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ILLINOIS LIQUOR CONTROL COMMISSION

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Public Comments to ILCC Proposed Amendment to 11 Ill.

Admin. Code 100

Consumer Coupons and Discounts

Section 100.500 (d)(18)

**Written Comments Submitted in 2021 Before Formal Illinois
Register Filing Period**

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November 30, 2021

Ms. Lisa Gardner
Executive Director
Illinois Liquor Control Commission
50 W. Washington Street Suite 209
Chicago, IL 60602

RE: Response on Proposed Coupon Regulations

Dear Executive Director Gardner:

I wanted to thank you for providing me a copy of the Proposed Coupon Draft Rule and Statement on Rule Proposal for Coupons/Rebates. I welcome the opportunity to provide comments that I intend to be helpful for the process.

As a former regulator, I understand the challenges of writing a rule on coupons/rebates.

Currently, I write these proposed comments as someone that represents all three-tiers of the industry.

Instant Redeemable Coupons

The goal of coupon regulations should be to eliminate fraud and tied-house issues.

In my opinion, the most optimal way to meet these important regulatory goals is to eliminate paper instant redeemable coupons (IRCs). In a worst-case scenario, these coupons can be utilized in a fraudulent way to provide an enhanced benefit to select retailers.

The proposed regulations should only permit digital IRCs.

A digital IRC can eliminate the potential for fraud and providing an illegal benefit to the retailers, as the coupon stays in the hands of the consumer and never touches

the retailer. Further, the technology a digital IRC utilizes, can prohibit the use of coupons after expiration date and prohibits the sharing of coupons.

As the world shifts more to digital as opposed to paper mediums, the ban on paper IRCs would not become a major inconvenience to consumers.

By eliminating potential fraud and tied-house issues, digital IRCs and the elimination of paper IRCs, would make the industry easier to regulate for the Illinois Liquor Control Commission.

Discount Issues

Pertaining to the proposed regulation's policy on discounts, I have a major concern. Specifically, as it relates to this statement under Section (iv), "Coupons that require the purchase of one alcoholic liquor product to obtain a full or partial discount on a separate alcoholic liquor product are prohibited."

First, as the policy of an "of value"/tied house regulation should be to eliminate fraud and tied-house issues, the specific discount program mentioned does not create tied-house concerns. The only tied-house issue could be how the program is distributed. If the coupon discount is a paper direct to consumer coupon, it should be subject to the "direct proportion" rules in Section (iv).

Second, the purpose of these discount programs is to induce the purchase of more products, the program does not benefit the retailer, as the benefit of the discount is recognized by the consumer.

Third, under recently enacted Illinois law, HB2620, a wholesaler can offer quantity discounts to a retailer that purchases more products. If a wholesaler can provide an incentive for a retailer to purchase more product and enhance sales, then why can't a manufacturer utilize a purchasing incentive to enhance sales. Especially, when the purchasing incentive is aimed at someone that is outside the legal confines of the tied-house statutes.

I believe that this specific discount program should not be expressly prohibited by this regulation, but should be expressly permitted.

Expressed Authorization

As I read the Statement on Rule Proposal for Coupons/Rebates, I respectfully disagree with the statement that if a coupon program is not expressly authorized by the Illinois Liquor Control Commission rules, it is noncompliant.

First, innovation comes in fast waves and often times state regulations and rules are behind the technology wave. It is impossible for a state regulator to anticipate innovation and even to keep up with innovation. The proposed rules should provide for more flexibility, which provides the ILCC regulatory discretion in the face of change.

Second, as indicated, many of these coupon programs do not create a tied house issue, so subjecting them to the express provisions of 235 ILCS 5/6-5, restrains them to a law they may not violate.

On-premise coupons

Finally, I also wanted to comment on the issue of on-premise coupons. Traditionally, coupons were utilized by off-premise retailers, but with the advent of digital coupons, in the future we will see more electronic coupons for on-premise retailers. I think this is an issue that should be addressed and I am happy to provide input.

Executive Director Gardner, I wanted to thank you for your efforts, and I look forward to working with you on this issue. If you have any comments or questions, please do not hesitate to contact me. Thank You!

