in its application, violated a revenue or alcoholic beverage law of Illinois, exceeded the manufacture of 465,000 gallons of beer in any calendar year or became part of an affiliated group manufacturing more than 465,000 gallons of beer or any other alcoholic beverage.

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

(F) Nothing in this paragraph (18) shall prohibit a self-distribution exemption holder from entering into or simultaneously having a distribution agreement with a licensed Illinois importing distributor or a distributor. If a self-distribution exemption holder enters into a distribution agreement and has assigned distribution rights to an importing distributor or distributor, then the self-distribution exemption holder's distribution rights in the assigned territories shall cease in a reasonable time not to exceed 60 days.

(G) It is the intent of this paragraph (18) to promote and continue orderly markets. The General Assembly finds that in order to preserve Illinois' regulatory distribution system, it is necessary to create an exception for smaller manufacturers in order to afford and allow such smaller manufacturers of beer

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access to the marketplace in order to develop a customer base without impairing the integrity of the 3-tier system.

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

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

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

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

(iii) the number of reported violations, the number of cease and desist notices issued by the Commission, the number of notices of violations issued to the Department of Revenue, and the number of notices and complaints of violations to law enforcement officials.

(Source: P.A. 95-634, eff. 6-1-08; 96-179, eff. 8-10-09; 96-446, eff. 1-1-10; 96-1000, eff. 7-2-10.)

(235 ILCS 5/5-1) (from Ch. 43, par. 115)

Sec. 5-1. Licenses issued by the Illinois Liquor Control Commission shall be of the following classes:

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(a) Manufacturer's license - Class 1. Distiller, Class 2. Rectifier, Class 3. Brewer, Class 4. First Class Wine Manufacturer, Class 5. Second Class Wine Manufacturer, Class 6. First Class Winemaker, Class 7. Second Class Winemaker, Class 8. Limited Wine Manufacturer, Class 9. Craft Distiller, Class 10. Craft Brewer,

- (b) Distributor's license,
- (c) Importing Distributor's license,
- (d) Retailer's license,
- (e) Special Event Retailer's license (not-for-profit),
- (f) Railroad license,
- (g) Boat license,
- (h) Non-Beverage User's license,
- (i) Wine-maker's premises license,
- (j) Airplane license,
- (k) Foreign importer's license,
- (l) Broker's license,
- (m) Non-resident dealer's license,
- (n) Brew Pub license,
- (o) Auction liquor license,
- (p) Caterer retailer license,
- (q) Special use permit license,
- (r) Winery shipper's license.

No person, firm, partnership, corporation, or other legal business entity that is engaged in the manufacturing of wine may concurrently obtain and hold a wine-maker's license and a

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wine manufacturer's license.

(a) A manufacturer's license shall allow the manufacture, importation in bulk, storage, distribution and sale of alcoholic liquor to persons without the State, as may be permitted by law and to licensees in this State as follows:

Class 1. A Distiller may make sales and deliveries of alcoholic liquor to distillers, rectifiers, importing distributors, distributors and non-beverage users and to no other licensees.

Class 2. A Rectifier, who is not a distiller, as defined herein, may make sales and deliveries of alcoholic liquor to rectifiers, importing distributors, distributors, retailers and non-beverage users and to no other licensees.

Class 3. A Brewer may make sales and deliveries of beer to importing distributors and, distributors and may make sales as authorized under subsection (e) of Section 6-4 of this Act, ~~and to non licensees, and to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act.~~

Class 4. A first class wine-manufacturer may make sales and deliveries of up to 50,000 gallons of wine to manufacturers, importing distributors and distributors, and to no other licensees.

Class 5. A second class Wine manufacturer may make sales and deliveries of more than 50,000 gallons of wine to manufacturers, importing distributors and distributors and to

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no other licensees.

