MICHIGAN LIQUOR CONTROL CODE, RULES & RELATED LAWS

Michigan Liquor Control Commission

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Department of Energy, Labor & Economic Growth
Steven Hilfinger, Director

Rick Snyder, Governor

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FOREWORD

As one of 18 control states, the Michigan Liquor Control Commission's guiding philosophy is to make alcoholic beverages available while regulating their sale and distribution in order to protect the rights and interests of Michigan citizens. The Commission believes this can be accomplished most effectively through selective licensing and strict enforcement. The observance of all liquor laws and the rules of the Commission is in the best interest of everyone - - - the public, the licensees and the alcoholic beverage industry.

This publication contains the Liquor Control Code statutes and the administrative rules of the Liquor Control Commission. In addition, it contains certain other laws which are often used by liquor licensees, such as those regarding youth employment. The laws and rules contained in this printing are those in effect as of January 1, 2011. However, because laws and rules are constantly changing, subscriptions for updates to this publication are also available (*use the form on the next page)*. Any colored pages which may be included with this book are amendments to the original printing and should replace pages with the same number.

IMPORTANT: Information on obtaining a license to sell alcoholic beverages at retail or the transfer of an existing license is available from the Commission's Lansing Office or on their website at www.michigan.gov/lcc. Applicants should not invest any money nor commit themselves by any binding agreement in the expectation of receiving a license until officially notified of the Commission's approval. Applicants are also warned against payment of any money to persons who claim they can obtain a license. This is a form of deception and fraud and persons soliciting and/or accepting money under such pretenses will be prosecuted.

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THE CONSTITUTION OF THE UNITED STATES OF AMERICA (EXCERPTS)

ARTICLE XXI

§1 Repeal of 18th amendment.

Section 1.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§2 Transportation or importation of intoxicating liquors.

Section 2.

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.

Compiler=s note: This amendment to the Constitution was proposed to the several states by the seventy-second congress on February 20, 1933, and was declared, in a proclamation by the secretary of state, dated December 5, 1933, to have been ratified by conventions in the states of Arizona, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming-said states constituting three fourths of the whole number of states in the United states and certified as valid to all intents and purposes as a part of the Constitution of the United States.

CONSTITUTION OF MICHIGAN OF 1963 (EXCERPT)

PREAMBLE

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE IV - LEGISLATIVE BRANCH

§40 Alcoholic beverages; age requirement; liquor control commission; excise tax; local option.

Sec. 40.

A person shall not sell or give any alcoholic beverage to any person who has not reached the age of 21 years. A person who has not reached the age of 21 years shall not possess any alcoholic beverage for the purpose of personal consumption. An alcoholic beverage is any beverage containing one-half of one percent or more alcohol by volume.

Except as prohibited by this section, (t)he legislature may by law establish a liquor control commission which, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof. The legislature may provide for an excise tax on such sales. Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages in any county in which a majority of the electors voting thereon shall prohibit the same.

History: Const. 1963, Art. IV, §40, Eff. Jan. 1, 1964; - Am. Initiated Law, approved Nov. 7, 1978, Eff. Dec. 28, 1978. **Former Constitution:** See Const. 1908, Art. XVI, §11.

YOUTH EMPLOYMENT STANDARDS ACT (EXCERPTS)
Act 90 of 1978

AN ACT to provide for the legal employment and protection of minors; to provide for the issuance and revocation of work permits; to provide for the regulation of hours and conditions of employment of minors; to prescribe powers and duties of the departments of labor and education; to provide for the enforcement of this act; to prescribe penalties; and to repeal certain acts and parts of acts.

History: 1978, Act 90, Eff. June 1, 1978.

409.101 Short title.

Sec. 1.

This act shall be known and may be cited as the “youth employment standards act”.

History: 1978, Act 90, Eff. June 1, 1978.

409.102 Definitions.

Sec. 2. As used in this act:

(a) “Employ” means engage, permit, or allow to work.
(b) “Employer” means a person, firm, or corporation which employs a minor, and includes the state or a political subdivision of the state, an agency or instrumentality of the state, and an agent of an employer.
(c) “Issuing officer” means a superintendent of a school district or intermediate school district or a person whom the superintendent authorizes in writing to act on behalf of the superintendent.
(d) “Minor” means a person under 18 years of age.
(e) “Rule” means a rule promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1978, Act 90, Eff. June 1, 1978.

409.103 Employment of minor; prohibited occupations; minimum age; exceptions and limitations.

Sec. 3.

(1) A minor shall not be employed in, about, or in connection with an occupation that is hazardous or injurious to the minor's health or personal well-being or that is contrary to standards established under this act, unless a deviation is granted under section 20.
(2) The minimum age for employment of minors is 14 years, subject to the following exceptions and limitations:
    (a) A minor at least 11 years of age and less than 14 years of age may be employed as a youth athletic program referee or umpire for an age bracket younger than his or her own age if an adult representing the athletic program is on the premises at which the athletic program event is occurring and a person responsible for the athletic program possesses a written acknowledgment of the minor's parent or guardian consenting to the minor's employment as a referee or umpire.
    (b) A minor 11 years of age or older may be employed as a golf caddy.
    (c) A minor 13 years of age or older may be employed in farming operations as described in section 4(3).
    (d) A minor 11 years of age or older may be employed as a bridge caddy at any event sanctioned by the American contract bridge league or other national bridge league association.
    (e) A minor 13 years of age or older may be employed to perform services which entail setting traps for formal or informal trap, skeet, and sporting clays shooting events.

History: 1978; Act 90, Eff. June 1, 1978; - Am. 1987, Act 71, Imd. Eff. June 29, 1987; - Am. 1997, Act 132, Eff. Nov. 14, 1997.

409.104 Employment of minor; copy of work permit or temporary permit required; issuance and filing of work permit; duration of temporary permit; oath; return of permit; exception to work permit requirement; evidence of age.

Sec. 4.

(1) Except as provided in subsection (3), a minor shall not be employed in an occupation regulated by this act until the person proposing to employ the minor procures from the minor and keeps on file at the place of employment a copy of the work permit or a temporary permit. The work permit shall be issued by the issuing officer of the school district, intermediate school district, public school academy, or nonpublic school at which the minor is enrolled, and a copy of the work permit shall be placed in the minor's permanent school file for as long as the minor is employed. A temporary permit shall be valid for 10 days from the date of issue. A work permit may be issued by the school district in which the minor's place of employment is located, or by the public school academy or nonpublic school nearest that place of employment. An issuing officer may administer oaths in relation to work permits.

(2) Immediately after the termination of the minor's employment, the employer shall return the permit to the issuing officer.

(3) The work permit requirement of subsection (1) does not apply to a minor 13 years of age or older who is employed in farming operations involving detasseling, roguing, hoeing, or any similar act involved in the production of seed. This exception applies only when a minor is employed during school vacation periods or when the minor is not regularly enrolled in school. The work permit exception provided in this subsection does not provide an exemption from any other provision of this act. An employer shall keep on file at the place of employment evidence of the age of any minor employed under this work permit exception. Evidence of the age of the minor shall be established as provided in section 5(b).

History: 1978, Act 90, Eff. June 1, 1978; - Am. 1987, Act 71, Imd. Eff. June 29, 1987.

409.105 Work permit; application; examination, approval, and filing of papers.

Sec. 5.

An issuing officer shall issue a work permit only upon application in person by the minor desiring employment and after having examined, approved, and filed the following papers:

1) A statement of intention to employ, signed by the prospective employer or by a person authorized by the prospective employer, setting forth the general nature of the occupation in which the employer intends to employ the minor, the hours during which the minor will be employed, the wages to be paid and other information the department of education, in cooperation with the department of labor, requires.

2) Evidence showing that the minor is of the age required by this act. Proof of age shall be established by one of the following:
   - i) A certified copy of the birth record or any other proof of age showing the place and date of birth.
   - ii) A certified copy of valid operator's license issued by this state clearly showing date of birth.
   - iii) The school record or the school census record.
   - iv) The sworn statement of the minor's parent or guardian, together with a corroborating statement of a physician.
   - v) If documentary proof as described in subparagraphs (i) to (iv) is not obtainable, the issuing officer may accept other documentation as established by department of education rules.

History: 1978, Act 90, Eff. June 1, 1978.

409.106 Work permit; form; color; contents; rules.

Sec. 6.

(1) Work permits shall be issued in the form prescribed by the department of education in cooperation with the department of labor and in accordance with instructions so prescribed. The color of work permits for minors under 16 years of age shall be distinct from that for minors 16 years of age and over. Work permits shall state the name and address of the minor, the date of birth, the occupation and industry in which the minor is employed, the employer's name and address, and other information required by the department of education.
(2) The department of education shall promulgate rules prescribing standards for the issuance of work permits, which shall include the following factors:
    (a) Evidence of age.
    (b) Standards of work as established by the department of labor and federal regulation.
    (c) Statutory requirements.
(3) A fee shall not be charged for a work permit or other record required by this act.

History: 1978, Act 90, Eff. June 1, 1978

Compiler's Notes: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Admin Rule: R 340.186 et seq.; R 408.201 et seq.; R 409.1 et seq.; and R 423.401 et seq. of the Michigan Administrative Code.

409.107 Revocation of permit; factors; record of refusal, suspension, or revocation; informing minor of appeal process.

Sec. 7.

(1) The issuing officer may revoke a permit based solely on the following factors:
    (a) Poor school attendance, characterized by repeated erratic or unexcused absences, which results in consistent performance of school work at a level lower than that which preceded the minor's employment. The work permit shall be revoked only after the permit has been suspended. The suspension shall take place upon notice to the minor and the employer, and an opportunity to correct the deficiency is afforded. The suspension shall not exceed 30 days after date of notification.
    (b) The minor's employment is in violation of federal or state law or of a regulation or rule promulgated under federal or state law, and the issuing officer is informed of the violation by the department of labor.
(2) The issuing officer shall keep a record of each refusal, suspension, or revocation and the reasons for the action. Upon revocation, the minor shall be informed of the appeal process and shall be given instructions as to the initiation of an appeal.

History: 1978, Act 90, Eff. June 1, 1978

Compiler's Notes: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

409.108 Failure or refusal to issue work permit; appeal; procedure.

Sec. 8.

The failure or refusal of the issuing officer to issue a work permit may be appealed in accordance with Act No. 306 of the Public Acts of 1969, as amended, by the minor or by the parent or guardian of the minor applying therefor, or by the person or agency to whom custody of the minor has been awarded. An appeal may be taken in the same manner from the revocation of a permit.

History: 1978, Act 90, Eff. June 1, 1978

Compiler's Notes: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

409.109 Work permit as evidence of age.

Sec. 9.

A work permit issued in accordance with this act shall be conclusive evidence of the age of the minor for whom issued in a proceeding involving the employment of the minor under this act.

History: 1978, Act 90, Eff. June 1, 1978

409.110 Minor under 16 years; days and hours of employment.

Sec. 10.

A minor under 16 years shall not be employed in an occupation subject to this act for more than 6 days in 1 week, nor for a period longer than a weekly average of 8 hours per day or 48 hours in 1 week, nor more than 10 hours in 1 day. The minor shall not be employed between the hours of 9 p.m. and 7 a.m. A minor who is a student in school shall not be employed more than a combined school and work week of 48 hours during the period when school is in session.

History: 1978, Act 90, Eff. June 1, 1978

409.111 Minor 16 years or older; days and hours of employment; definitions.

Sec. 11.

1. Except as provided in subsection (3), a minor 16 years of age or older shall not be employed in an occupation subject to this act for more than any of the following periods:
    (a) Six days in 1 week.
    (b) A period longer than a weekly average of 8 hours per day or 48 hours in 1 week.
    (c) Ten hours in 1 day.
    (d) For a minor 16 years of age or older who is a student in school, a combined school and work week of 48 hours during the period school is in session.
2. Except as provided in subsection (3), a minor 16 years of age or older shall not be employed between 10:30 p.m. and 6 a.m. However, except as provided in subsection (3), a minor 16 years of age or older who is a student in school may be employed until 11:30 p.m. on any of the following days:
    (a) On Fridays and Saturdays.
    (b) During school vacation periods.
    (c) During periods when the minor is not regularly enrolled in school.
3. A minor 16 years of age or older may be employed in farming operations involved in the production of seed or in agricultural processing for a period greater than the periods described in subsections (1) and (2) if all of the following conditions are met:
    (a) If the minor is a student in school, the period greater than the periods described in subsections (1) and (2) occurs when school is not in session.
    (b) The minor is employed for not more than 11 hours in 1 day.
    (c) The minor is employed for not more than 62 hours in any week. However, the minor shall not be required by an employer to work more than 48 hours during any week without the consent of the minor.
    (d) The minor is not employed between 2 a.m. and 5:30 a.m.
    (e) The agricultural processing employer maintains on file a written acknowledgment of the minor's parent or guardian consenting to the period of employment authorized under this subsection.
4. As used in this section:

(a) “Agricultural processing” means the cleaning, sorting, or packaging of fruits or vegetables.
(b) “Farming operations involved in the production of seed” means farming activities and research involved in the production of seed, including plant detasseling, hand-pollination, roguing, or hoeing, and any other similar farming activity required for commercial seed production.