Very truly yours,



Sean O'Leary



Associated Beer Distributors of Illinois

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December 2, 2021

Ms. Lisa Gardner
Executive Director
Illinois Liquor Control Commission
50 West Washington Street
Suite 209
Chicago, Illinois 60602

Dear Director:

Thank you for providing the Associated Beer Distributors of Illinois (ABDI) an opportunity to comment on the proposed rule regarding coupons the Illinois Liquor Control Commission (ILCC) has put forth for comment from Industry stakeholders such as ABDI. The process of the ILCC seeking such input is valuable insight for the ILCC into Industry concerns of maintaining orderly markets, temperance and an even playing field - the very purpose and policy reasons for the three-tier system and the Illinois Liquor Control Act (the "Act"). ABDI respectfully requests that the ILCC consider the input of ABDI contained in this letter as well as input from other Industry stakeholders. In so doing, ABDI further requests that the ILCC give itself ample opportunity to consider ABDI's position along with the other Industry stakeholders prior to submitting the rule to the Joint Commission on Administrative Rules.

ABDI makes three key points regarding the coupon rule:

First, it is well settled in Illinois that the Act is an enabling and authorizing act, and thus if the Act does not authorize a particular trade practice it is legally prohibited. Similarly, the ILCC's authority for rule making and the scope of such rules is limited to administering the existing provisions of the Act and not expanding the permitted trade practices under the Act. Only the legislature may expand the scope of the Act as provided in the 21st Amendment of the United States Constitution.

The Act in no way authorizes coupons between Industry members (importers, manufacturer, distributors) and retailers. The Act expressly prohibits any payment between an Industry member and a retailer unless there exists an express exception to any such payment or thing "of value." Coupons which result in payments from an Industry member to a retailer is an of value transaction which the Act does not authorize and thus is prohibited. Simply put, the ILCC does not have a statutory basis to authorize coupons between Industry members and retailers.



Second, and similarly, "scan backs," as defined in the proposed rule, are also not authorized under the Act and thus are already prohibited. ABDI suggests that the ILCC does not need a rule to prohibit a trade practice which the Act already prohibits. However, to the extent the rule facilitates notice to the Industry that scan backs are not compliant under the Act, ABDI supports such a rule.

Third, Direct to Consumer coupons as the rule has defined such coupons do not implicate any of value considerations as they are a transaction between an Industry member and consumer, and while subject to rules such as prohibitions against free alcoholic products, are not of value transactions. ABDI does not have an objection to any such coupons provided that they are redeemable at all retailers, which protects small businesses against the economic powers of large chain retailers. Such transactions are also really "pricing" discounts to consumers. Pricing is not subject to the Act or any federal law provided it is not a subterfuge for an of value transaction.

ABDI respectfully requests that the ILCC consider this letter and revise or withdraw the rule consistent with the above analysis. Once again, ABDI appreciates the opportunity to comment on the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Myers". The signature is stylized with large, flowing letters and a prominent initial "R".

Robert L. Myers
President



December 3, 2021

Lisa Gardner, Executive Director
Illinois Liquor Control Commission

Dear Director Gardner,

On November 17, 2021, the Illinois Liquor Control Commission (the "ILCC") circulated a proposed coupon and rebate rule (the "Draft Rule"). The Draft Rule essentially mirrors the ILCC's Trade Practice Policy 11 ("TPP 11"), captioned "Consumer Coupons and Rebates." Simply summarized, the Draft Rule allows paper and electronic coupons and rebates, but prohibits consumer discounts via retailer point of sale scans (possibly because TPP 11 was written well before scan technology was in use or readily available).

As you know, the Commission's Trade Practice Policies are not law and are, therefore, unenforceable. To that end, an effort to enact clear, enforceable rules regarding the use of coupons is a laudable and much appreciated goal. However, utilizing the old TPP 11 as the foundation for the proposed law, when it was plagued with a multitude of difficulties from clarity to enforceability to inequality of use/terms is ill advised, as further explained below.

The Commission correctly recognized two possible ways to incent a consumer to purchase product via a discount: (a) a Retailer Redemption Coupon (traditionally known as an instant redeemable coupon) and (b) a Direct to Consumer Coupon Rebate. In a Retailer Redemption Coupon transaction, retailers, upon consumer presentation of the coupon itself, directly credit the consumer the coupon value off the transaction price. The retailers then request reimbursement from the suppliers or a third party representative of a supplier. In a Consumer Coupon Rebate transaction, consumers request a rebate directly from the supplier and the supplier directly pays the consumer upon proof of purchase. In recent years, point of sale scan equipment has made it possible for instant redeemable coupons to be electronically provided to consumers, which is typically facilitated through retailer loyalty card programs. In addition, technology is eliminating the traditional mail-in rebate. Many rebate requests are electronically transferred from consumers to suppliers (or their fulfillment houses) and the suppliers transfer rebate funds electronically to the consumers.

