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Illinois Liquor Control Commission
COVID-19 Related Action
Enforcement Reminder
“To-go” Sales and Delivery of Premixed Cocktails
March 29, 2020

The Illinois Liquor Control Commission (“State Commission”) has received inquiries from bars and restaurants seeking authority to sell pre-mixed drinks/cocktails “to-go” and for “delivery” in the non-original packaging. **This bulletin is a reminder that, for reasons stated herein, the Commission has not authorized the sale of premixed cocktails in non-original containers for off-premises consumption.**

General Statutory – The Illinois Liquor Control Act generally prohibits “any person to have in his possession for sale at retail any bottles, casks or other containers containing alcoholic liquor, except in original packages.” 235 ILCS 5/6-22.

An exception to this rule is expressly authorized by the Act which allows on-premises retailers to sell beer growlers and crowlers but only under very strict and specific conditions related to sealing the container, sanitizing the receptacle, and labeling the product with specific government labeling requirements (235 ILCS 5/6-6.5).

Vehicle Code Container Laws/Driving Under the Influence

§11-502(a) of the Illinois Vehicle Code states:

“it is illegal for any driver to transport, carry, possess, or have any open alcohol container in the passenger area of any motor vehicle upon a highway in Illinois. Open alcohol includes, but is not limited to, open beer, wine, liquor, and champagne”

Both the State of Illinois and multiple municipalities define “container” to mean “original packaging.” As such, a “to-go” purchaser or delivery driver of premixed cocktails would violate both state regulations and local ordinances for purchasing mixed drinks that are not in their original packaging.

In general, the sale of premixed cocktails would allow the transport of non-originally packaged products containing wine and spirits in moving vehicles. Since wine and spirits have a significant intoxicating effect on the person consuming these products, allowing the sale of premixed cocktails would increase the likelihood of impaired or intoxicated driving.

Allowing the “to-go” or delivery service of wine and spirits (and non-growler beer) products in non-original containers is not a safe way to help restaurants and bars hurt by the suspension of on-premises sales. Allowing retailers to arbitrarily fill “to-go” containers encourages immediate

consumption of such products, while also creating concerns around sanitary delivery to consumers and product safety.

The State Commission, through the Illinois Liquor Control Act, does not have the authority to unilaterally exempt bars and restaurants from the requirements of the Illinois Vehicle Code. The prohibition against having an open container of alcoholic liquor in a vehicle discourages drinking in a vehicle and gives law enforcement officials the necessary tools to help contain the intoxicated driving.

Sanitation/Health Concerns

Furthermore, there are sanitation and health concerns in selling wine and spirits in non-original containers. For this reason, the Liquor Control Act strictly limits the “to-go” sales to original containers except for the sale of beer growlers/crowlers for which the retailer is held to numerous receptacle sanitation requirements incorporated into the growler/crowler exception. For example, the law permitting growler and crowler sales has three variations of sanitation requirements for a total of eighteen different sanitation conditions. Aside from 235 ILCS 5/6-6.5, there are specific rules in 100 Ill. Admin. Code 100.160 regarding methods of cleaning, labeling, and sanitizing acceptable containers.

Illinois Local Authority

In contrast to other states, any statement made by the Illinois Liquor Control Commission allowing the sale of premixed cocktails is subject to local rules and ordinances which could cause lack of uniformity and unfair competition in the marketplace. Numerous local municipalities, law enforcement officials, and liquor commissioners have expressed great concern and have urged that the ILCC continue to prohibit the sale of premixed cocktails in non-original packaging. Without a standardized system of safeguards established by the Act or the Rules, retailers could feasibly sell premixed cocktails in whatever manner they choose. There would be no single rule and no safeguards or protocols in place for premixed cocktails sold in “to-go” containers or for delivery. With many restaurants and bars seeking local approval to offer pre-mixed cocktails "to-go" and for delivery, please also be advised that the requirement that alcoholic liquor be sold in the original package for off-premises consumption is mandated by state law and cannot be undermined or be made less restrictive locally, even in home-rule municipalities.

Conclusion

Allowing the sale of premixed cocktails “to-go” and for delivery violates current original packaging statutes, increases the likelihood of vehicle code violations regarding open containers and intoxicated driving incidents. It also increases the likelihood of product contamination.

Local municipalities would have less control over the sale of alcohol because there would be no standardized rule related to traveling with alcohol and delivering in the non-original package.

The State Commission has the authority to take action against founded complaints of illegal advertisements or sales of premixed drinks in non-original containers. Should the State Commission find validity to a complaint of the illegal advertisement or sale of “to-go” premixed drinks, licensees conducting unauthorized sales and deliveries of premixed drinks will be subject to enforcement action. The Commission will continue to enforce this and other regulations according to applicable statutes prohibiting the sale of alcohol not contained in the original sealed packaging.