History: 1978, Act 90, Eff. June 1, 1978 ;-- Am. 1995, Act 251, Eff. Mar. 28, 1996 ;-- Am. 1996, Act 499, Imd. Eff. Jan. 9, 1997 ;-- Am. 2000, Act 418, Imd. Eff. Jan. 8, 2001

409.112 Meals and rest period.

Sec. 12.

A minor shall not be employed for more than 5 hours continuously without an interval of at least 30 minutes for a meal and rest period. An interval of less than 30 minutes shall not be considered to interrupt a continuous period of work.

History: 1978, Act 90, Eff. June 1, 1978

409.112a Employment of minor in occupation involving a cash transaction after sunset or 8 p.m. at fixed location; condition.

Sec. 12a.

A minor who would otherwise be permitted under this act to be employed in an occupation subject to this act shall not be employed in an occupation that involves a cash transaction subject to this act after sunset or 8 p.m., whichever is the earlier, at a fixed location unless an employer or other employee 18 years of age or older is present at the fixed location during those hours.

History: Add. 1980, Act 436, Eff. Mar. 31, 1981

409.113 Posting copy of "409.110, 409.111, and 409.112; time record.

Sec. 13.

(1) Each employer shall keep posted conspicuously in or about the premises at which a minor is employed, a printed copy of sections 10, 11, and 12 as furnished by the department.
(2) Each employer shall keep in or about the premises at which a minor is employed, an adequate time record which shall state the number of hours worked by the minor each day of the week together with starting and ending times and other information the department of labor requires. The employer shall keep the record on file for not less than 1 year.

History: 1978, Act 90, Eff. June 1, 1978

409.114 Employment of minor in performance by performing arts organization; approval.

Sec. 14.

This act shall not prevent a minor from being employed in a performance by any performing arts organization if a letter of approval is obtained from the department of labor by the representative of the arts organization. Approval shall be issued only if the department of labor determines that the employment is not detrimental to the health or personal well-being of the minor, that the minor is adequately supervised, and that the minor's education is not neglected.

History: 1978, Act 90, Eff. June 1, 1978

409.114a Performing in or being subject to child abusive commercial activity.

Sec. 14a.

Except as provided in section 14, a minor shall not perform in or be a subject of a child abusive commercial activity as defined in section 145c of Act No. 328 of the Public Acts of 1931, being section 750.145c of the Michigan Compiled Laws.

History: Add. 1978, Act 228, Imd. Eff. June 14, 1978

409.115 Employment of minor in establishment manufacturing, distributing, or selling alcoholic beverages.

Sec. 15.

(1) A work permit shall not be issued authorizing the employment of a minor 16 years of age or older in, about, or in connection with that part of an establishment where alcoholic beverages are distilled, rectified, compounded, brewed, manufactured, bottled, consumed, distributed, sold at retail, or sold for consumption on the premises unless the sale of food or other goods constitutes at least 50% of the total gross receipts.
(2) This act shall not prohibit the issuance of work permits for 14- and 15-year-olds to be employed in establishments where alcoholic beverages are sold at retail, if the sale of food or other goods constitutes at least 50% of the total gross receipts of the establishment. Minors 14 and 15 years of age shall not be employed in, or about, or in connection with that part of the establishment where alcoholic beverages are consumed or sold for consumption on the premises.

History: 1978, Act 90, Eff. June 1, 1978

409.116 Exemption; minor 16 years of age completing requirements for graduation; minor 17 years of age passing general educational development test; duty of employer.

Sec. 16.

(1) This act shall not apply to or prohibit the employment of a minor 16 years of age or older who has completed the requirements for graduation from high school. An employer, before employing the minor, shall obtain and keep on file a certification from the school the minor attended certifying that the minor has completed the requirements for graduation.
(2) This act shall not apply to or prohibit the employment of a minor 17 years of age or older who has successfully passed the general educational development test. An employer, before employing the minor, shall obtain and keep on file proof of the minor's successful completion.

History: 1978, Act 90, Eff. June 1, 1978

409.117 Exemption; emancipated minor; duty of employer.

Sec. 17.

This act shall not apply to nor prohibit the employment of an emancipated minor, as defined by section 4 of Act No. 293 of the Public Acts of 1968, as amended, being section 722.4 of the Michigan Compiled Laws. An employer, before employing the minor, shall obtain and keep on file proof of the minor's emancipated status.

History: 1978, Act 90, Eff. June 1, 1978

409.118 Exemption; minor 14 years of age employed under agreement or contract between employer and governing body of school district, public school academy, or nonpublic school.

Sec. 18.

This act does not apply to or prohibit the employment of a student minor 14 years of age or older by an employer if a written agreement or contract is entered into between the employer and the governing body of the school district, public school academy, or nonpublic school at which the minor is enrolled. The employment shall not be in violation of a federal statute or regulation and a signed copy of the agreement shall be on file in the place of employment before the minor begins employment.

History: 1978, Act 90, Eff. June 1, 1978 ;-- Am. 1996, Act 438, Imd. Eff. Dec. 18, 1996

409.119 Exemptions generally; hours of work.

Sec. 19.

(1) This act shall not apply to or prohibit a minor from engaging in any of the following activities:
   (a) Domestic work or chores in connection with a private residence.
   (b) Soliciting, distributing, selling, or offering for sale newspapers, magazines, periodicals, political, or advertising matter.
   (c) Shoe shining.
   (d) Services performed as a member of a recognized youth oriented organization that is engaged in citizenship training and character building, if the services are not intended to replace employees in occupations for which workers are ordinarily paid.
   (e) Employment in a business owned and operated by the parent or guardian of the minor. For the purposes of this subdivision, a business is considered to be owned by the parent or guardian of the minor if the parent or guardian is either the sole owner, partner, or stockholder in the business and a business is considered to be operated by the parent or guardian of the minor if he or she devotes substantially all of his or her working hours to the operation of the business.
   (f) Farm work if the employment is not in violation of a standard established by the department of labor and economic growth. Farm work means the work activity designated in sector 11 - agriculture, forestry, fishing, and hunting, of the North American industry classification system - United States, 1997, published by the office of management and budget. Farm work includes any practices performed on a farm as an incident to or in conjunction with farming operations, including preparation for market and delivery to storage, market, or carriers for transport to market.
   (g) Employment by a school, academy, or college in which the minor is enrolled if the minor is 14 years old or older.
   (h) Nonhazardous construction work or operations performed as an unpaid volunteer, if the construction work or operations are performed under adult supervision for a charitable housing organization. As used in this subdivision:
      (i) “Charitable housing organization” means a nonprofit charitable organization the primary purpose of which is the construction or renovation of residential housing for low-income individuals.
      (ii) “Family income” and “statewide median gross income” mean those terms as defined in section 11 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1411.
      (iii) “Low-income person” means a person with a family income of not more than 60% of the statewide median gross income.
      (iv) “Nonhazardous construction work or operations” means construction work or operations that are performed at a construction site of a new or renovated single family home and do not involve the use of power tools, woodworking machinery, or hazardous substances or other activities that would constitute a great risk of serious injury. Activities that would constitute a great risk of serious injury include, but are not limited to, all of the following:

(A) Excavation.
(B) Highway, bridge, or street construction.
(C) Wrecking.
(D) Demolition.
(E) New commercial or new multiple residential construction.

(2) If a minor is required by law to attend school, the work may only be performed outside of school hours, unless the minor is enrolled and employed under a work-related educational program.

History: 1978, Act 90, Eff. June 1, 1978 ;-- Am. 2003, Act 288, Imd. Eff. Jan. 8, 2004

Compiler's Notes: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

409.120 Rules; deviations.

Sec. 20.

(1) The department of labor shall promulgate rules prescribing standards not inconsistent with this act as to the working conditions, safety, health and personal well-being of minors in various types of employment.
(2) Deviations from established standards or from hours by employment shall be granted by the director of labor when it is determined to be in the best interests of the minor and the community. The procedures for applying and issuing deviations shall be prescribed by the department of labor.

History: 1978, Act 90, Eff. June 1, 1978

409.121 Enforcement and prosecution of act; right of entry and inspection.

Sec. 21.

The department of labor shall enforce this act and assist in the prosecution of this act. The department shall have the authority to enter and inspect any place where a minor may be employed and to have access to work permits, age certificates, or other proof of age and time records of the employer, and other records which may aid in the enforcement of this act.

History: 1978, Act 90, Eff. June 1, 1978

409.122 Violation as misdemeanor or felony; penalties.

Sec. 22.

Except as provided in subsection (2) or (3), a person who employs a minor in violation of this act, violates this act or a rule promulgated under this act, or obstructs the department of labor in the enforcement of this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $500.00, or both.
A person who employs, permits, or suffers a minor in violation of section 12a is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $2,000.00, or both. A person who commits a second offense under section 12a is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than $5,000.00, or both. A person who commits a third or subsequent violation of section 12a is guilty of a felony, punishable by imprisonment for not more than 10 years, or a fine of not more than $10,000.00, or both.
A person who employs, permits, or suffers a minor to be employed or to work in violation of section 14a is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than $20,000.00, or both.

History: 1978, Act 90, Eff. June 1, 1978 ;-- Am. 1978, Act 228, Imd. Eff. June 14, 1978 ;-- Am. 1980, Act 436, Eff. Mar. 31, 1981

MICHIGAN LIQUOR CONTROL CODE OF 1998
Act 58 of 1998

AN ACT to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to prohibit the use of certain devices for the dispensing of alcoholic vapor; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 320, Imd. Eff. Dec. 27, 2005

CHAPTER 1

436.1101 Short title.

Sec. 101.

This act shall be known and may be cited as the “Michigan liquor control code of 1998”.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.1103 Meanings of words and phrases.

Sec. 103.

For the purposes of this act, the words and phrases defined in this chapter have the meanings ascribed to them in this chapter, unless the context requires otherwise.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.1105 Definitions; A, B.

Sec. 105.

(1) "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.
(2) "Alcohol vapor device" means any device that provides for the use of air or oxygen bubbled through alcoholic liquor to produce a vapor or mist that allows the user to inhale this alcoholic vapor through the mouth or nose.
(3) "Alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this chapter.
(4) "Authorized distribution agent" means a person approved by the commission to do 1 or more of the following:

(a) To store spirits owned by a supplier of spirits or the commission.
(b) To deliver spirits sold by the commission to retail licensees.
(c) To perform any function needed to store spirits owned by a supplier of spirits or by the commission or to deliver spirits sold by the commission to retail licensees.

(5) "Bar" means a barrier or counter at which alcoholic liquor is sold to, served to, or consumed by customers.
(6) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.
(7) "Brand" means any word, name, group of letters, symbol, trademark, or combination thereof adopted and used by a supplier to identify a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product and to distinguish that product from another beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product that is produced or marketed by that or another supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), "supplier" means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.
(8) "Brand extension" means any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), "supplier" means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.
(9) "Brandy" means an alcoholic liquor as defined in 27 CFR 5.22(d) (1980).
(10) "Brandy manufacturer" means a person licensed under this act to engage in the manufacturing, rectifying or blending, or both, of brandy only and no other distilled spirit. Only a licensed wine maker or a small wine maker is eligible to be a brandy manufacturer. The commission may approve a brandy manufacturer to sell at retail brandy which it manufactures, blends or rectifies, or both, at its licensed premises or at other premises authorized in this act.
(11) "Brewer" means a person located in this state that is licensed to manufacture and sell to licensed wholesalers beer produced by it.
(12) "Brewpub" means a license issued in conjunction with a class C, tavern, class A hotel, or class B hotel license that authorizes the person licensed with the class C, tavern, class A hotel, or class B hotel to manufacture and brew not more than 5,000 barrels of beer per calendar year in Michigan and sell at those licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner provided for in sections 405 and 407.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 320, Imd. Eff. Dec. 27, 2005

436.1107 Definitions; C to L

Sec. 107.

(1) “Cash” means money in hand, bank notes, demand deposits at a bank, or legal tender, which a creditor must accept according to law. Cash does not include call loans, postdated checks, or promissory notes.
(2) “Class C license” means a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises.
(3) “Class G-1 license” means a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises at a golf course having at least 18 holes that measure at least 5,000 yards and which license is issued only to a facility which permits member access by means of payments that include annual paid membership fees.
(4) “Class G-2 license” means a place licensed to sell at retail beer and wine for consumption on the premises at a golf course having at least 18 holes that measure at least 5,000 yards and which license is issued only to a facility which permits member access by means of payments that include annual paid membership fees.
(5) “Club” means a nonprofit association, whether incorporated or unincorporated, organized for the promotion of some common purpose, the object of which is owning, hiring, or leasing a building, or

space in a building, of an extent and character as in the judgment of the commission may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, but does not include an association organized for a commercial or business purpose.

(6) "Commission" means the liquor control commission provided for and created in section 209.

(7) "Church" means an entire house or structure set apart primarily for use for purposes of public worship, and which is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure of which is kept for that use and not put to any other use inconsistent with that use.

(8) "Distiller" means any person licensed to manufacture and sell spirits or alcohol, or both, of any kind.

(9) "Hotel" means a building or group of buildings located on the same or adjoining pieces of real property, which provide lodging to travelers and temporary residents and which may also provide food service and other goods and services to registered guests and to the public.