Importantly, direct to consumer rebates have not created any regulatory problems because they involve solely the consumer and the supplier and require no retailer reimbursement. Instant Redeemable Coupons, however, have historically and will continue to cause of significant "of value" concerns in the marketplace. Specifically, because there are not clear rules requiring that IRC's be provided to all retailers, at the same time, on the same conditions, to create a level competitive playing field, IRC's are (a) not uniformly offered to all retailers; (b) frequently offered

only to one large retailer chain; (c) not always offered at the same time; and (d) rarely, if ever, offered to smaller retailers.

Some suppliers have tried to remedy the disproportionate benefit instant redeemable coupons convey to large retailer chains by offering “comparable” coupons via alternative means, such as through coupon websites like Coupons.com or CouponCabin.com or through electronic consumer rebate applications such as Swizl or ByBe App / Bybeapp.com. However, these alternatives are not the same, and select larger chains continue to receive disproportionate supplier coupon attention to the detriment of other larger chains and smaller retailers.

The following examples demonstrate the foregoing concerns:

1. Supplier offers coupons good for 1,000 uses to a retail chain to publish on its website and offers 100 coupons on Coupons.com for consumers to use at all of the remaining thousands of potentially participating retailers throughout the state. This practice substantially favors the retail chain.
2. Supplier offers coupons good for 1,000 uses to a retail chain to publish on its website and offers the same amount, 1,000 coupons, on Coupons.com for consumers to use at all of the remaining thousands of potentially participating retailers throughout the state. This practice, while on its face equal, favors the retail chain, which receives greater visibility and can plan, as compared to the other thousands of retailers, which are not likely to know about the coupon, are not likely to be able to prepare, receive less exposure, and must share the same number of coupons with a much greater retailer base.
3. Supplier offers to redeem coupons printed in a retail chain’s weekly printed advertisement and publishes a coupon in a coupon section of a regional newspaper for the remaining thousands of potentially participating retailers throughout the state. This practice raises the same concerns as those in example two above.
4. Supplier offers coupons good for 1,000 uses to a retail chain to publish on its website and offers 100 or 1,000 e-mail / text rebates through a e-rebate website for consumers to use at any retailer throughout the state. This practice shares the same concerns as example two above. In addition, a coupon and a rebate are not the same thing. A coupon is money off at the point of sale. A rebate requires the consumer to pay the full price and then request a rebate.
5. Supplier offers coupons good for 1,000 uses to a retail chain to publish on its website before the Independence Day holiday and offers the same coupon promotion to a different retailer before Labor Day. This practice favors one retailer over all others.

The foregoing examples demonstrate real and regular practices that took place under TPP 11 and have taken place since TPP 11 became ineffective. Codifying TPP 11 through the Draft Rule will

simply allow these practices to continue. Much of the Draft Rule is ambiguous or omits the detail necessary to interpret, follow and enforce the Draft Rule, if enacted.

There is nothing in the Draft Rule that explains how to make Retailer Redemption Coupons available “at all participating retailer locations.” Nothing in the Draft Rule explains: (a) how a coupon service like Coupons.com is or might be a reasonable “general market” substitute when suppliers are putting coupons directly on big retailer websites; or (b) whether a Direct to Consumer Coupon, like ByBe or Swizl, can be used if a Retailer Redemption Coupon cannot be provided to all retailers as a “general market” substitute.

Further, the Draft Rule does not explicitly state that coupons must be offered for the same product, in the same dollar amount, for the same time period, or that a supplier must make available to all retailers the same number or proportionate percentage of coupons to all retailers desirous of participating. Nor is there anything in the Draft Rule explaining how Direct to Consumer Coupons should be offered to “all retailers.” Without detailed rules addressing the foregoing, the abuses of coupons authorized during the TPP 11 years will undoubtedly continue. In addition, because of staffing limitations and the press of other business, the Commission has never been able to properly investigate or regulate coupon use.