Class 6. A first-class wine-maker's license shall allow the manufacture of up to 50,000 gallons of wine per year, and the storage and sale of such wine to distributors in the State and to persons without the State, as may be permitted by law. A person who, prior to the effective date of this amendatory Act of the 95th General Assembly, is a holder of a first-class wine-maker's license and annually produces more than 25,000 gallons of its own wine and who distributes its wine to licensed retailers shall cease this practice on or before July 1, 2008 in compliance with this amendatory Act of the 95th General Assembly.

Class 7. A second-class wine-maker's license shall allow the manufacture of between 50,000 and 150,000 gallons of wine per year, and the storage and sale of such wine to distributors in this State and to persons without the State, as may be permitted by law. A person who, prior to the effective date of this amendatory Act of the 95th General Assembly, is a holder of a second-class wine-maker's license and annually produces more than 25,000 gallons of its own wine and who distributes its wine to licensed retailers shall cease this practice on or before July 1, 2008 in compliance with this amendatory Act of the 95th General Assembly.

Class 8. A limited wine-manufacturer may make sales and deliveries not to exceed 40,000 gallons of wine per year to distributors, and to non-licensees in accordance with the

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provisions of this Act.

Class 9. A craft distiller license shall allow the manufacture of up to 5,000 gallons of spirits by distillation per year and the storage of such spirits. If a craft distiller licensee is not affiliated with any other manufacturer, then the craft distiller licensee may sell such spirits to distributors in this State and non-licensees to the extent permitted by any exemption approved by the Commission pursuant to Section 6-4 of this Act.

Any craft distiller licensed under this Act who on the effective date of this amendatory Act of the 96th General Assembly was licensed as a distiller and manufactured no more spirits than permitted by this Section shall not be required to pay the initial licensing fee.

Class 10. A craft brewer's license, which may only be issued to a licensed brewer or licensed non-resident dealer, shall allow the manufacture of up to 465,000 gallons of beer per year. A craft brewer licensee may make sales and deliveries to importing distributors and distributors and to retail licensees in accordance with the conditions set forth in paragraph (18) of subsection (a) of Section 3-12 of this Act.

(a-1) A manufacturer which is licensed in this State to make sales or deliveries of alcoholic liquor and which enlists agents, representatives, or individuals acting on its behalf who contact licensed retailers on a regular and continual basis in this State must register those agents, representatives, or

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persons acting on its behalf with the State Commission.

Registration of agents, representatives, or persons acting on behalf of a manufacturer is fulfilled by submitting a form to the Commission. The form shall be developed by the Commission and shall include the name and address of the applicant, the name and address of the manufacturer he or she represents, the territory or areas assigned to sell to or discuss pricing terms of alcoholic liquor, and any other questions deemed appropriate and necessary. All statements in the forms required to be made by law or by rule shall be deemed material, and any person who knowingly misstates any material fact under oath in an application is guilty of a Class B misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions, or suppression of material facts in the securing of a registration are grounds for suspension or revocation of the registration.

(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.

(c) An importing distributor's license may be issued to and held by those only who are duly licensed distributors, upon the filing of an application by a duly licensed distributor, with the Commission and the Commission shall, without the payment of any fee, immediately issue such importing distributor's license to the applicant, which shall allow the importation of

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alcoholic liquor by the licensee into this State from any point in the United States outside this State, and the purchase of alcoholic liquor in barrels, casks or other bulk containers and the bottling of such alcoholic liquors before resale thereof, but all bottles or containers so filled shall be sealed, labeled, stamped and otherwise made to comply with all provisions, rules and regulations governing manufacturers in the preparation and bottling of alcoholic liquors. The importing distributor's license shall permit such licensee to purchase alcoholic liquor from Illinois licensed non-resident dealers and foreign importers only.