(10) "Class A hotel" means a hotel licensed by the commission to sell beer and wine for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.

(11) "Class B hotel" means a hotel licensed by the commission to sell beer, wine, mixed spirit drink, and spirits for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.

(12) "License" means a contract between the commission and the licensee granting authority to that licensee to manufacture and sell, or sell, or warehouse alcoholic liquor in the manner provided by this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2001, Act 223, Eff. Mar. 22, 2002

436.1109 Definitions; M to O.

Sec. 109.

(1) "Manufacturer" means a person engaged in the manufacture of alcoholic liquor, including, but not limited to, a distiller, a rectifier, a wine maker, and a brewer.

(2) "Master distributor" means a wholesaler who acts in the same or similar capacity as a brewer, wine maker, outstate seller of wine, or outstate seller of beer for a brand or brands of beer or wine to other wholesalers on a regular basis in the normal course of business.

(3) "Micro brewer" means a brewer that produces in total less than 30,000 barrels of beer per year and that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises. In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

(4) "Minor" means a person less than 21 years of age.

(5) "Mixed spirit drink" means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain 1 or more of the following:

(a) Water.
(b) Fruit juices.
(c) Fruit adjuncts.
(d) Sugar.
(e) Carbon dioxide.
(f) Preservatives.

(6) “Mixed spirit drink manufacturer” means any person licensed under this act to manufacture mixed spirit drink in this state and to sell mixed spirit drink to a wholesaler. For purposes of rules promulgated by the commission, a mixed spirit drink manufacturer shall be treated as a wine manufacturer but is subject to the rules applicable to spirits for purposes of manufacturing and labeling.

(7) “Mixed wine drink” means a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling, or carbonated water, and containing any 1 or more of the following:
   (a) Nonalcoholic beverages.
   (b) Flavoring.
   (c) Coloring materials.
   (d) Fruit juices.
   (e) Fruit adjuncts.
   (f) Sugar.
   (g) Carbon dioxide.
   (h) Preservatives.

(8) “Outstate seller of beer” means a person licensed by the commission to sell beer which has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission.
(9) “Outstate seller of mixed spirit drink” means a person licensed by the commission to sell mixed spirit drink which has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission. For purposes of rules promulgated by the commission, an outstate seller of mixed spirit drink shall be treated as an outstate seller of wine but is subject to the rules applicable to spirits for purposes of manufacturing and labeling.
(10) “Outstate seller of wine” means a person licensed by the commission to sell wine which has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission and to sell sacramental wine as provided in section 301.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998; Am. 2010, Act 213, Eff. November 17, 2010

436.1111 Definitions; P to S.

Sec. 111.

(1) "Person" means an individual, firm, partnership, limited partnership, association, limited liability company, or corporation.
(2) "Primary source of supply" means, in the case of domestic spirits, the distiller, producer, owner of the commodity at the time it becomes a marketable product, or bottler, or the exclusive agent of any such person and, in the case of spirits imported into the United States, either the foreign distiller, producer, owner of the bottler, or the prime importer for, or the exclusive agent in the United States of, the foreign distiller, producer, owner, or the bottler.
(3) "Professional account" means an account established for a person by a class C licensee or tavern licensee whose major business is the sale of food, by which the licensee extends credit to the person for not more than 30 days.
(4) "Residence" means the premises in which a person resides permanently.
(5) “Retailer” means a person licensed by the commission who sells to the consumer in accordance with rules promulgated by the commission. Retailer includes a brewpub but does not include a manufacturer or supplier, as defined in section 603, that is allowed as a condition of its license to sell to consumers in this state.
(6) "Sacramental wine" means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.
(7) "Sale" includes the exchange, barter, traffic, furnishing, or giving away of alcoholic liquor. In the case of a sale in which a shipment or delivery of alcoholic liquor is made by a common or other carrier, the

sale of the alcoholic liquor is considered to be made in the county within which the delivery of the alcoholic liquor is made by that carrier to the consignee or his or her agent or employee, and venue for the prosecution for that sale may be in the county or city where the seller resides or from which the shipment is made or at the place of delivery.

(8) "School" includes buildings used for school purposes to provide instruction to children in grades kindergarten through 12, when that instruction is provided by a public, private, denominational, or parochial school, except those buildings used primarily for adult education or college extension courses. School does not include a proprietary trade or occupational school.

(9) "Small distiller" means a manufacturer of spirits annually manufacturing in Michigan not exceeding 60,000 gallons of spirits, of all brands combined.

(10) "Small wine maker" means a wine maker manufacturing or bottling not more than 50,000 gallons of wine in 1 calendar year.

(11) "Special license" means a contract between the commission and the special licensee granting authority to that licensee to sell beer, wine, mixed spirit drink, or spirits. The license shall be granted only to such persons and such organization and for such period of time as the commission shall determine so long as the person or organization is able to demonstrate an existence separate from an affiliated umbrella organization. If such an existence is demonstrated, the commission shall not deny a special license solely by the applicant's affiliation with an organization that is also eligible for a special license.

(12) "Specially designated distributor" means, subject to section 534, a person engaged in an established business licensed by the commission to distribute spirits and mixed spirit drink in the original package for the commission for consumption off the premises.

(13) "Specially designated merchant" means a person to whom the commission grants a license to sell beer or wine, or both, at retail for consumption off the licensed premises.

(14) "Spirits" means a beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

(15) "State liquor store" means a store established by the commission under this act for the sale of spirits in the original package for consumption off the premises.

(16) "Supplier of spirits" means a vendor of spirits, a manufacturer of spirits, or a primary source of supply.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008; Am. 2010, Act 213, Eff. November 17, 2010

436.1113 Definitions; T to W.

Sec. 113.

(1) "Tavern" means any place licensed to sell at retail beer and wine for consumption on the premises only.

(2) "Vehicle" means any means of transportation by land, by water, or by air.

(3) "Vendor" means a person licensed by the commission to sell alcoholic liquor.

(4) "Vendor of spirits" means a person selling spirits to the commission.

(5) "Warehouse" means a premises or place primarily constructed, used, or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of a warehousing business, or for both.

(6) "Warehouser" means a licensee authorized by the commission to store alcoholic beverages, but prohibited from making sales or deliveries to retailers unless the licensee is also the holder of a wholesaler or manufacturer license issued by the commission.

(7) “Wholesaler” means a person who is licensed by the commission and sells beer, wine, or mixed spirit drink only to retailers or other licensees, and who sells sacramental wine as provided in section 301. A wholesaler includes a person who may also act as a master distributor unless prohibited from doing so by its supplier or manufacturer in a written agreement required by either section 305(3)(i) or 403(3)(i) and, by mutual agreement with an outstate seller of beer or wine, can be authorized by the outstate seller of beer or wine to do, in the manner prescribed by the commission, either or both of the following:

(a) Register with the state of Michigan the labels of the outstate seller of beer or wine.

(b) On behalf of the outstate seller of beer or wine, collect excise taxes levied by the state of Michigan and remit the taxes to the commission.

(8) "Wine" means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

(9) "Wine maker" means any person licensed by the commission to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, to sell that wine to a retailer, and as provided for in section 537.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 269, Imd. Eff. Dec. 16, 2005; Am. 2010, Act 213, Eff. November 17, 2010

Constitutionality: In Granholm v Heald, 544 US 460 (2005), the United States Supreme Court held that Michigan laws regulating direct shipment of alcohol to in-state consumers discriminated against interstate commerce in violation of clause 3 of section 8 of article 1 of the United States Constitution, and that the powers granted to states under the 21st Amendment to the United States Constitution do not authorize violation of other constitutional provisions.

Compiler's Notes: Enacting sections 2 and 3 of Act 269 of 2005 provide:"Enacting section 2. (1) If any provision of section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, as amended by this amendatory act, is held to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is repealed."(2) Section 113a of the Michigan liquor control code of 1998, 1998 PA 58, as added by this amendatory act, shall not take effect unless section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is held unconstitutional or repealed pursuant to subsection (1)."Enacting section 3. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."

436.1113a Definitions; T to W.

Sec. 113a.

(1) "Tavern" means any place licensed to sell at retail beer and wine for consumption on the premises only.

(2) "Vehicle" means any means of transportation by land, by water, or by air.

(3) "Vendor" means a person licensed by the commission to sell alcoholic liquor.

(4) "Vendor of spirits" means a person selling spirits to the commission.

(5) "Warehouse" means a premises or place primarily constructed, used, or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of a warehousing business, or for both.

(6) "Warehouser" means a licensee authorized by the commission to store alcoholic liquor, but prohibited from making sales or deliveries to retailers unless the licensee is also the holder of a wholesaler license issued by the commission.

(7) "Wholesaler" means a person who is licensed by the commission and sells beer, wine, or mixed spirit drink only to retailers or other licensees, and who sells sacramental wine as provided in section 301. A wholesaler includes a person who may also act as a master distributor unless prohibited from doing so by its supplier or manufacturer in a written agreement required by either section 305(3)(i) or 403(3)(i) and, by mutual agreement with an outstate seller of beer or wine, can be authorized by the outstate seller of beer or wine to do, in the manner provided by the commission, either or both of the following:

a. Register with the state of Michigan the labels of the outstate seller of beer or wine.

b. On behalf of the outstate seller of beer or wine, collect excise taxes levied by the state of Michigan and remit the taxes to the commission.

(8) "Wine" means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

(9) "Wine maker" means any person licensed by the commission to manufacture wine, to sell that wine to a wholesaler, to sell that wine by direct shipment to a consumer, at retail on the licensed winery premises, and as provided for in section 537 but not to sell wine to a retailer.

History: Add. 2005, Act 269, Eff. (pending); Am. 2010, Act 213, Eff. November 17, 2010

Compiler's Notes: Enacting sections 2 and 3 of Act 269 of 2005 provide:"Enacting section 2. (1) If any provision of section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, as amended by this amendatory act, is held to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is repealed."(2) Section 113a of the Michigan liquor control code of 1998, 1998 PA 58, as added by this amendatory act, shall not take effect unless section 113 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1113, is held unconstitutional or repealed pursuant to subsection (1)."Enacting section 3. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."

436.1201 Alcoholic liquor; manufacture, sale, possession, or transportation lawful; terms, conditions, limitations, and restrictions; right, power, and duty of commission to control alcoholic beverage traffic and traffic in other alcoholic liquor; unreasonable discrimination against Michigan manufacturers prohibited; enforcement of act and rules; willful neglect or refusal of officer to perform duties as misdemeanor; penalty.

Sec. 201.

(1) On and after December 15, 1933, it shall be lawful to manufacture for sale, sell, offer for sale, keep for sale, possess, or transport any alcoholic liquor, as defined in this act, including alcoholic liquor used for medicinal, mechanical, chemical, or scientific purposes and wine used for sacramental purposes, subject to the terms, conditions, limitations, and restrictions contained in this act, and only as provided for in this act.
(2) Except as otherwise provided in this act, the commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof.
(3) A rule, regulation, or order made by the commission shall not unreasonably discriminate against Michigan manufacturers of alcoholic liquor.
(4) A peace officer or law enforcement officer of this state or a county, township, city, village, state university, or community college or an inspector of the commission is authorized, and it is the duty of each of them, to enforce the provisions of this act and the rules promulgated by the commission within his or her respective jurisdiction. It is the special duty of an officer described in this section to use his or her utmost efforts to repress and prevent crime and the violation of any of the provisions of this act. An officer described in this section who willfully neglects or refuses to perform the duties imposed upon him or her by this section is guilty of a misdemeanor and upon conviction shall be fined not more than $500.00 or imprisoned in the county jail not more than 90 days, or both.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1203 Sale, delivery, or importation of alcoholic liquor or wine; duties of direct shipper of wine; verification that individual accepting delivery is of legal age; original purchase and importation into state of spirits for sale, use, storage, or distribution; requirements; exceptions; direct shipper license required; qualifications; fee; violation; delivery of beer and wine to home or designated location of consumer; holder of specially designated merchant license, out-of-state retailer holding equivalent license, or brewpub or microbrewer; definitions.

Sec. 203.

(1) Except as provided in this section and section 301, a sale, delivery, or importation of alcoholic liquor, including alcoholic liquor for personal use, shall not be made in this state unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent approved by order of the commission, a person licensed by the commission, or by prior written order of the commission.
(2) Notwithstanding R 436.1011(7)(b) and R 436.1527 of the Michigan administrative code and except as provided in subsection (11), a retailer shall not deliver alcoholic liquor to a Michigan consumer at the home or business of the consumer or at any location away from the licensed premises of the retailer. The purpose of this subsection is to exercise the state of Michigan's authority under section 2 of amendment XXI of the constitution of the United States, to maintain the inherent police powers to regulate the transportation and delivery of alcoholic liquor, and to promote a transparent system for

the transportation and delivery of alcoholic liquor. The regulation described in this subsection is considered necessary for both of the following reasons:

(a) To promote the public health, safety, and welfare.

(b) To maintain strong, stable, and effective regulation by having beer and wine sold by retailers to Michigan consumers by passing through the 3-tier distribution system established under this act.

