

TPP-22 ~~HAPPY HOUR LAW~~ PROHIBITION OF CONSUMER DRINK SPECIALS, CONTESTS GIVEAWAYS (Happy Hours Prohibited)

I. Purpose

This Policy statement establishes this Commission's policy interpretation of 235 ILCS 5/6-28 of the Liquor Control Act, titled "Happy hours prohibited"~~as to various licensee promotions, and defines the general procedure used by this Commission to enforce the Happy Hour Law (235 ILCS 5/6-28).~~

II. Policy

It is the policy of this Commission to define the types of promotions and activities allowed and disallowed under the ~~Happy Hour Law~~"Happy hours prohibited" section of the Liquor Control Act, to monitor and verify compliance with those defined promotions and activities, and to enforce this policy as provided by law.

III. Definitions

A. MEAL PACKAGE

Any food, excluding snacks and other so-called "finger food," that is served on the licensed premises, which includes the service of no more than 2 alcoholic beverages as part of such package.

B. DAY

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

C. DRINKS

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

D. PITCHERS

1. Pitcher – (from Dictionary.com) "a container, usually with a handle and spout or lip, for holding and pouring liquids." The Commission recognizes that not all serving containers meet the standard definition of a pitcher and will not mandate that all serving containers match that definition.

The Commission does, however, recognize that the standard pitcher or other serving containers of alcoholic liquor do not contain in excess of 64 ounces of alcoholic liquor. Therefore, the Commission does mandate that all pitchers and serving containers served to two or more persons not exceed 64 ounces.

-Note: Containers that are filled by the manufacturer are presumptively valid containers for the purposes of serving to two or more persons (exception: a bottle of wine can be served to one person).

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IV. Current Law Prohibiting Happy Hour Promotions and Giveaways Procedure
The Happy Hour Law The law prohibiting happy hour promotions and certain types of drink specials, effective 8/31/89, was enacted in 1989 passed in order to eliminate the over consumption service and over-consumption of alcoholic liquor by controlling drink specials and promotions at bars, restaurants and other on-premises liquor licensed locations. and was intended to eliminate promotions that would encourage such over consumption.

Below, the The Liquor Control Act's happy hour prohibitions are reprinted in boldface type. Following the statutory language in bold, there is an *Interpretative Statement* which explains the Commission's interpretation of referenced restated section 235 ILCS 5/6-28 Happy Hour Law states in relevant part:

(b)

V. From Subsection (b) of 235 ILCS 5/6-28

No retail licensee or employee or agent of such licensee shall:

(1) serve 2 or more drinks of alcoholic liquor at one time to one person for consumption by that one person, except selling or delivering wine by the bottle or carafe; ...

Interpretative Statement

Service of two or more drinks to one person is prohibited if the license holder knew or should have known the drinks were intended to be consumed by that person.

Two (or greater) for one drink promotions are prohibited.

Pitchers, bottles or other serving containers of alcoholic liquor may not be served to one person unless the container is a standard sized bottle or carafe of wine.

Drinks that are commonly mixed like long island ice teas, a "shot and a beer" or "boilermakers" are considered one drink and can be served to one person for consumption by that person. It is expected that the cost of the drink be reasonably proportionate to the combined cost of each individual unit of alcoholic liquor contained in the drink on that given business day. [(see subsection (4)]

... (2) sell, offer to sell or serve to any person an unlimited number of drinks of alcoholic liquor during any set period of time for a fixed price, except at private functions not open to the general public; ...

Interpretive Statement

Selling unlimited drinks to the public for a set price is illegal. “All you can drink” promotions are prohibited. Therefore, in all cases except private functions, alcohol must be sold to customers by the drink.

The Act (235 ILCS 5/1-3.36) generally defines “private functions.” The following is the Commission’s interpretation of the definition of private function:

1. Private functions must be “prearranged”. Prearranged means that the license holder shall require the party host to sign a written contract before the event disclosing the hosts’ costs and detailing the alcoholic liquor to be included in the prearranged package. The contract shall be available for review by the Illinois Liquor Control Commission upon request.

2. Private functions must be “by invitation or reservation and not open to the general public.”

A. Event Advertising - For a function to be private, the party host will invite guests in a manner that is not advertised to the general public. Therefore, if the party host, license holder or other promoter of the event advertises or promotes the event through general or social media outlets or through any other public advertising means, the license holder shall require that alcoholic liquor be sold per drink for that event. The license holder shall not give away or make drinks available on an unlimited basis for any part of the event.