(d) A retailer's license shall allow the licensee to sell and offer for sale at retail, only in the premises specified in the license, alcoholic liquor for use or consumption, but not for resale in any form. Nothing in this amendatory Act of the 95th General Assembly shall deny, limit, remove, or restrict the ability of a holder of a retailer's license to transfer, deliver, or ship alcoholic liquor to the purchaser for use or consumption subject to any applicable local law or ordinance. Any retail license issued to a manufacturer shall only permit the manufacturer to sell beer at retail on the premises actually occupied by the manufacturer. For the purpose of further describing the type of business conducted at a retail licensed premises, a retailer's licensee may be designated by the State Commission as (i) an on premise consumption retailer, (ii) an off premise sale retailer, or (iii) a combined on

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premise consumption and off premise sale retailer.

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).

(e) A special event retailer's license (not-for-profit) shall 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 (i) furnish with the application: (A) a resale number issued under Section 2c of the Retailers' Occupation Tax Act or evidence that the applicant is registered under Section 2a of the Retailers' Occupation Tax Act, (B) a current, valid exemption identification number issued under Section 1g of the Retailers' Occupation Tax Act, and a certification to the Commission that the purchase of alcoholic liquors will be a tax-exempt purchase, or (C) a statement that the applicant is not registered under Section 2a of the Retailers' Occupation Tax Act, does not hold a resale number under Section 2c of the Retailers' Occupation Tax Act, and does not hold an exemption

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number under Section 1g of the Retailers' Occupation Tax Act, in which event the Commission shall set forth on the special event retailer's license a statement to that effect; (ii) submit with the application proof satisfactory to the State Commission that the applicant will provide dram shop liability insurance in the maximum limits; and (iii) show proof satisfactory to the State Commission that the applicant has obtained local authority approval.

(f) A railroad license shall permit the licensee to import alcoholic liquors into this State from any point in the United States outside this State and to store such alcoholic liquors in this State; to make wholesale purchases of alcoholic liquors directly from manufacturers, foreign importers, distributors and importing distributors from within or outside this State; and to store such alcoholic liquors in this State; provided that the above powers may be exercised only in connection with the importation, purchase or storage of alcoholic liquors to be sold or dispensed on a club, buffet, lounge or dining car operated on an electric, gas or steam railway in this State; and provided further, that railroad licensees exercising the above powers shall be subject to all provisions of Article VIII of this Act as applied to importing distributors. A railroad license shall also permit the licensee to sell or dispense alcoholic liquors on any club, buffet, lounge or dining car operated on an electric, gas or steam railway regularly operated by a common carrier in this State, but shall not

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permit the sale for resale of any alcoholic liquors to any licensee within this State. A license shall be obtained for each car in which such sales are made.

(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.

(h) A non-beverage user's license shall allow the licensee to purchase alcoholic liquor from a licensed manufacturer or importing distributor, without the imposition of any tax upon the business of such licensed manufacturer or importing distributor as to such alcoholic liquor to be used by such licensee solely for the non-beverage purposes set forth in subsection (a) of Section 8-1 of this Act, and such licenses shall be divided and classified and shall permit the purchase, possession and use of limited and stated quantities of alcoholic liquor as follows:

- Class 1, not to exceed 500 gallons
- Class 2, not to exceed 1,000 gallons
- Class 3, not to exceed 5,000 gallons
- Class 4, not to exceed 10,000 gallons
- Class 5, not to exceed 50,000 gallons

(i) A wine-maker's premises license shall allow a licensee that concurrently holds a first-class wine-maker's license to

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sell and offer for sale at retail in the premises specified in such license not more than 50,000 gallons of the first-class wine-maker's wine that is made at the first-class wine-maker's licensed premises per year for use or consumption, but not for resale in any form. A wine-maker's premises license shall allow a licensee who concurrently holds a second-class wine-maker's license to sell and offer for sale at retail in the premises specified in such license up to 100,000 gallons of the second-class wine-maker's wine that is made at the second-class wine-maker's licensed premises per year for use or consumption but not for resale in any form. A wine-maker's premises license shall allow a licensee that concurrently holds a first-class wine-maker's license or a second-class wine-maker's license to sell and offer for sale at retail at the premises specified in the wine-maker's premises license, for use or consumption but not for resale in any form, any beer, wine, and spirits purchased from a licensed distributor. Upon approval from the State Commission, a wine-maker's premises license shall allow the licensee to sell and offer for sale at (i) the wine-maker's licensed premises and (ii) at up to 2 additional locations for use and consumption and not for resale. Each location shall require additional licensing per location as specified in Section 5-3 of this Act. A wine-maker's premises licensee shall secure liquor liability insurance coverage in an amount at least equal to the maximum liability amounts set forth in subsection (a) of Section 6-21 of this Act.