(3) For purposes of subsection (1), the sale, delivery, or importation of wine, to consumers in this state, by a person who both produces and bottles the wine or wine that is manufactured by a wine maker for another wine maker and that is transacted or caused to be transacted by means of any mail order, internet, telephone, computer, device, or other electronic means, or sold directly to a consumer on the winery premises, shall only be done by a direct shipper. If a retail sale, delivery, or importation of wine occurs to a consumer by any means described in this subsection, the direct shipper must comply with all of the following:

(a) Hold a direct shipper license.

(b) Pay any applicable taxes to the commission and pay any applicable taxes to the department of treasury as directed by the department of treasury. Upon the request of the department of treasury, a direct shipper shall furnish an affidavit to verify payment.

(c) Comply with all prohibitions of the laws of this state, including, but not limited to, sales to minors.

(d) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by utilizing an identification verification service. The person receiving and accepting the order on behalf of the direct shipper shall record the name, address, date of birth, and telephone number of the person placing the order on the order form or other verifiable record of a type and generated in a manner approved by the commission and provide a duplicate to the commission.

(e) Upon request of the commission, make available to the commission any document used to verify the age of the individual ordering or receiving the wine from the direct shipper.

(f) Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older." The recipient at the time of the delivery is required to provide photo identification verifying his or her age along with a signature.

(g) Place a label on the top panel of the shipping container containing the direct shipper license number, the order number, the name and address of the individual placing the order, and the name of the designated recipient if different from the name of the individual placing the order.

(h) Direct ship not more than 1,500 9-liter cases, or 13,500 liters in total, of wine in a calendar year to Michigan consumers. If a direct shipper, whether located in this state or outside this state, owns, in whole or in part, or commonly manages 1 or more direct shippers, it shall not in combination ship to consumers in this state more than 13,500 liters of wine in the aggregate.

(i) Pay wine taxes quarterly and report to the commission quarterly the total amount of wine, by type, brand, and price, shipped to consumers in this state during the preceding calendar quarter, and the order numbers.

(j) Authorize and allow the commission and the department of treasury to conduct an audit of the direct shipper's records.

(k) Consent and submit to the jurisdiction of the commission, the department of treasury, and the courts of this state concerning enforcement of this section and any related laws, rules, and regulations.

(4) Notwithstanding subsection (3), in the case of a sale, delivery, or importation of alcoholic liquor occurring by any means described in subsection (3), a person taking the order on behalf of the direct shipper must comply with subsection (3)(c) through (g).

(5) The person who delivers the wine shall verify that the individual accepting delivery is of legal age and is the individual who placed the order or the designated recipient, is an individual of legal age currently occupying or present at the address, or is an individual otherwise authorized through a rule

promulgated under this act by the commission to receive alcoholic liquor under this section. If the delivery person, after a diligent inquiry, determines that the purchaser or designated recipient is not of legal age, the delivery person shall return the wine to the direct shipper. A delivery person who returns wine to the direct shipper due to inability to obtain the purchaser's or designated recipient's legal age is not liable for any damages suffered by the purchaser or direct shipper.

(6) All spirits for sale, use, storage, or distribution in this state, shall originally be purchased by and imported into the state by the commission, or by prior written authority of the commission.

(7) This section does not apply in the case of an alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by a person of legal age to purchase alcoholic liquor at the time of reentry into this state from without the territorial limits of the United States if the person has been outside the territorial limits of the United States for more than 48 hours and has not brought alcoholic liquor into the United States during the preceding 30 days.

(8) A person who is of legal age to purchase alcoholic liquor may do either of the following in relation to alcoholic liquor that contains less than 21% alcohol by volume:

   (a) Personally transport from another state, once in a 24-hour period, not more than 312 ounces of alcoholic liquor for that person's personal use, notwithstanding subsection (1).

   (b) Ship or import from another state alcoholic liquor for that person's personal use so long as that personal importation is done in compliance with subsection (1).

(9) A direct shipper shall not engage in the sale, delivery, or importation of wine to a consumer unless it applies for and is granted a direct shipper license from the commission. This subsection does not prohibit wine tasting or the selling at retail by a wine maker of wines he or she produced and bottled or wine manufactured for that wine maker by another wine maker, if done in compliance with this act. Only the following persons qualify for the issuance of a direct shipper license:

   (a) A licensed wine maker.

   (b) A wine producer and bottler located inside this country but outside of this state holding both a federal basic permit issued by the alcohol and tobacco tax and trade bureau and a license to manufacture wine in its state of domicile.

(10) An applicant for a direct shipper license shall submit an application to the commission in a written or electronic format provided by the commission and accompanied by an application and initial license fee of $100.00. The application shall be accompanied by a copy or other evidence of the existing federal basic permit or license, or both, held by the applicant. The direct shipper may renew its license annually by submission of a license renewal fee of $100.00 and a completed renewal application. The commission shall use the fees collected under this section to conduct investigations and audits of direct shippers. The failure to renew, or the revocation or suspension of, the applicant's existing Michigan license, federal basic permit, or license to manufacture wine in its state of domicile is grounds for revocation or denial of the direct shipper license. If a direct shipper is found guilty of violating this act or a rule promulgated by the commission, the commission shall notify both the alcoholic liquor control agency in the direct shipper's state of domicile and the alcohol and tobacco tax and trade bureau of the United States department of treasury of the violation.

(11) A retailer that holds a specially designated merchant license in this state; an out-of-state retailer that holds its state's substantial equivalent license; or a brewpub, microbrewer, or an out-of-state entity that is the substantial equivalent of a brewpub or microbrewer may deliver beer and wine to the home or other designated location of a consumer in this state if all of the following conditions are met and except as otherwise provided in subsection (12):

   (a) The beer or wine, or both, is delivered by the retailer's, brewpub's, or microbrewer's employee and not by an agent or by a third party delivery service.

   (b) The retailer, brewpub, or microbrewer or its employee who delivers the beer or wine, or both, verifies that the person accepting delivery is at least 21 years of age.

   (c) If the retailer, brewpub, or microbrewer or its employee intends to provide service to consumers, the retailer, brewpub, or microbrewer or its employee providing the service must have received alcohol server training through a server training program approved by the commission.

(12) A retailer that holds a specially designated merchant license in this state or an out-of-state retailer that holds its state's substantial equivalent license may utilize a third party that provides delivery service to municipalities in this state that are surrounded by water and inaccessible by motor vehicle to deliver beer and wine to the home or other designated location of that consumer is the delivery service is

approved by the commission and agrees to verify that the person accepting delivery of the beer and wine is at least 21 years of age.

(13) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Consumer" means an individual who purchases wine for personal consumption and not for resale.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Diligent inquiry" means a diligent good faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, or any other bona fide picture identification that establishes the identity and age of the person.

(h) "Direct shipper" means a person who engages in the sale, delivery, or importation of wine, to consumers in this state, that he or she produces and bottles or wine that is manufactured by a wine maker for another wine maker and that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

(i) "Identification verification service" means any internet-based service approved by the commission specializing in age and identity verification.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2000, Act 289, Imd. Eff. July 10, 2000 ;-- Am. 2005, Act 268, Imd. Eff. Dec. 16, 2005 ;-- Am. 2008, Act 474, Eff. Mar. 31, 2009

Compiler's Notes: Enacting section 2 of Act 268 of 2005 provides:"Enacting section 2. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."

436.1205 Privatization of warehousing and delivery of spirits; authorized distribution agents.

Sec. 205.

(1) The commission shall, as provided in section 203(1), by order appoint authorized distribution agents to engage in the warehousing and delivery of spirits in this state so as to ensure that all retail licensees continue to be properly serviced with spirits. An authorized distribution agent is subject to uniform requirements, including business operating procedures, that the commission may prescribe by rule, subject to this section.

(2) A person is eligible for appointment by the commission as an authorized distribution agent if the following circumstances exist:

(a) The person satisfies all applicable commission rules prescribing qualifications for licensure promulgated under section 215.

(b) The person has entered into a written agreement or contract with a supplier of spirits for the purposes of warehousing and delivering a brand or brands of spirits of that supplier of spirits.

(c) The person has an adequate warehousing facility located in this state for the storing of spirits from which all delivery of spirits to retail licensees shall be made.

(3) An authorized distribution agent shall not have a direct or indirect interest in a supplier of spirits or in a retailer. A supplier of spirits or a retailer shall not have a direct or indirect interest in an authorized distribution agent. An authorized distribution agent shall not hold title to spirits.

(4) An authorized distribution agent shall deliver to each retailer located in its assigned distribution area on at least a weekly basis if the order meets the minimum requirements. Except that in those weeks that accompany a state holiday, the commission may order a modified delivery schedule provided that a retailer waits not longer than 9 days between deliveries due to a modified delivery schedule. The commission shall provide for an integrated on-line ordering system for spirits and shall require the continuance of any ordering system in existence on the activation date of the system established under section 206. The minimum requirements shall be set by the commission and shall be a sufficient number of bottles to comprise not more than 2 cases. A retailer may pick up the product at the authorized distribution agent's warehouse. To avoid occasional emergency outages of spirits, a retail licensee may make up to 12 special emergency orders to an authorized distribution agent per calendar year which order shall be made available to the retail licensee within 18 hours of the placing of the order. A special emergency order placed on Saturday or Sunday shall be made available to the retail licensee before noon on the following Monday. An authorized distribution agent may impose a fee of up to $20.00 to deliver a special emergency order to a retail licensee.

(5) In locations inaccessible to a motor vehicle as that term is defined by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, the authorized distribution agent shall arrange that a delivery of spirits to a retailer be in compliance with the following procedures:

(a) After processing an order from a retailer, an authorized distribution agent shall contact a retailer to confirm the quantity of cases or bottles, or both, and the exact dollar total of the order.

(b) The authorized distribution agent shall have the responsibility to coordinate with the retailer the date and time a driver is scheduled to deliver the order to a ferry transport dock, shall arrange any ferry, drayage, or other appropriate service, and shall pick up the retailer's payment at that time.

(c) The ferry transport company or company representing any other form of conveyance shall take the retailer's payment to the mainland dock and give that payment to the authorized distribution agent's driver.

(d) The ferry transport company or company representing any other form of conveyance shall transport the order to the drayage or other appropriate company at the island dock for immediate delivery to the retailer.

(e) The drayage or other appropriate company shall deliver the order to the retailer.

(6) The authorized distribution agent is responsible for the payment of all transportation and delivery charges imposed by the ferry, drayage, or other conveyance company and is responsible for all breakage and any shortages, whether attributable to the ferry, drayage, or other conveyance company or any combination of those companies, until the order is delivered to the retailer's establishment. This subsection does not in any way prevent the authorized distribution agent from seeking reimbursement or damages from any company conveying the authorized distribution agent's product.

(7) Except as otherwise provided in subsection (4), an authorized distribution agent shall not charge a delivery fee or a split-case fee for delivery of spirits sold by the commission to a retailer.

(8) An authorized distribution agent or prospective authorized distribution agent shall maintain and make available to the commission or its representatives, upon notice, any contract or written agreement it may have with a supplier of spirits or other authorized distribution agent for the warehousing and delivery of spirits in this state.

(9) For any violation of this act, rules promulgated under this act, or the terms of an order appointing an authorized distribution agent, an authorized distribution agent shall be subject to the suspension, revocation, forfeiture, and penalty provisions of sections 903(1) and 907 in the same manner in which a licensee would be subject to those provisions. An authorized distribution agent aggrieved by a penalty imposed by the commission may invoke the hearing and appeal procedures of section 903(2) and rules promulgated under that section.

(10) A specially designated distributor may sell to an on-premises licensee up to 9 liters of spirits during any 1-month period and an on-premises licensee may purchase, collectively from specially designated distributors, up to that amount during any 1-month period. Notwithstanding any other provision of this act or rule promulgated under this act, a specially designated distributor is only liable for knowingly violating this section. Records verifying these purchases shall be maintained by the on-premises licensee and be available to the commission upon request.

(11) An authorized distribution agent shall demonstrate that it has made a good faith effort to provide employment to those former state employees who were terminated due to the privatization of the liquor distribution system. A good faith effort is demonstrated by the authorized distribution agent performing at least the following actions:

(a) Seeking from the commission a list of names and resumes of all such former state employees who have indicated a desire for continued employment in the distribution of liquor in Michigan.

(b) Providing a list of employment opportunities created by the authorized distribution agent in the distribution of liquor in Michigan to each individual whose name and resume is transmitted from the commission.

(c) Providing an opportunity for application and interview to any terminated state worker who indicates an interest in pursuing a job opportunity with the authorized distribution agent.

(d) Providing a priority in hiring for those individuals who apply and interview under this process.

(12) Any former state employees terminated due to privatization who have reason to believe that an authorized distribution agent has not made a good faith effort to provide him or her with employment opportunities as described in subsection (11) may file a complaint with the commission who shall hear the complaint and make a determination on its validity. If the commission determines that the complaint is valid, the violation may be treated as a violation of this act and the authorized distribution agent may be subject to the suspension, revocation, forfeiture, and penalty provisions of sections 903(1) and 907.