B. Door Entry Fees/Tickets – If the license holder, party host, promoter or their agents charge or collect a door entry fee or ticket for the event, the license holder shall sell alcoholic liquor per drink for that event. The license holder shall not give away or make drinks available on an unlimited basis for any part of the event.

FOR EVENTS HOSTED BY LEGALLY RECOGNIZED NOT FOR PROFIT ORGANIZATIONS, the not-for-profit party host or its agent, not the license holder, may accept donations at the private event but if donations or a pre-paid ticket is a condition for entry to the party, then the license holder shall sell alcoholic liquor per drink for that event. The license holder shall not give away or make drinks available on an unlimited basis for any part of the event.

3. Private parties shall be “held in a room or rooms designated and used exclusively for the private party.” License holders are responsible for ensuring that a private party is sufficiently physically separated from other portions of the licensed establishment in which the general public has access. The use of wristbands as a means to distinguish between a person who is part of a party and a person who is

not is not sufficient to permit reduced or unlimited drinks given to the wrist banded person. Organized pub crawls that operate in this manner are prohibited.

... (3) sell, offer to sell or serve any drink of alcoholic liquor to any person on any date at a reduced price other than that charged other purchasers of drinks on that day where such reduced price is a promotion to encourage consumption of alcoholic liquor...;...

Interpretive Statement

No license holder shall sell one type of alcoholic beverage to one person for more or less than they have sold the same beverage to another person on the same business day.

Coupons/Special Discount programs (on-premises license holders) – the offer of discounts to consumers redeeming a coupon privilege, including electronic forms of a coupon, or to consumers redeeming other forms of a special discounting privilege (i.e. club membership, favored customer discounts) is prohibited if the discount is offered for alcoholic beverages solely. Coupons or discounts that include a discount of alcoholic liquor as part of a meal package or hotel package are permitted.

A license holder shall not use the terms such as “Happy Hour” and “Ladies Night” during which drink discounts are given to all or some patrons. The license holder may additionally be held liable for violating 235 ILCS 5/6-17 of the Liquor Control Act, even if there is no discount on prices, if the license holder does not give access to the licensed premises to all persons on an equal basis (i.e. A license holder cannot give free entry to a woman while charge a cover for a man.). A liquor license holder may prohibit entry to a person for an underlying legal reason.

A multi-use establishment may charge different prices in different rooms provided that such prices remain the same all day and the license holder has been issued a separate liquor license for each room in which there are different prices.\

A bartender or another agent of a license holder may give away or buy a drink as a reward for a customer as long as the practice is not promoted or advertised in any manner.

... (4) increase the volume of alcoholic liquor contained in a drink, or the size of a drink of alcoholic liquor, without increasing proportionately the price regularly charged for the drink on that day;...

Interpretive Statement

The license holder must increase the price of a drink in direct proportion to the increase of the amount of alcoholic liquor. In this case, the license holder will be expected to use a reasonable approximation calculation to increase the price of the

drink in relation to the increase in the amount of alcoholic liquor. The baseline for such measurement will be the regular cost of a drink during the same business day for the same type of alcoholic liquor.

Increasing drink prices in lieu of a cover charge if special entertainment, which is not regularly scheduled, is permitted at the licensed premises. This provision allows a licensee to increase drink prices, in lieu of a cover charge, to defray the cost of non-regularly scheduled entertainment. However, this practice is not allowed for entertainment which is of the “house band” variety. If an establishment has various entertainment acts scheduled on a regular basis, this will also be considered to be of the “house band” variety.

... (5) encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or awarding of drinks of alcoholic liquor as prizes for such game or contest on the licensed premises; or ..

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Interpretive Statement

A licensee may not sponsor or permit, on its premises, games or contests which involve drinking alcoholic liquor or awarding drinks as prizes. If a licensee knows or should have known that their customers are engaged in drinking contests, they will be liable for a license violation.

A licensee may sponsor games and contests at its premises but they may not use the award of alcoholic liquor as a prize for winning such contests. In addition, the drinking of alcohol may not be part of the contest (e.g. chugging contest, beer pong, power hour or other games, contests or promotions that encourage over-consumption or accelerated consumption of alcoholic liquor). A licensee may offer coupons for winning such contest; however, the coupons may not be used solely for alcohol (e.g. drink coupons)

... (6) advertise or promote in any way, whether on or off the licensed premises, any practices prohibited under paragraphs (1) through (5).”