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(j) An airplane license shall permit the licensee to import alcoholic liquors into this State from any point in the United States outside this State and to store such alcoholic liquors in this State; to make wholesale purchases of alcoholic liquors directly from manufacturers, foreign importers, distributors and importing distributors from within or outside this State; and to store such alcoholic liquors in this State; provided that the above powers may be exercised only in connection with the importation, purchase or storage of alcoholic liquors to be sold or dispensed on an airplane; and provided further, that airplane licensees exercising the above powers shall be subject to all provisions of Article VIII of this Act as applied to importing distributors. An airplane licensee shall also permit the sale or dispensing of alcoholic liquors on any passenger airplane regularly operated by a common carrier in this State, but shall not permit the sale for resale of any alcoholic liquors to any licensee within this State. A single airplane license shall be required of an airline company if liquor service is provided on board aircraft in this State. The annual fee for such license shall be as determined in Section 5-3.

(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 (i)

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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, (ii) 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, and (iii) the foreign importer complies with the provisions of Sections 6-5 and 6-6 of this Act to the same extent that these provisions apply to manufacturers.

(1) (i) A broker's license shall be required of all persons who solicit orders for, offer to sell or offer to supply alcoholic liquor to retailers in the State of Illinois, or who offer to retailers to ship or cause to be shipped or to make contact with distillers, rectifiers, brewers or manufacturers or any other party within or without the State of Illinois in order that alcoholic liquors be shipped to a distributor, importing distributor or foreign importer, whether such solicitation or offer is consummated within or without the State of Illinois.

No holder of a retailer's license issued by the Illinois Liquor Control Commission shall purchase or receive any alcoholic liquor, the order for which was solicited or offered for sale to such retailer by a broker unless the broker is the holder of a valid broker's license.

The broker shall, upon the acceptance by a retailer of the broker's solicitation of an order or offer to sell or supply or

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deliver or have delivered alcoholic liquors, promptly forward to the Illinois Liquor Control Commission a notification of said transaction in such form as the Commission may by regulations prescribe.

(ii) A broker's license shall be required of a person within this State, other than a retail licensee, who, for a fee or commission, promotes, solicits, or accepts orders for alcoholic liquor, for use or consumption and not for resale, to be shipped from this State and delivered to residents outside of this State by an express company, common carrier, or contract carrier. This Section does not apply to any person who promotes, solicits, or accepts orders for wine as specifically authorized in Section 6-29 of this Act.

A broker's license under this subsection (1) shall not entitle the holder to buy or sell any alcoholic liquors for his own account or to take or deliver title to such alcoholic liquors.

This subsection (1) shall not apply to distributors, employees of distributors, or employees of a manufacturer who has registered the trademark, brand or name of the alcoholic liquor pursuant to Section 6-9 of this Act, and who regularly sells such alcoholic liquor in the State of Illinois only to its registrants thereunder.

Any agent, representative, or person subject to registration pursuant to subsection (a-1) of this Section shall not be eligible to receive a broker's license.

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(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 (i) 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, (ii) 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, and (iii) the non-resident dealer shall comply with the provisions of Sections 6-5 and 6-6 of this Act to the same extent that these provisions apply to manufacturers.