Moreover, the Draft Rule, for reasons unstated, draws a distinction between e-coupons and scan coupons and deems the latter illegal. This distinction is unwarranted. Both are instant redeemable coupons, and both can be tracked using retailer software. In addition, the Draft Rule does not make clear whether an e-coupon on a retailer’s website, which the consumer selects online at home, but is applied when the product crosses the point-of-sale scanner, is a proposed illegal scan or a permitted coupon. For these reasons, among others, if scans are to be illegal, so should e-coupons. There is no discernable difference and blurring the lines will further confuse the industry and make enforcement more difficult.

Finally, the Draft Rule’s prohibition on retailers demanding coupons is ambiguous, the industry members will not understand it, and the prohibition will be difficult to enforce. Demand is subjective. Neither asking, nor suggesting is demanding. Yet, requests or suggestions can result in “of value” concerns. Similarly, a retailer offering to purchase product in exchange for a coupon is not a demand, but it could be deemed a request for special treatment. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeremy Kruidenier".

Jeremy Kruidenier
Executive Director and General Counsel
Wine and Spirits Distributors of Illinois



Geralyn Lasher
Director, Great Lakes States

December 3, 2021

Ms. Lisa Gardner
Executive Director
Illinois Liquor Control Commission
50 West Washington Street, Suite 209
Chicago, IL 60602

Mr. Noel Quanbeck
General Counsel
Illinois Liquor Control Commission
50 West Washington Street, Suite 209
Chicago, IL 60602

Dear Executive Director Gardner and General Counsel Quanbeck:

In response to the Commission's proposed rule on consumer coupons and discounts, I am writing to respectfully submit the following comments on behalf of the Wine Institute, a nonprofit trade association representing over 1,000 California wineries and associate members. California wineries produce 90% of the wine manufactured in the United States and provide a significant portion of the wine sold in licensed establishments in Illinois.

We have serious concerns with the proposal as currently drafted. Our members value the relationship they have with their wholesaler and retailer partners and support policies that expand opportunities for all three tiers to sell their products responsibly and effectively. However, we are concerned about wineries reimbursing an off-premise retailer for product promotions that the retailer offers directly to consumers. These promotions come in various forms like instant redeemable coupons (IRCs) and scan backs. There has been a history of abuse with reimbursing retailers for such programs because they offer little transparency to ensure that consumers are receiving the full discount and are very difficult to enforce – greatly increasing the potential for these promotions to become an item “of value” to the retailer in violation of tied-house laws.

Therefore, we respectfully urge that manufacturers and wholesalers be prohibited from being allowed to produce, furnish, sponsor, fund or reimburse, either directly or indirectly, retailers for consumer promotions like IRCs and scan backs. We

Ms. Gardner/Mr. Quanbeck
December 2, 2021
Page 2

have no objections to off-premise retailers offering and funding their own IRCs and loyalty program promotions for wine -- to build and increase customer loyalty to their stores. We also support wine manufacturers being allowed to offer mail-in and online rebate coupons that are redeemed directly by their consumers. In each of these instances, the consumer deals directly with the business entity that offers, funds and provides redemption of the coupon/rebate thereby furthering their direct relationship with customers.

Most of our members are small to medium producers, reflective of the domestic wine industry, and do not have the inventories or financial resources to market their products through IRCs. These promotions can create a competitive imbalance between large and smaller wineries and unfairly discriminate against small and medium-sized wineries. Currently, 33 states prohibit winery-funded IRCs and in many states these prohibitions have been supported by the wine industry and the state wine and spirits wholesaler associations.

We would also encourage careful review of the language used in the proposed rule in defining different types of coupons. Some of the language used is not consistent with industry terminology. For a rule of this scope, it is important to help avoid any confusion about what is and is and is not permissible by utilizing terms that are known by those who are required to comply with it.

Thank you for your consideration of our comments on this important item. On behalf of our member wineries, Wine Institute greatly appreciates the opportunity to share our perspective and assist you and the Commission in any way we can in your critical endeavor to convert trade practice policies into administrative rules.

If you have any questions about our comments and/or otherwise, please feel free to contact me at 517-898-3260 or glasher@wineinstitute.org.

Sincerely,



Geralyn Lasher

cc: Jeff Glass