Interpretive Statement

Advertising, in any way, any practice prohibited by the Happy Hour Law. The act of advertising a promotion which violates the Happy Hour Law is, in itself, a violation.

Advertisements for illegal promotions at a particular licensed location will be presumed to have been placed by the license holder at that business location unless, the license holder can prove by reasonable evidence that they did not advertise the illegal promotion and the promotion did not occur at the licensed premises. .

Use of the Words “free” or “complimentary” in advertisement is prohibited.

This Commission takes the position that using the word “free” (or any form thereof) in any advertising promotion regarding alcoholic liquor (e.g. “buy a case, get a six-pack free”) is a violation of both 5/6-28 and Regulation 100.280. Such promotions encourage the over consumption of alcoholic liquor.

(e)

VI. From Subsection (c) of 235 ILCS 5/6-28

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

- (1) offering free food or entertainment at any time ...**

Interpretive Statement

Offering discounts is subject to the provisions of the protections of 235 ILCS 5/6-17 (Civil rights in licensed establishment);

- (2) ... including drinks of alcoholic liquor as part of a meal package; ...**

Interpretive Statement – See definition of Meal Plan in subpar. III and subpar (3) below.

- (3) ... including drinks of alcoholic liquor as part of a hotel package; ...**

Interpretive Statement

The emphasis of such promotion must be the meal or hotel package itself, and not unlimited consumption of alcohol. A meal package is defined above, and must not be of the general hors d’oeuvres variety.

No more than two drinks may be permitted to be included in a drink or hotel package.—

- (4) ... negotiating drinks of alcoholic liquor as part of a contract between ___ hotel or multi-use establishments and another group for the holding of any function, -meeting, convention or trade show; ...**

Interpretive Statement – none

- (5) ... providing -room service to persons renting rooms at a hotel; ...**

Interpretive Statement – none

- ~~(6)...~~ **selling pitchers (or the equivalent, including but not limited to buckets), carafes, or bottles of alcoholic liquor which are customarily sold in such manner and delivered to 2 or more persons at one time; or ...**

Interpretive Statement

Pitchers or equivalent serving container must contain no more than 64 ounces of alcoholic liquor.

Carafes, bottles or flights of one may be sold to one person.

Beer Buckets may not contain more than an aggregate of 64 ounces of beer.

~~(6)(7) increasing prices of drinks of alcoholic liquor in lieu of, in whole or in part, a cover charge to offset the —cost of special entertainment not regularly scheduled.”~~

(7) . . . increasing prices of drinks of alcoholic liquor in lieu of, in whole or in part, a cover charge to offset the cost of special entertainment not regularly scheduled.

Interpretive Statement

Increasing drink prices in lieu of a cover charge if special entertainment, which is not regularly scheduled, is permitted at the licensed premises. This provision allows a licensee to increase drink prices, in lieu of a cover charge, to defray the cost of non-regularly scheduled entertainment. However, this practice is not allowed for entertainment which is of the “house band” variety. If an establishment has various entertainment acts scheduled on a regular basis, this will also be considered to be of the “house band” variety.

In addition,

Illegal Giveaways of Alcoholic Liquor - ILCC Regulation 100.280. ~~of this Commission states as follows:~~

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

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

~~A. The Happy Hour Law prohibits:~~

~~1. Serving two or more drinks to one person for consumption by that person. This requires that individuals be served only one drink at a time. Also prohibited are promotions such as A2 for 1” drinks, or any type of promotion which discounts drinks at a 2 for 1 or greater (3-1) price. A “shot and a beer” (boilermaker) promotion is allowable as such is considered one drink under this provision.~~

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

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

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

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

~~6. Advertising, in any way, any practice prohibited by the Happy Hour Law. The act of advertising a promotion which violates the Happy Hour Law is, in itself, a violation. This Commission takes the position that using the word “free” (or any form thereof) in any advertising promotion regarding alcoholic liquor (e.g. “buy a case, get a six pack~~

free”) is a violation of both 5/6-28 and Regulation 100.280. Such promotions encourage the over consumption of alcoholic liquor.

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

B. The Happy Hour Law permits:

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

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

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

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