(n) A brew pub license shall allow the licensee (i) to manufacture beer only on the premises specified in the license, (ii) to make sales of the beer manufactured on the premises or, with the approval of the Commission, beer manufactured on another brew pub licensed premises that is substantially owned and operated by the same licensee to importing distributors, distributors, and to non-licensees for use and consumption, (iii) to store the beer upon the premises, and (iv) to sell and offer for sale at retail from the licensed premises, provided that a brew pub licensee shall not sell for off-premises consumption more than 50,000 gallons per year. A person who

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holds a brew pub license may simultaneously hold a craft brewer license if he or she otherwise qualifies for the craft brewer license and the craft brewer license is for a location separate from the brew pub's licensed premises. A brew pub license shall permit a person who has received prior approval from the Commission to annually transfer no more than a total of 50,000 gallons of beer manufactured on premises to all other licensed brew pubs that are substantially owned and operated by the same person.

(o) A caterer retailer license shall allow the holder to serve alcoholic liquors as an incidental part of a food service that serves prepared meals which excludes the serving of snacks as the primary meal, either on or off-site whether licensed or unlicensed.

(p) An auction liquor license shall allow the licensee to sell and offer for sale at auction wine and spirits for use or consumption, or for resale by an Illinois liquor licensee in accordance with provisions of this Act. An auction liquor license will be issued to a person and it will permit the auction liquor licensee to hold the auction anywhere in the State. An auction liquor license must be obtained for each auction at least 14 days in advance of the auction date.

(q) A special use permit license shall allow an Illinois licensed retailer to transfer a portion of its alcoholic liquor inventory from its retail licensed premises to the premises specified in the license hereby created, and to sell or offer

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for sale at retail, only in the premises specified in the license hereby created, the transferred alcoholic liquor for use or consumption, but not for resale in any form. A special use permit license may be granted for the following time periods: one day or less; 2 or more days to a maximum of 15 days per location in any 12 month period. An applicant for the special use permit license must also submit with the application proof satisfactory to the State Commission that the applicant will provide dram shop liability insurance to the maximum limits and have local authority approval.

(r) A winery shipper's license shall allow a person with a first-class or second-class wine manufacturer's license, a first-class or second-class wine-maker's license, or a limited wine manufacturer's license or who is licensed to make wine under the laws of another state to ship wine made by that licensee directly to a resident of this State who is 21 years of age or older for that resident's personal use and not for resale. Prior to receiving a winery shipper's license, an applicant for the license must provide the Commission with a true copy of its current license in any state in which it is licensed as a manufacturer of wine. An applicant for a winery shipper's license must also complete an application form that provides any other information the Commission deems necessary. The application form shall include an acknowledgement consenting to the jurisdiction of the Commission, the Illinois Department of Revenue, and the courts of this State concerning

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the enforcement of this Act and any related laws, rules, and regulations, including authorizing the Department of Revenue and the Commission to conduct audits for the purpose of ensuring compliance with this amendatory Act.

A winery shipper licensee must pay to the Department of Revenue the State liquor gallonage tax under Section 8-1 for all wine that is sold by the licensee and shipped to a person in this State. For the purposes of Section 8-1, a winery shipper licensee shall be taxed in the same manner as a manufacturer of wine. A licensee who is not otherwise required to register under the Retailers' Occupation Tax Act must register under the Use Tax Act to collect and remit use tax to the Department of Revenue for all gallons of wine that are sold by the licensee and shipped to persons in this State. If a licensee fails to remit the tax imposed under this Act in accordance with the provisions of Article VIII of this Act, the winery shipper's license shall be revoked in accordance with the provisions of Article VII of this Act. If a licensee fails to properly register and remit tax under the Use Tax Act or the Retailers' Occupation Tax Act for all wine that is sold by the winery shipper and shipped to persons in this State, the winery shipper's license shall be revoked in accordance with the provisions of Article VII of this Act.

A winery shipper licensee must collect, maintain, and submit to the Commission on a semi-annual basis the total number of cases per resident of wine shipped to residents of

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this State. A winery shipper licensed under this subsection (r) must comply with the requirements of Section 6-29 of this amendatory Act.

(Source: P.A. 95-331, eff. 8-21-07; 95-634, eff. 6-1-08; 95-769, eff. 7-29-08; 96-1367, eff. 7-28-10.)