(13) In addition to paying a vendor of spirits the acquisition price for purchasing spirits, the commission may pay a vendor of spirits an additional amount of not less than $4.50 and not more than $7.50 for each case of spirits purchased as an offset to the costs being incurred by that vendor of spirits in contracting with an authorized distribution agent for the warehousing and delivery of spirits to retailers. The payment described in this subsection shall not be included in the cost of purchasing spirits by the commission and shall not be subject to the commission's markup, special taxes, or state sales tax. The per-case offset established by this subsection may be increased by the state administrative board each January to reflect reasonable increases in the authorized distribution agent's cost of warehousing and delivery. As used in this subsection, "case" means a container holding twelve 750 ml bottles of spirits or other containers containing spirits which are standard to the industry.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 2001, Act 274, Imd. Eff. Jan. 11, 2002 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010; Am. 2010, Act 213, Eff. November 17, 2010

436.1206 Integrated on-line ordering system.

Sec. 206.

(1) Not later than January 1, 2003, the commission shall provide for an integrated on-line ordering system for retail licensees to place orders for spirits from authorized distribution agents. The system shall allow retail licensees to order all brands and types of spirits from the commission and provide the order to the appropriate authorized distribution agents.

(2) The commission may enter into any agreements with or contract with private or other public entities as provided for or allowed by law to establish the integrated on-line ordering system described in subsection (1). A licensee of the commission or an authorized distribution agent shall not have a direct or indirect interest in the person with whom the commission contracts or enters into an agreement to establish the integrated on-line ordering system described in subsection (1). Ownership of the integrated on-line ordering system remains with the commission. The commission may, through issuance of an order, allow banner advertising in conjunction with the on-line ordering system as a means of defraying the costs of operation or maintenance, or both, of the system.

History: Add. 2001, Act 274, Imd. Eff. Jan. 11, 2002

436.1207 Exceptions to act.

Sec. 207.

This act does not apply to the following:

(a) The manufacture of cider from fruit for the purpose of making vinegar and non-intoxicating cider and fruit juice for use and sale, and cider and fruit juice when used or sold, or both, within 30 days after manufacture.
(b) Beer, wine, mead, honey-based beer, or cider of any alcoholic content made on the premises by the owner or lessee of those premises provided those premises are used and occupied by that owner or lessee as a dwelling and the beer, wine, mead, honey-based beer, or cider is made for family use and home consumption.
(c) The gift to an individual for noncommercial use or consumption of up to 20 gallons of beer, wine, mead, honey-based beer, or cider produced under the circumstances described in subdivision (b). This subdivision does not allow a person less than 21 years of age to possess, receive as a gift, or give beer, wine, mead, honey-based beer, or cider produced under the circumstances described in subdivision (b).
(d) The sale, gift, or keeping and storing for sale by druggists and general merchants and others of medicinal preparations manufactured in accordance with the formulas prescribed by the United States pharmacopoeia and national formulary, patent or proprietary preparations, and other bona fide medicinal and technical preparations, that contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in those preparations and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve them, that are manufactured and sold as medicine and not as beverages, that are unfit for use for beverage purposes, and the sale of which does not require the payment of a United States liquor dealer's tax.
(e) The manufacture and sale of tinctures or of toilet, medicinal, and antiseptic preparations and solutions that are not intended for internal human use or that are not intended to be sold as beverages, that are unfit for beverage purposes, and upon the outside of each bottle, box, or package of which is conspicuously and legibly printed in English the quantity by volume of alcohol in those preparations.
(f) The manufacture and keeping for sale of the food product known as flavoring extracts that are manufactured and sold for cooking, culinary, or flavoring purposes and are unfit for use as a beverage or for beverage purposes, except that a person shall not manufacture or sell any toilet, medicinal, or antiseptic preparations or solutions, or any flavoring extracts or patent or proprietary medicines or preparations, if the manufacture and sale of those items require the payment of a United States liquor dealer's tax except as provided in this act.
(g) The manufacture or sale, or both, of ethyl, mechanical, or industrial alcohol, not used for or made unfit for beverage purposes.
(h) The purchase of alcoholic liquor for use in the manufacture of toilet, medicinal, or antiseptic preparations or solutions, or any flavoring extract or patent or proprietary medicines or preparations, by a manufacturer using alcoholic liquor exclusively for the manufacturing purposes and licensed by the commission for that use. A license issued for that use is predicated upon the payment of an annual fee of $10.00 and the furnishing of a bond or bonds as the commission requires running to the people of the state of Michigan, for the faithful performance of the conditions of the license and compliance with this act. The license expires on May 1 following the date of its issuance.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1209 Liquor control commission; creation; appointment, duties, and terms of members; designation and duties of hearing commissioners and administrative commissioners; appeal board; duties; terms; oath; removal; vacancies; quorum; salary and expenses; work station; designation by chairperson.

Sec. 209.

(1) A commission to be known as the liquor control commission is created.
(2) The commission shall consist of 5 members, not more than 3 of whom shall be members of the same political party, to be appointed by the governor with the advice and consent of the senate. Two of these members, 1 from each political party, shall be designated by the chairperson as hearing commissioners to hear violation cases and to perform such other functions and duties as are assigned to them by the chairperson. The remaining 3 commissioners shall be designated as administrative commissioners and shall have the responsibility for administering the provisions of this act relating to licensing, purchasing, enforcement, merchandising, and distribution. The administrative commissioners shall also act as an appeal board to the decisions rendered by the hearing commissioners.
(3) The responsibilities of the 5-member commission shall be the administration of the provisions of this act that have not been specifically delegated to either the hearing commissioners or the administrative commissioners in this section.
(4) Each member of the commission shall devote that member's entire time to the performance of the duties of that office.
(5) The terms of the commissioners shall be 4 years each. Each member of the commission shall qualify by taking and filing the constitutional oath of office and shall hold office until the appointment and qualification of a successor. The members of the commission shall not be removed from office by the governor except for malfeasance, misfeasance, or neglect in office.
(6) In the event of a vacancy or vacancies in the membership of the commission the governor shall appoint in like manner a successor or successors to fill the unexpired term.
(7) A quorum for the transaction of business of the administrative commissioners shall consist of 2 administrative commissioners. A quorum for the transaction of business of the 5-member commission shall be 3 members.
(8) Each member of the commission shall receive an annual salary as appropriated by the legislature, shall be entitled to actual and necessary expenses while on the business of the commission, and shall have a work station designated by the chairperson. If an administrative commissioner's permanent or temporary residence is within 100 miles of an office in which the commission regularly conducts business, the chairperson shall designate an office as the member's work station.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1211 Liquor control business manager; selection; duty and responsibility.

Sec. 211.

(1) The powers of the commission, enumerated in this act, which are not specifically and exclusively reserved to the commission by the act, shall be vested in, and exercised and administered by a liquor control business manager, who shall be selected by and responsible to the commission, and whose position shall be in the state classified civil service. The powers of the commission enumerated in, and provided for by this act, shall be exercised in conformity with the provisions of the act pertaining to the duties of the liquor control manager, except that the commission shall exclusively exercise the power to make rules and regulations under the act to regulate the control of the alcoholic beverage traffic within the state; to hear and decide all cases of violation of the provisions of the act and regulations thereunder; to employ a liquor control business manager as provided for by the act; and to hear and decide all public appeals from the administrative decisions of the liquor control business manager.

(2) The liquor control business manager shall be and shall serve as the business manager of the commission, and, as such, it shall be his or her duty and responsibility to manage the business affairs of the commission relative to purchasing, merchandising, warehousing, rationing, distributing, inspecting, investigating, licensing, and accounting, in accordance with policies established by the commission and in compliance with the provisions of this act and with the rules and regulations adopted thereunder. In addition to the foregoing, the business manager shall be exclusively responsible for the assigning, training, and supervision of all commission classified employees.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1213 Liquor control commission; employment of assistants and employees; compensation; expenses.

Sec. 213.

The commission may employ assistants, clerks, stenographers, employees, and experts as it considers necessary, and fix their compensation, and incur such other expenses as are necessary to carry out the provisions of this act, subject to appropriations provided by the legislature. Assistants and employees of the commission are entitled to actual and necessary travel and other expenses while on the business of the commission, if those expenses are authorized and approved by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1215 Liquor control commission; rules and regulations; public hearings; record.

Sec. 215.

(1) The commission shall adopt rules and regulations governing the carrying out of this act and the duties and responsibilities of licensees in the proper conduct and management of their licensed places. Rules shall be promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
(2) The commission shall hold public hearings twice each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to the administration of this act.
(3) The hearings shall be kept and transcribed as a part of the records of the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Admin Rule: R 436.571 et seq.; R 436.1001 et seq.; R 436.1101 et seq.; R 436.1301 et seq.; R 436.1401 et seq.; R 436.1501 et seq.; R 436.1601 et seq.; R 436.1701 et seq.; R 436.1801 et seq.; R 436.1851 et seq.; R 436.1951 et seq.; R 436.1963; and R 436.2001 et seq. of the Michigan Administrative Code.

436.1217 Liquor control commission; investigations; inspection and search of licensed premises; seizure and use of evidence of violation; examining or copying books, records, and papers; issuance of subpoena; oath or affirmation; court order; contempt; fees of witnesses; service of subpoena; seal; certified copies as evidence.

Sec. 217.

(1) The commission may make investigations that it considers proper in the administration of this act and the rules promulgated under this act concerning alcoholic liquor, or the manufacture, distribution, or sale of alcoholic liquor, or the collection of taxes on alcoholic liquor.
(2) A licensee shall make the licensed premises available for inspection and search by a commission investigator or law enforcement officer empowered to enforce the commission's rules and this act during regular business hours or when the licensed premises are occupied by the licensee or a clerk, servant, agent, or employee of the licensee. Evidence of a violation of this act or rules promulgated under this act discovered under this subsection may be seized and used in an administrative or court proceeding.

(3) The commission or a duly authorized agent of the commission may examine or copy the books, records, or papers of a person relative to a requirement pertaining to this act, access to which has been obtained pursuant to this section.
(4) A member of the commission or a duly authorized agent of the commission may issue a subpoena requiring a person to appear before the commission or its duly authorized agent at any reasonable time and place, to be examined with reference to any matter within the scope of the inquiry or investigation being conducted by the commission, and to produce any books, records, or papers pertaining to the question involved.
(5) A member of the commission or a duly authorized agent of the commission may administer an oath or affirmation to a witness in any matter before the commission, certify to official acts, and take depositions.
(6) In case of disobedience of a subpoena, the commission or its duly authorized agent may invoke the aid of any circuit court of the state to compel the attendance and testimony of witnesses and the production of books, records, and papers pertaining to the question involved. A circuit court of this state within the jurisdiction of which the inquiry is conducted may, in case of contumacy or refusal to obey a subpoena, issue an order requiring the person to appear before the commission or its duly authorized agent, to produce books, records, and papers if so ordered, and to give evidence regarding the matter in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
(7) The fees of witnesses required to appear before the commission shall be the same as those allowed to witnesses in the circuit courts and shall be paid by the commission.
(8) A sheriff's department or police department shall, upon request of the commission, cause to be served a subpoena that is directed to a person located within the jurisdiction of the sheriff's department or police department. A fee shall not be charged for this service by the sheriff's department or police department. Subpoenas may also be served by an investigator of the commission.
(9) The commission shall adopt a suitable seal, of which all courts of the state shall take judicial notice, and all proceedings, orders, licenses, and official acts of the commission shall be authenticated by that seal. Certified copies of the orders and records of the commission shall be prima facie evidence of the acts of the commission in any court of this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1219 Liquor control commission; branch offices.

Sec. 219.

The commission shall be authorized to establish throughout the state of Michigan 4 branch offices. The expense of the branch offices shall be paid by the commission in the manner provided in this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1221 Liquor control commission; revolving fund; use; report; interest earnings; disposition of money received.

Sec. 221.

(1) The commission is authorized to maintain a revolving fund that is to be derived from the money deposited to the credit of the commission with the state treasurer. From time to time, amounts shall be transferred from the revolving fund to the general fund in accordance with the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. The fund provided for in this section shall be used for replenishing, maintaining, warehousing, and distributing liquor stock throughout the state and for administration of this act. The commission shall make a monthly report of the fund to the state treasurer and to the budget director. The report shall contain an itemized account of all money received and all expenditures made by the commission during the month covered in the report.
(2) Interest earnings on common cash attributable to the revolving fund shall be credited to the revolving fund and shall be available to the commission for administration of this act.

(3) All money received by the commission under this act shall be turned over to the state treasurer according to department of treasury procedures.
(4) All money deposited by the commission with the state treasurer shall be either credited to the revolving fund for expenditures authorized under subsection (1) or credited to the general fund to be available for the purposes for which the general fund is available.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1223 Liquor control commission; interest of members or employees.

Sec. 223.

A member or employee of the commission shall not be pecuniarily interested, directly or indirectly, in the manufacture, warehousing, sale, distribution or transportation, or selling or furnishing of any equipment, furnishings, or refrigeration used in the manufacture or sale of alcoholic liquor within this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1225 Liquor control commission; civil liability of commission or members.

Sec. 225.

The commission or a member of the commission shall not be personally liable for any action at law for damages sustained by a person because of an action performed or done by the commission or a member of the commission in the performance of their respective duties in the administration and implementation of this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1227 Liquor control commission; establishment of state liquor stores; basis.

Sec. 227.