(235 ILCS 5/5-3) (from Ch. 43, par. 118)

Sec. 5-3. License fees. Except as otherwise provided herein, at the time application is made to the State Commission for a license of any class, the applicant shall pay to the State Commission the fee hereinafter provided for the kind of license applied for.

The fee for licenses issued by the State Commission shall be as follows:

For a manufacturer's license:

Class 1. Distiller	\$3,600
Class 2. Rectifier	3,600
Class 3. Brewer	900
Class 4. First-class Wine Manufacturer	600
Class 5. Second-class Wine Manufacturer	1,200
Class 6. First-class wine-maker	600
Class 7. Second-class wine-maker	1200
Class 8. Limited Wine Manufacturer	120
Class 9. Craft Distiller	1,800
<u>Class 10. Craft Brewer</u>	<u>25</u>

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For a Brew Pub License	1,050
For a caterer retailer's license	200
For a foreign importer's license	25
For an importing distributor's license	25
For a distributor's license	270
For a non-resident dealer's license (500,000 gallons or over)	270
For a non-resident dealer's license (under 500,000 gallons)	90
For a wine-maker's premises license	100
For a winery shipper's license (under 250,000 gallons)	150
For a winery shipper's license (250,000 or over, but under 500,000 gallons)	500
For a winery shipper's license (500,000 gallons or over)	1,000
For a wine-maker's premises license, second location	350
For a wine-maker's premises license, third location	350
For a retailer's license	500
For a special event retailer's license, (not-for-profit)	25
For a special use permit license, one day only	50
2 days or more	100

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For a railroad license	60
For a boat license	180
For an airplane license, times the licensee's maximum number of aircraft in flight, serving liquor over the State at any given time, which either originate, terminate, or make an intermediate stop in the State	60
For a non-beverage user's license:	
Class 1	24
Class 2	60
Class 3	120
Class 4	240
Class 5	600
For a broker's license	600
For an auction liquor license	50

Fees collected under this Section shall be paid into the Dram Shop Fund. On and after July 1, 2003, of the funds received for a retailer's license, in addition to the first \$175, an additional \$75 shall be paid into the Dram Shop Fund, and \$250 shall be paid into the General Revenue Fund. Beginning June 30, 1990 and on June 30 of each subsequent year through June 29, 2003, any balance over \$5,000,000 remaining in the Dram Shop Fund shall be credited to State liquor licensees and applied against their fees for State liquor licenses for the following year. The amount credited to each licensee shall be a

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proportion of the balance in the Dram Fund that is the same as the proportion of the license fee paid by the licensee under this Section for the period in which the balance was accumulated to the aggregate fees paid by all licensees during that period.

No fee shall be paid for licenses issued by the State Commission to the following non-beverage users:

(a) Hospitals, sanitariums, or clinics when their use of alcoholic liquor is exclusively medicinal, mechanical or scientific.

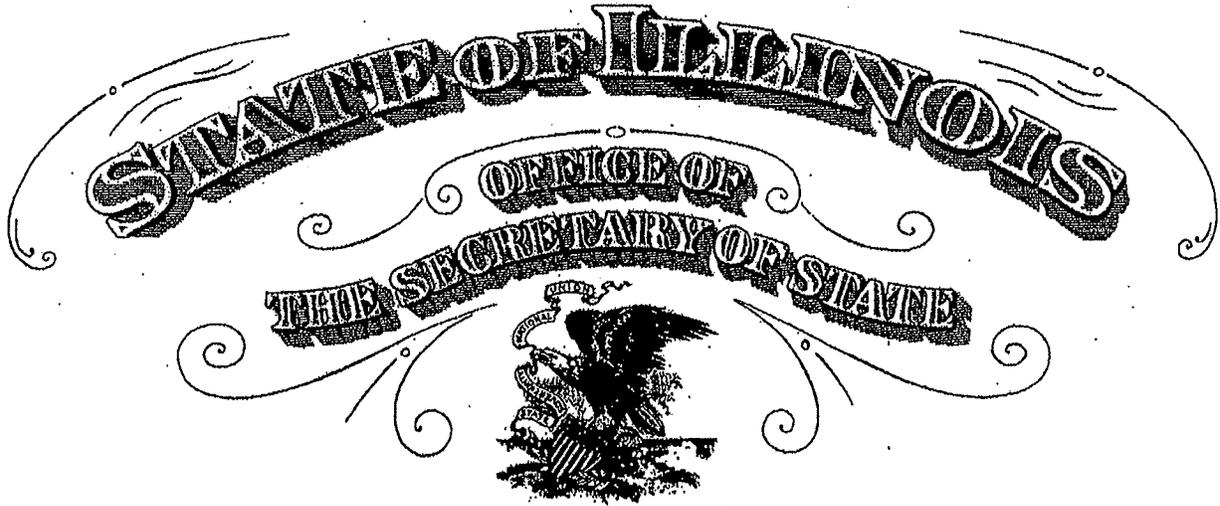
(b) Universities, colleges of learning or schools when their use of alcoholic liquor is exclusively medicinal, mechanical or scientific.

(c) Laboratories when their use is exclusively for the purpose of scientific research.

(Source: P.A. 95-634, eff. 6-1-08; 96-1367, eff. 7-28-10.)

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

File Number



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

AN EXAMINATION OF THE RECORDS OF THIS OFFICE DOES NOT DISCLOSE A CORPORATION, EITHER DOMESTIC OR FOREIGN, ENTITLED WHOLESALER EQUITY DEVELOPMENT CORP., AS HAVING BEEN INCORPORATED OR LICENSED TO TRANSACT BUSINESS IN THIS STATE AT ANY TIME. *****



In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 7TH day of SEPTEMBER A.D. 2012

Jesse White

SECRETARY OF

Authentication #: 1225101739

Authenticate at: <http://www.cyberdrivellinois.com>

EXHIBIT G

File Number



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

AN EXAMINATION OF THE RECORDS OF THIS OFFICE DOES NOT DISCLOSE A CORPORATION, EITHER DOMESTIC OR FOREIGN, ENTITLED WHOLESALER EQUITY DEVELOPMENT CORPORATION, AS HAVING BEEN INCORPORATED OR LICENSED TO TRANSACT BUSINESS IN THIS STATE AT ANY TIME. *****



In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 7TH day of SEPTEMBER A.D. 2012

Jesse White

Authentication #: 1225101743
Authenticate at: <http://www.cyberdriveillinois.com>

SECRETARY OF STATE



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

0160106-7

09/29/2011

C T CORPORATION SYSTEM
208 SO LASALLE ST, SUITE 814
CHICAGO, IL 60604-1101

RE CITY BEVERAGE - ILLINOIS, L.L.C.

DEAR SIR OR MADAM:

APPLICATION FOR AMBENDMENT HAS BEEN PLACED ON FILE, AND THE LIMITED LIABILITY COMPANY CREDITED WITH THE REQUIRED FILING FEE.

SINCERELY YOURS,

JESSE WHITE
SECRETARY OF STATE
DEPARTMENT OF BUSINESS SERVICES
LIMITED LIABILITY DIVISION
(217) 524-8008

EXHIBIT H

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2013Westin.
Riverwalk
San Antonio
(click here)**A-B Branch Warehouse, Delivery Reporting to Corp Logistics**

FILED MARCH 4, 2010

Dear Client:

"To deliver greater value to our customers and better leverage our logistics expertise, the warehouse and delivery operations at the Wholesale Operation Division (WODs) will begin reporting to Corporate Logistics, effective March 15th," writes A-B in a memo to logistics employees. A-B is creating a new position to support this new arrangement, called 2nd-Tier Logistics Director, who will run all branch logistics in the US and will have responsibilities for "Zone support function for 2nd-tier operations in Canada."