The commission may establish state liquor stores throughout this state. In counties with a population of less than 40,000 according to the most recent federal census, there shall not be more than 1 store in that county, and in counties with a population of 40,000 or more according to the most recent federal census, there shall not be more than 1 store located in that county for each 40,000 population or major fraction thereof according to the most recent federal census. However, the commission may in its discretion establish a state liquor store in any village or city with a population of 3,000 or more according to the most recent federal census.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1229 Licensing hotel or merchant to sell spirits for consumption off premises; sale of alcoholic liquor; price; rules; definitions.

Sec. 229.

(1) The commission may license a hotel or merchant, in places that the commission may designate, to sell spirits for consumption off the premises, notwithstanding section 233(1). Except as otherwise provided in this section, if alcoholic liquor is sold by a specially designated distributor pursuant to a license issued under this section, it shall not be sold at less than the minimum retail selling price fixed by the commission and pursuant to rules promulgated by the commission.
(2) The commission may, by rule or order, allow a specially designated distributor to sell alcoholic liquor at less than the minimum retail selling price in order to dispose of inventory at a price and under conditions and procedures established through that rule or order.

(3) As used in this section and in sections 1201, 1203, 1205, and 1207, "retail selling price" means the price the commission pays for spirits plus the gross profit established in section 233.
(4) As used in this section, "minimum retail selling price" means retail selling price plus the specific taxes imposed in sections 1201, 1203, 1205, and 1207.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2004, Act 407, Imd. Eff. Nov. 29, 2004 ;-- Am. 2005, Act 288, Imd. Eff. Dec. 19, 2005

436.1231 Liquor control commission; handling of alcoholic liquor; gross profit; leasing and purchasing power.

Sec. 231.

The commission may buy, possess, and sell in its own name all alcoholic liquor for distribution as provided in sections 227 and 229. The commission shall supply such types of alcoholic liquor as are demanded by the public. However, if a brand so demanded is not manufactured within the United States or is not readily obtainable within the United States, then an order for that brand shall be filled by the commission at the entire expense of the person placing that order subject to any gross profit or discounts, or both, provided for in section 233. The commission may lease or occupy any building or land required for its operation, and may purchase any warehouse required for its operation, subject to the approval of the state administrative board.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1233 Uniform prices for sale of alcoholic liquor; gross profit; prices for sale of alcoholic liquor to hospitals, charitable institutions, and military establishments; discount for certain sales of alcoholic liquor.

Sec. 233.

(1) The commission shall establish uniform prices for the sale of alcoholic liquor in state liquor stores and by specially designated distributors. The prices shall return a gross profit to the commission of not less than 51% and not greater than 65%. If alcoholic liquor purchased by the commission has not met sales standards established by the commission for a period of 6 months, the commission may sell the alcoholic liquor at a price to be approved by the state administrative board.
(2) Notwithstanding subsection (1), the commission may establish by rule prices for the sale of alcoholic liquor to hospitals, charitable institutions, and military establishments located in this state.
(3) There shall be allowed a discount of 17% deducted from the sale price established by the commission on the sale of alcoholic liquor made by the state liquor stores to specially designated distributors and establishments licensed to sell for consumption on the premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1235 Search warrant; seizure of property.

Sec. 235.

A search warrant may be issued in accordance with the code of criminal procedure, 1927 PA 175, MCL 760.1 to 776.21. Under such a search warrant the officer may seize any alcoholic liquor, containers, implements, or conveyances used in connection with the violation of this act or any rule promulgated under this act. A property right does not exist in any alcoholic liquor had, kept, transported, or possessed contrary to law or in any receptacle or container of any kind in which the alcoholic liquor is found, and all such are hereby declared contraband and forfeited to the state and shall be seized. All alcoholic liquor, containers, implements, or conveyances seized under any such search warrant shall be turned over to the commission by direction of the

court or magistrate and shall be disposed of in accordance with the rules promulgated under this act, which shall guarantee the return of such property, or payment of money received for the sale of that property, to the owner unless the owner is charged and convicted of the alleged offense or offenses in connection with which the search and seizure was made.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

CHAPTER 3

436.1301 Wine tax; levy and collection; rate; sacramental wines; tax on mixed spirit drink; incorporation of farm mutual cooperative wineries; licensing; fee; certification of stockholders or members.

Sec. 301.

(1) The commission shall levy and collect on all wines containing 16% or less of alcohol by volume sold in this state a tax at the rate of 13.5 cents per liter if sold in bulk and in a like ratio if sold in smaller quantities.
(2) The commission shall levy and collect on all wines containing more than 16% of alcohol by volume sold in this state a tax at the rate of 20 cents per liter if sold in bulk and in a like ratio if sold in smaller quantities.
(3) All sacramental wines are nontaxable when used by churches. Sacramental wines may be imported. The commission shall not impose restrictions on importations of wine for sacramental purposes but may promulgate rules as will prevent any abuses which result from the importations. A wholesaler or an outstate seller of wine may sell sacramental wine directly to a church for sacramental purposes.
(4) The commission shall levy and collect on all mixed spirit drink sold in this state a tax at the rate of 48 cents per liter if sold in bulk or a like ratio if sold in smaller quantities.
(5) On approval by the commission, the corporation and securities bureau shall incorporate a limited number of farm mutual cooperative wineries as the commission determines to be beneficial to the Michigan grape and fruit industry. These wineries shall be licensed under this act and the payment of 1 license fee annually by the corporation shall authorize wine making on the premises of the corporation and also on the premises of the grape and fruit growing farmers who are members of or stockholders in the corporation. Upon incorporation of a farmers' cooperative corporation as provided for in this section, the members of or the stockholders in the corporation shall be certified to be Michigan grape and fruit growing farmers. Wine making by cooperative corporations on farm premises is allowed, but all sales of the wine shall be made by the corporation and from the corporation premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Admin Rule: R 436.1001 et seq.; R 436.1701 et seq.; and R 436.1801 et seq. of the Michigan Administrative Code.

436.1303 Grape and wine industry council; creation; appointment, qualifications, and terms of members; chairperson; personnel; expenses; liability on contracts; compensation; books and records; duties of council; rules; “council” defined.

Sec. 303.

(1) The grape and wine industry council is created in the department of agriculture. The council shall consist of all of the following:
    (a) Three wine makers.
    (b) A wine grape grower.
    (c) The director of consumer and industry services or his or her designee.
    (d) The director of the department of agriculture or his or her designee.
    (e) A staff member of Michigan state university appointed by, and serving at the pleasure of, the dean of the college of agriculture and natural resources of Michigan state university.
    (f) The chairperson of the commission or his or her designee, as an ex officio member.

(g) A person who operates a retail food establishment that holds a specially designated merchant license and sells Michigan wines or a person who operates a restaurant that holds a class C license and serves Michigan wines.
(h) A beer and wine wholesaler who markets Michigan wine.
(i) Not more than 2 additional members appointed as prescribed in subsection (3).

(2) The members of the council described in subsection (1)(a), (b), (g), and (h) shall be appointed by the governor. The council members appointed under subsection (1)(g) and (h) shall be appointed for 2-year terms beginning on October 1, 1991. Of the council members appointed for terms beginning October 1, 1991, 1 shall be appointed for a 1-year term, and 3 shall be appointed for terms of 2 years each. All appointments for terms beginning on or after October 1, 1992 shall be for 2 years each. A member shall continue to serve until a qualified successor has been appointed. A member shall not serve more than 2 consecutive terms. A vacancy on the board shall be filled in the same manner as the original appointment. The director of the department of agriculture shall act as chairperson of the council.

(3) The governor may appoint not more than 2 additional members to the council who shall assist the council in performing its duties, but who shall not have the power to vote. The persons appointed under this subsection shall not be members of the classified state civil service, shall serve at the pleasure of the governor, and shall receive salaries and benefits determined and paid by the department of agriculture.

(4) The council may employ personnel and incur such expenses as are necessary to carry out the purposes of the council under this act. All such expenses shall be paid from fees credited to the wine industry council under section 543(2). A member of the council or an employee or agent of the council shall not be personally liable on the contracts of the council.

(5) A nongovernmental member of the council shall receive $50.00 per day for each day spent in actual attendance at meetings of the council and traveling expenses while on council business in accordance with standard travel regulations of the department of management and budget.

(6) The council shall maintain accurate books and records, and all funds received by the council shall be used to implement and enforce this section.

(7) The council shall do all of the following:
(a) Provide for research on wine grapes and wines, including, but not limited to, methods of planting, growing, controlling insects and diseases, charting microclimates and locations for growing desirable varieties of wine grapes, marketing, processing, distribution, advertising, sales production, and product development.
(b) Provide the wine industry, including growers, wineries, distributors, and retailers, with information relative to proper methods of handling and selling wine grapes and wines.
(c) Provide for market surveys and analyses for purposes of expanding existing markets and creating new and larger markets for wine grapes and wines.
(d) Provide for the promotion of the sale of Michigan wine grapes and wines for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.
(e) Develop and administer financial aid programs to wine grape growers to encourage the increased planting in this state of desirable grape varieties in microclimates determined to provide the best conditions for producing quality wines.

(8) The council may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the purposes of implementing and enforcing this section. However, a rule shall not be promulgated that conflicts with a rule promulgated by the commission pursuant to section 215.

(9) As used in this section, “council” means the grape and wine industry council created in subsection (1).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1305 Wine industry; purpose of section; reasons for regulation; definitions; prohibited conduct; servicing impacted sales territory; termination, cancellation, nonrenewal, or discontinuance of agreement; burden; notice; test marketing; sales and distribution; transfer of wholesaler's business; compensation for diminished value of wholesaler's business; arbitration; costs; default; waiver; good faith dispute settlement; agreement binding on successor to supplier; agreements to which section applicable; civil action for actual damages; liability; action for declaratory judgment; exemplary damages; injunctive relief; procedure for resolving violations.

Sec. 305.

(1) The purpose of this section is to provide a structure for the business relations between a wholesaler of wine and a supplier of wine. Regulation in this area is considered necessary for the following reasons:
   (a) To maintain stability and healthy competition in the wine industry in this state.
   (b) To promote and maintain a sound, stable, and viable 3-tier distribution system of wine to the public.
   (c) To recognize the marketing distinctions between beer and wine.
   (d) To promote the public health, safety, and welfare.

(2) As used in this section, unless the context requires otherwise:
   (a) "Agreement" means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to offer and sell a brand or brands of wine sold by a supplier.
   (b) "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler the primary purpose of which is directly related to the transporting, storing, or marketing of the brand or brands of wine of a supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler which recycles empty returnable beverage containers.
   (c) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a wholesaler, who is entitled to inherit the deceased individual's ownership interest in the wholesaler under the terms of the deceased individual's will, or who has otherwise been designated in writing by the deceased individual to succeed the deceased individual in the wholesaler's business, or is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a wholesaler, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler.
   (d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined and interpreted under section 2103 of the uniform commercial code, 1962 PA 174, MCL 440.2103.
   (e) "Master distributor" means a wholesaler who acts in the same or similar capacity as a wine maker or an outstate seller of wine for a brand or brands of wine to other wholesalers on a regular basis in the normal course of business.
   (f) "Reasonable qualifications" means the average standard of the criteria used by the respective supplier for wholesalers that entered into or renewed an agreement with the suppliers during a period of 24 months prior to the proposed transfer of the wholesaler's business.
   (g) "Retaliatory action" means action which includes, but is not limited to, the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products

available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

(h) “Sales territory” means an area of sales responsibility for the brand or brands of wine sold by a supplier as designated by an agreement.

(i) “Successor” means a supplier who obtains, in any manner from any person, including a person who is not a supplier, the distribution rights of 1 or more brands of wine which a licensed Michigan wholesaler has distributed in this state pursuant to an agreement with another supplier, who previously had the distribution rights for the brand or brands.

(j) “Supplier” means a wine maker or an outstate seller of wine, or a master distributor.

(k) “Transfer of a wholesaler's business” means the voluntary sale, assignment, or other transfer of the business or control of the business of the wholesaler, including the sale or other transfer of stock or assets by merger, consolidation, or dissolution.

(3) A supplier shall not do any of the following:

(a) Coerce, or attempt to coerce, any wholesaler to accept delivery of any wine or other commodity which has not been ordered by the wholesaler. However, a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other wholesalers having an agreement with the supplier.

(b) Coerce, or attempt to coerce, any wholesaler to accept delivery of any wine or other commodity ordered by a wholesaler if the order was properly canceled by the wholesaler in accordance with the procedures agreed upon by the supplier and wholesaler.

(c) Coerce, or attempt to coerce, any wholesaler to do any illegal act by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler.

(d) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of wine of any other supplier anywhere in this state unless the acquisition of the brand or brands of another supplier would materially impair the quality of service of the brand or brands of the supplier presently being sold by the wholesaler.

(e) Require a wholesaler to purchase 1 or more brands of wine in order for the wholesaler to purchase another brand or brands of wine for any reason. However, a wholesaler that has agreed to distribute a brand or brands before June 26, 1984 shall continue to distribute the brand or brands in conformance with this section.

(f) Request a wholesaler to submit profit and loss statements, balance sheets, or financial records as a requirement for renewing or retaining an agreement.