This is a further integration of A-B's company-owned distributorship operations into the brewery. Historically, A-B branches were largely run as independent entities. Today, they are clearly being integrated into the brewery, and this development, along with the integration of branch sales into brewery regional sales, seems to demonstrate that A-B is moving toward vertical integration -- at least with its own branches -- to save costs and streamline logistics and production.

This new position will be led by Joaquin Schlottmann, who is transferring to the North America Zone from the global organization. From 2002 until October 2005, Joaquin was based in Sao Paulo and was responsible for sales and distribution for all operations outside Brazil. In 2005, after the AmBev Interbrew merger, Joaquin moved to Belgium where he initiated the WCCP implementation in Russia, Korea, Belgium, the UK and Germany. Since 2008, as Global Wholesaler Director, he has been responsible for implementing Route-to-Market and Wholesaler Management best practices in the top ten AB InBev countries.

Volumes Down, Margins Up for ABI in Q4

It's a new quarter but the same old story for our biggest brewer. AB InBev's organic volumes were down 0.7% for the year in 2009, while EBIDTA margins expanded by 2 points. In the fourth quarter global beer volumes were up 0.7%. ABI has proven itself to be, once again and even in tough times, a margin machine. La Maquina strikes again. But it has to be tough when all regions lost volume except Brazil.

It was a very weak volume quarter for A-B. Anheuser-Busch posted fourth quarter US sales-to-retailers down 4.1% due to a "softer industry," with shipments down 2.2%, and full year STRs down 1.9%. Full year market share remains at 48.9%, "on par with last year." A-B points out that it was cycling tough comparisons with the intro of Bud Light Lime in mid 2008.

In the fourth quarter, shipments were ahead of STRs as A-B "continued to balance capacity utilization, this time with a shift in volumes from" the third quarter to the fourth quarter. The year 2009 showed "a significant reduction of out-of-pattern distribution expenses." ABI achieved a remarkable \$1.1 billion in synergies in 2009. They expect another \$500 million in 2010.

ABI's outlook for 2010 globally is positive, but with gains skewed toward the second half. First half US and Russian sales are likely to be a drag because of poor weather in the US and destocking in Russia.

ABI says it is focused in 2010 on reducing its \$42 billion of remaining debt leftover from the A-B acquisition. More after the call....

North Carolina Distributor Merger

Greensboro-based I.H. Caffey Distributing is merging with Cunningham Wholesale in Charlotte and Rudisill Enterprises in Gastonia to create the formation of Carolina Premium Beverage. All are MillerCoors distributors, while Caffey also has Yuengling and the others have Corona, among other brands. The merger will be effective May 1, 2010. The new company will be headquartered in Caffey's Concord location. Chris Caffey will serve as ceo while Lou Cunningham and Ben Rudisill will serve on the board.

NAB To Intro Blue Light Lime, Made in Rochester

North American Breweries' Labatt USA is introducing a new product, which it will own (not Labatt Canada), called Blue Light Lime, to be made in their Rochester brewery. The company says it is

EXHIBIT I

hiring 50 new workers and adding a third shift at the brewery.

The new product combines the Blue Light recipe of Canada-based Labatt Brewing Co. Ltd. with a lime flavor created by Genesee Brewing. "Blue Light Lime is a proprietary new product that we own," said chief Richard Lozyniak. "In order to bring it to market quickly and quietly, the best and most confidential route was through our own brewery." The new brand will be available in the northeast next month.

Labatt Blue and Blue Light continue to be brewed in Canada, said Rich. "The Canadian heritage of the beers is critical to their success. Our plan is, and has always been, to brew them in Canada. Blue Light Lime is a very different scenario, where we wanted to quickly bring a new product to market."

Until tomorrow, Harry

"Every man has his follies - and often they are the most interesting thing he has got."
-Josh Billings

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----- Sell Day Calendar -----

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Sell days this month last year: 22
This month ends on a: Wed.
This month last year ended on a: Tues.
YTD sell days Over/Under: -1

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