(g) Withhold delivery of wine ordered by a wholesaler, or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith.

(h) Require a wholesaler by any means to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier.

(i) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains in total the supplier' s agreement with each wholesaler, and designates a specific sales territory.

(j) Fix, maintain, or establish the price at which a wholesaler shall sell any wine.

(k) Take any retaliatory action against a wholesaler that files a complaint regarding an alleged violation by the supplier of state or federal law or an administrative rule.

(l) Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the supplier as of June 26, 1984. Should, after June 26, 1984, a supplier require that a manager or successor manager be appointed, or should a wholesaler change an approved manager or successor manager, a supplier shall not interfere with or prohibit the appointment unless the person fails to meet the reasonable written standards for Michigan wholesalers of the supplier which standards have been provided to the wholesaler.

(m) Require by a provision of any agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with that agreement be determined through the application of any other state's laws. Any supplier or wholesaler aggrieved by any dispute arising out of or in connection with an agreement governed by this act shall have the right to file an appropriate action consistent with this act in any court in this state having venue.

(4) A wholesaler shall not sell or deliver wine to a retail licensee located outside the sales territory designated by the supplier of a particular brand or brands of wine. However, during periods of temporary service interruptions impacting a particular sales territory, a wholesaler who normally services the impacted sales territory shall file with the commission a written notice designating the specific wholesaler or wholesalers who will service the sales territory during the period of temporary service interruption and the approximate length of time of the service interruption. When the temporary service interruption is over, the wholesaler who normally services the sales territory shall notify in writing the commission and the wholesaler, or wholesalers, which is servicing the sales territory on a temporary basis of this fact and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of the notice.

A wholesaler who is designated to service the impacted sales territory during the period of temporary service shall not be in violation of this subsection.

A wholesaler who has been designated to service the impacted sales territory during the period of temporary service interruption shall not have any of the rights provided under subsections (6) to (12).

(5) A supplier or wholesaler shall not restrict or inhibit, directly or indirectly, the right of free association among suppliers or wholesalers for any lawful purpose.
(6) Notwithstanding the terms, provisions, or conditions of any agreement, a supplier shall not amend any agreement unless the supplier is acting in good faith in making the amendment.
(7) Notwithstanding any agreement and except as otherwise provided for in this section, a supplier shall not cause a wholesaler to resign from an agreement; or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the supplier has complied with all of the following:
    (a) Has satisfied the applicable notice requirements of subsection (10).
    (b) Has acted in good faith.
    (c) Has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.
(8) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (7)(c) when all of the following occur:
    (a) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier.
    (b) The supplier first acquired knowledge of the failure described in subdivision (a) not more than 2 years before the date notification was given pursuant to subsection (7).
    (c) The wholesaler was given written notice by the supplier of failure to comply with the agreement.
    (d) The wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits as provided for in subdivision (e).
    (e) The wholesaler has been afforded 25 days in which to submit a plan of corrective action to comply with the agreement and an additional 75 days to cure such noncompliance in accordance with the plan.
(9) A supplier or wholesaler who terminates, cancels, nonrenews, or discontinues an agreement shall have the burden of showing that it has acted in good faith, complied with the applicable notice requirements under this section, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.
(10) Notwithstanding any agreement and except as otherwise provided in this section, the supplier shall furnish written notice of the termination, cancellation, nonrenewal, or discontinuance of an agreement to the wholesaler not less than 15 days before the effective date of the termination, cancellation, nonrenewal, or discontinuance. The notice shall be by certified mail and shall contain all of the following:
    (a) A statement of intention to terminate, cancel, not renew, or discontinue the agreement.
    (b) A statement of the reason for the termination, cancellation, nonrenewal, or discontinuance.
    (c) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(11) Notwithstanding subsections (7) and (10), a supplier may immediately terminate, cancel, fail to renew, or discontinue an agreement upon written notice given in the manner and containing the information required by subsection (10) if any of the following occur:
    (a) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler which materially affects the wholesaler's ability to remain in business.
    (b) Revocation of the wholesaler's license by the commission whereby the wholesaler cannot service the wholesaler's sales territory for more than 60 days.
    (c) The wholesaler, or an individual who owns more than 10% of the stock of a corporate wholesaler, has been convicted of a felony. As used in this subdivision, “felony” means a felony under the United States code or the Michigan Compiled Laws. However, an existing approved stockholder or stockholders shall have the right to purchase the stock of the offending stockholder prior to the conviction of the offending stockholder, and if the sale is completed prior to conviction, the provisions of this subdivision shall not apply.

(12) Notwithstanding subsections (7), (10), and (11), upon not less than 15 days' prior written notice given in the manner and containing the information required by subsection (10), a supplier may terminate, cancel, fail to renew, or discontinue an agreement if any of the following events occur:
    (a) There was fraudulent conduct on the part of the wholesaler in dealings with the supplier.
    (b) The wholesaler failed to confine its sales of a brand or brands to the assigned sales territory. This subdivision does not apply if there is a dispute between 2 or more wholesalers as to the boundaries of the assigned territory, and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers.
    (c) The sale by the wholesaler of any brand or brands sold by the supplier to the wholesaler and known by the wholesaler to be ineligible for sale prior to the actual sale to the retailer. The supplier shall repurchase the ineligible product from the wholesaler when the ineligibility is caused by the supplier. The supplier must give the wholesaler written notice specifying the ineligible product.

(13) Notwithstanding subsections (7), (10), (11), and (12), a supplier may terminate, cancel, not renew, or discontinue an agreement upon not less than 30 days' prior written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler. Nothing in this section shall prohibit a supplier upon not less than 30 days' notice to discontinue the distribution of any particular brand or package of wine. This subsection does not prohibit a supplier from conducting test marketing of a new brand of wine or from conducting the test marketing of a brand of wine which is not currently being sold in this state provided that the supplier has notified the commission in writing of its plans to test market. The notice shall describe the market area in which the test shall be conducted; the name or names of the wholesaler or wholesalers who will be selling the wine; the name or names of the brand of wine being tested; and the period of time during which the testing will take place. A market testing period shall not exceed 18 months.

(14) The wholesaler shall devote reasonable efforts and resources to sales and distribution of all the supplier's products which the wholesaler has been granted the right to sell and distribute and shall maintain reasonable sales levels.

(15) A supplier shall not withhold consent to any transfer of a wholesaler's business if the proposed transferee meets the material and reasonable qualifications and standards required by the supplier. A wholesaler shall give the supplier written notice of intent to transfer the wholesaler's business. A supplier shall not unreasonably delay a response to a request for a proposed transfer of a wholesaler's business. However, a transfer of a wholesaler's business which is not approved by the supplier shall be null and void. A supplier shall not interfere with, or prevent, the transfer of the wholesaler's business if the proposed transferee is a designated member.

(16) A supplier as part of the written agreement required by this section may, subject to the provisions of subsection (3)(l), require a wholesaler to designate a successor manager who shall be subject to prior approval by the supplier. In the event the designated successor manager fails to assume the role of approved manager or for any reason does not continue to manage the wholesaler's business, after assuming that responsibility, then any successor shall be subject to the prior approval of the supplier, subject to the provisions of subsection (3)(l), notwithstanding the transferee's interest as a designated member.

(17) A supplier that has amended, canceled, terminated, or refused to renew any agreement; has caused a wholesaler to resign from an agreement; or has withheld consent to any assignment or transfer of a wholesaler's business, except as provided for in this section, shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business or of any ancillary business which has been negatively affected by the act of the supplier, or both. The value of the wholesaler's business or ancillary business shall include, but not be limited to, its goodwill.

(18) Either party may, at any time, determine that mutual agreement on the amount of reasonable compensation cannot be reached. Should such a determination be made, the supplier or the wholesaler shall send written notice to the other party declaring their intention to proceed with arbitration. Arbitration shall proceed only by mutual agreement of both parties.

(19) The matter of determining the amount of compensation under arbitration may, by agreement of the parties, be submitted to a 5-member arbitration panel consisting of 2 representatives selected by the supplier but unassociated with the affected supplier, 2 wholesaler representatives selected by the wholesaler but unassociated with the wholesaler, and an impartial arbitrator.

(20) Not more than 10 days after the notice to enter into arbitration has been sent, each party shall request, in writing, a list of 5 arbitrators from the American arbitration association. Not more than 10 days after the receipt of the list of 5 choices, the wholesaler arbitrators and the supplier arbitrators may strike and disqualify up to 2 names each from the list. Should either party fail to respond within the 10 days or should more than 1 name remain, the American arbitration association shall make the selection of the impartial arbitrator.

(21) Not more than 30 days after the list of arbitrators is received, the wholesaler and supplier shall exchange in writing the names of their respective arbitration panel representatives.

(22) Not more than 30 days after the final selection of the arbitration panel is made, the arbitration panel shall convene to decide the dispute. The panel shall render a decision by majority vote of the participants within 20 days from the conclusion of the arbitration.

(23) The cost of the impartial arbitrator, the stenographer, and the meeting site shall be equally divided between the wholesaler and the supplier. All other costs shall be paid by the party incurring them. The award of the arbitration panel shall be final and binding on the parties.

(24) Should either party fail to abide by the time limitations as prescribed in subsections (20), (21), and (22), or fail or refuse to make the selection of any arbitrators, or fail to participate in the arbitration hearings, the other party shall make the selection of their arbitrators and proceed to arbitration. The party who has failed or refused to comply as prescribed in this subsection shall be considered to be in default. Any party considered to be in default pursuant to this subsection shall have waived any and all rights the party would have had in the arbitration and shall be considered to have consented to the determination of the arbitration panel.

(25) A wholesaler shall not waive any of the rights granted in any provision of this section. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(26) A successor to a supplier that continues in business as a wine maker, an outstate seller of wine, or master distributor shall be bound by all terms and conditions of each agreement of the supplier with a wholesaler licensed in this state that were in effect on the date on which the successor received the distribution rights of the previous supplier.

(27) This section shall apply to agreements in existence on June 26, 1984, as well as agreements entered into or renewed after that date.

(28) If a supplier engages in conduct prohibited under this section, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under this section, a supplier with which the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.

(29) A supplier that violates any provision of this section is liable for all actual damages and all court costs and reasonable attorney fees incurred by a wholesaler as a result of that violation. A wholesaler that violates any provision of this section is liable for all actual damages and all court costs and reasonable attorney fees incurred by the supplier as a result of that violation.

(30) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to this section.
(31) Except as otherwise provided in this section, if a court finds that a supplier has not acted in good faith in effecting the amendment, termination, cancellation, or nonrenewal of any agreement; or has unreasonably withheld its consent to any assignment, transfer, or sale of a wholesaler's business, it may award exemplary damages, as well as actual damages, court costs, and reasonable attorney fees to the wholesaler who has been damaged by the action of the supplier.
(32) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this section. If the court grants injunctive relief or issues a temporary restraining order, bond shall not be required to be posted.
(33) The procedure for resolving any violation of subsection (3)(a), (b), (c), (e), (f), (h), (i), (j), (k), (l), or (4) shall be the procedure prescribed by this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Any other violation of or dispute regarding this section, unless the dispute is resolved pursuant to subsections (18) to (24), shall only be resolved by a civil action in court as provided in this section and not by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1307 Sales territory.

Sec. 307.

(1) A manufacturer, an outstate seller of wine, and a master distributor shall grant to each of its wholesalers a sales territory within which the wholesaler shall be a distributor of the specified brand or brands of the manufacturer, outstate seller of wine, or master distributor under an agreement as required under this act. The territory shall be the territory agreed upon between the wholesaler and manufacturer, outstate seller of wine, or master distributor. Except as provided for in subsection (9) and beginning June 1, 2010, a manufacturer, outstate seller of wine, or master distributor shall not grant the right to sell a specified brand or brands of wine in a sales territory to more than 1 wine wholesaler. A master distributor shall not itself distribute a specified brand or brands of wine in the same sales territory where that master distributor has granted the right to distribute that specified brand or brands of wine in that sales territory to another wine wholesaler. Notwithstanding section 109(2), as used in this section, “master distributor” means a wholesaler that acts in the same or similar capacity as a wine maker, wine manufacturer, or outstate seller of wine for a brand or brands of wine to other wholesalers on a regular basis in the normal course of business.
(2) Notwithstanding subsection (1), a brand extension is not considered a new or different brand. A manufacturer or outstate seller of wine shall assign a brand extension to the wholesaler that was granted the sales territory for the brand from which the brand extension resulted.
(3) Subsection (2) does not apply where, before January 1, 1994, a manufacturer or outstate seller of wine had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.
(4) Until July 1, 1995, a manufacturer or outstate seller of wine who acquired or otherwise obtained the right to assign brands of another manufacturer or outstate seller of wine between January 1, 1994 and July 1, 1995 shall assign a brand extension to the wholesaler that was granted the sales territory for the brand from which the brand extension resulted. Beginning July 1, 1995, a manufacturer or outstate seller of wine who acquires or otherwise obtains the right to assign brands of another manufacturer or outstate seller of wine is not required to assign a new brand extension to the wholesaler that is granted the exclusive sales territory to the brand from which the new brand extension results. Any brand extension assigned between January 1, 1994 and July 1, 1995 shall remain assigned to the assigned wholesaler.
(5) A manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink shall grant to each of its wholesalers an exclusive sales territory in which the wholesaler shall be a distributor of the specified brand or brands of the manufacturer or outstate seller. The territory shall be the territory agreed upon between the

wholesaler and the manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of mixed wine drinks, or outstate seller of mixed spirit drink.

(6) Notwithstanding subsection (5), a brand extension is not considered a new or different brand. A manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink shall assign a brand extension to the wholesaler that was granted the exclusive sales territory for the brand from which the brand extension resulted.

(7) Subsection (6) does not apply where, before January 1, 1994, a manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.

(8) Until July 1, 1995, a manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of mixed wine drink, or outstate seller of mixed spirit drink who acquired or otherwise obtained the right to assign brands of another manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink between January 1, 1994 and July 1, 1995 shall assign a brand extension to the wholesaler that was granted the exclusive sales territory for the brand from which the brand extension resulted. Beginning July 1, 1995, a manufacturer of mixed wine drink, mixed spirit drink manufacturer, outstate seller of mixed wine drink, or outstate seller of mixed spirit drink who acquires or otherwise obtains the right to assign brands of another manufacturer of mixed wine drink, mixed spirit drink manufacturer, outstate seller of mixed wine drink, or outstate seller of mixed spirit drink is not required to assign a new brand extension to the wholesaler that is granted the exclusive sales territory to the brand from which the new brand extension results. Any brand extension assigned between January 1, 1994 and July 1, 1995 shall remain assigned to the assigned wholesaler.

(9) Subsection (1) does not prohibit any of the following:

   a. A manufacturer of wine, an outstate seller of wine, or a master distributor from continuing or renewing an agreement under this act with a wholesaler for a specified brand or brands for any county or part of a county where more than 1 wholesaler has an agreement with the manufacturer of wine, outstate seller of wine, or master distributor in effect on June 1, 2010 if the wholesaler had an agreement to distribute that specified brand or brands in that county or that part of a county and was a master distributor or was actively selling that brand or brands of wine to a retailer in that county or that part of a county on June 1, 2010.

   b. A wholesaler from selling or transferring the wholesaler's distribution rights or a manufacturer of wine, outstate seller of wine, or master distributor from approving the sale or transfer of a wholesaler's distribution rights to a specified brand or brands of wine for any county or part of a county to another wholesaler if the selling or transferring wholesaler, or any of its predecessors, had the right to distribute that brand or brands of wine in that county or part of that county and was actively selling that brand or brands to a retailer in that county or that part of a county on June 1, 2010 or was acting as a master distributor for that county or part of that county on June 1, 2010.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998; Am. 2010, Act 213, Eff. November 17, 2010

CHAPTER 4

436.1401 Wholesalers to be granted exclusive sales territory by manufacturer and outstate seller of beer and malt beverages.

Sec. 401.

(1) A manufacturer and outstate seller of beer and malt beverages shall grant to each of its wholesalers an exclusive sales territory, as agreed upon between the wholesaler and manufacturer or outstate seller of beer, within which the wholesaler shall be the exclusive distributor of the specified brand or brands of the manufacturer or outstate seller of beer.

(2) If the manufacturer or outstate seller manufactures or supplies more than 1 brand of beer or malt beverage, the manufacturer or outstate seller may grant exclusive sales territories to different wholesalers for the sale of the different brand or brands.

(3) Notwithstanding subsection (2), a brand extension is not considered a new or different brand. A manufacturer or outstate seller of beer or malt beverages shall assign a brand extension to the wholesaler that was granted the exclusive sales territory to the brand from which the brand extension resulted.
(4) Subsection (3) does not apply where, before January 1, 1994, a manufacturer or outstate seller of beer or malt beverages had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.
(5) Until July 1, 1995, a manufacturer or outstate seller of beer or malt beverages who acquired or otherwise obtained the right to assign brands of another manufacturer or outstate seller of beer or malt beverages between January 1, 1994 and July 1, 1995 shall assign a brand extension to the wholesaler that was granted the exclusive sales territory to the brand from which the brand extension resulted. Beginning July 1, 1995, a manufacturer or outstate seller of beer or malt beverages who acquires or otherwise obtains the right to assign brands of another manufacturer or outstate seller of beer or malt beverages is not required to assign a new brand extension to the wholesaler that is granted the exclusive sales territory to the brand from which the new brand extension results. Any brand extension assigned between January 1, 1994 and July 1, 1995 shall remain assigned to the assigned wholesaler.
(6) The sales territory shall be the territory agreed upon between the wholesaler and manufacturer or outstate seller.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1403 Beer industry; purpose of section; reasons for regulation; definitions; prohibited conduct; termination, cancellation, nonrenewal, or discontinuance of agreement; burden; notice; test marketing; sales and distribution; additional agreement prohibited; transfer of wholesaler's business; compensation for diminished value of wholesaler's business; arbitration; costs; default; waiver; good faith dispute settlement; agreement binding on successor to supplier; agreements to which section applicable; civil action for actual damages; liability; action for declaratory judgment; exemplary damages; injunctive relief; procedure for resolving violations.

Sec. 403.

(1) The purpose of this section is to provide a structure for the business relations between a wholesaler of beer and a supplier of beer. Regulation in this area is considered necessary for the following reasons:
    (a) To maintain stability and healthy competition in the beer industry in this state.
    (b) To promote and maintain a sound, stable, and viable 3-tier system of distribution of beer to the public.
    (c) To promote the public health, safety, and welfare.
(2) As used in this section, unless the context requires otherwise:
    (a) "Agreement" means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to offer and sell a brand or brands of beer sold by a supplier.
    (b) "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler the primary purpose of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler which recycles empty returnable beverage containers.
    (c) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a wholesaler, who is entitled to inherit the deceased individual's ownership interest in the wholesaler under the terms of the deceased

individual's will, or who has otherwise been designated in writing by the deceased individual to succeed the deceased individual in the wholesaler's business, or is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a wholesaler, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined and interpreted under section 2103 of the uniform commercial code, 1962 PA 174, MCL 440.2103.

(e) "Master distributor" means a wholesaler who acts in the same or similar capacity as a brewer or outstate seller of beer for a brand or brands of beer to other wholesalers on a regular basis in the normal course of business.

(f) "Reasonable qualifications" means the average standard of the criteria used by the respective supplier for wholesalers that entered into or renewed an agreement with the supplier during a period of 24 months prior to the proposed transfer of the wholesaler's business.

(g) "Retaliatory action" means action which includes, but is not limited to, the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

(h) "Sales territory" means an area of exclusive sales responsibility for the brand or brands of beer sold by a supplier as designated by an agreement.

(i) "Successor" means a supplier who obtains, in any manner from any person, including a person who is not a supplier, the distribution rights of 1 or more brands of beer which a licensed Michigan wholesaler has distributed in this state pursuant to an agreement with another supplier who previously had the distribution rights for the brand or brands.

(j) "Supplier" means a brewer, an outstate seller of beer, or a master distributor.

(k) "Transfer of a wholesaler's business" means the voluntary sale, assignment, or other transfer of the business or control of the business of the wholesaler, including the sale or other transfer of stock or assets by merger, consolidation, or dissolution.

(3) A supplier shall not do any of the following:

(a) Coerce, or attempt to coerce, any wholesaler to accept delivery of any beer or other commodity which has not been ordered by the wholesaler. However, a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other wholesalers having an agreement with the supplier.

(b) Coerce, or attempt to coerce, any wholesaler to accept delivery of any beer or other commodity ordered by a wholesaler if the order was properly canceled by the wholesaler in accordance with the procedures agreed upon by the supplier and wholesaler.

(c) Coerce, or attempt to coerce, any wholesaler to do any illegal act by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler.

(d) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of beer of any other supplier anywhere in this state unless the acquisition of the brand or brands of another supplier would materially impair the quality of service of the brand or brands of the supplier presently being sold by the wholesaler.

(e) Require a wholesaler to purchase 1 or more brands of beer in order for the wholesaler to purchase another brand or brands of beer for any reason. However, a wholesaler that has agreed to distribute a brand or brands before June 26, 1984 shall continue to distribute the brand or brands in conformance with this section.

(f) Request a wholesaler to submit profit and loss statements, balance sheets, or financial records as a requirement for renewing or retaining an agreement.

(g) Withhold delivery of beer ordered by a wholesaler, or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith.

(h) Require a wholesaler by any means to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier.
(i) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains, in total, the supplier's agreement with each wholesaler and which designates a specific sales territory. Any agreement which is in existence on June 26, 1984 shall be renewed consistent with this section, except that this section may be incorporated by reference in the agreement.
(j) Fix, maintain, or establish the price at which a wholesaler shall sell any beer.
(k) Take any retaliatory action against a wholesaler that files a complaint regarding an alleged violation by the supplier of state or federal law or an administrative rule.
(l) Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the supplier as of June 26, 1984. Should a wholesaler change an approved manager or successor manager, a supplier shall not require or prohibit the change unless the person fails to meet the reasonable written standards for Michigan wholesalers of the supplier which standards have been provided to the wholesaler.
(m) Require by a provision of any agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with that agreement be determined through the application of any other state's laws, be determined in federal court sitting in a state other than Michigan, or be determined in a state court of a state other than the state of Michigan. A provision contained in any agreement or other instrument in connection with the agreement which contravenes this subdivision shall be null and void.

(4) A wholesaler shall not sell or deliver beer to a retail licensee located outside the sales territory designated by the supplier of a particular brand or brands of beer. However, during periods of temporary service interruptions impacting a particular sales territory, a wholesaler who normally services the impacted sales territory shall file with the commission a written notice designating the specific wholesaler or wholesalers who will service the sales territory during the period of temporary service interruption and the approximate length of time of the service interruption. When the temporary service interruption is over, the wholesaler who normally services the sales territory shall notify in writing the commission and the wholesaler, or wholesalers, which is servicing the sales territory on a temporary basis of this fact and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of the notice.

A wholesaler who is designated to service the impacted sales territory during the period of temporary service shall not be in violation of this subsection.

A wholesaler who has been designated to service the impacted sales territory during the period of temporary service interruption shall not have any of the rights provided under subsections (6) to (12).

(5) A supplier or wholesaler shall not restrict or inhibit, directly or indirectly, the right of free association among suppliers or wholesalers for any lawful purpose.
(6) Notwithstanding the terms, provisions, or conditions of any agreement, a supplier shall not amend any agreement unless the supplier is acting in good faith in making the amendment.
(7) Notwithstanding any agreement and except as otherwise provided for in this section, a supplier shall not cause a wholesaler to resign from an agreement; or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the supplier has complied with all of the following:
    (a) Has satisfied the applicable notice requirements of subsection (10).
    (b) Has acted in good faith.
    (c) Has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.
(8) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (7)(c) when all of the following occur:
    (a) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier.

(b) The supplier first acquired knowledge of the failure described in subdivision (a) not more than 2 years before the date notification was given pursuant to subsection (7).
(c) The wholesaler was given written notice by the supplier of failure to comply with the agreement.
(d) The wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits as provided for in subdivision (e).
(e) The wholesaler has been afforded 30 days in which to submit a plan of corrective action to comply with the agreement and an additional 90 days to cure such noncompliance in accordance with the plan.

(9) For each termination, cancellation, nonrenewal, or discontinuance, the supplier shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.

(10) Notwithstanding any agreement and except as otherwise provided in this section, the supplier shall furnish written notice of the termination, cancellation, nonrenewal, or discontinuance of an agreement to the wholesaler not less than 15 days before the effective date of the termination, cancellation, nonrenewal, or discontinuance. The notice shall be by certified mail and shall contain all of the following:
(a) A statement of intention to terminate, cancel, not renew, or discontinue the agreement.
(b) A statement of the reason for the termination, cancellation, nonrenewal, or discontinuance.
(c) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(11) Notwithstanding subsections (7) and (10), a supplier may terminate, cancel, fail to renew, or discontinue an agreement upon written notice given in the manner and containing the information required by subsection (10) if any of the following occur:
(a) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler which materially affects the wholesaler's ability to remain in business.
(b) Revocation of the wholesaler's license by the commission whereby the wholesaler cannot service the wholesaler's sales territory for more than 60 days.
(c) The wholesaler, or an individual who owns more than 10% of the stock of a corporate wholesaler, has been convicted of a felony. As used in this subdivision, “felony” means a felony under the United States Code or the Michigan Compiled Laws. However, an existing approved stockholder or stockholders shall have the right to purchase the stock of the offending stockholder prior to the conviction of the offending stockholder and, if the sale is completed prior to conviction, the provisions of this subdivision shall not apply.

(12) Notwithstanding subsections (7), (10), and (11), upon not less than 15 days' prior written notice given in the manner and containing the information required by subsection (10), a supplier may terminate, cancel, fail to renew, or discontinue an agreement if any of the following events occur:
(a) There was fraudulent conduct on the part of the wholesaler in dealings with the supplier.
(b) The wholesaler failed to confine its sales of a brand or brands to the assigned sales territory. This subdivision does not apply if there is a dispute between 2 or more wholesalers as to the boundaries of the assigned territory, and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers.
(c) The sale by the wholesaler of any brand or brands sold by the supplier to the wholesaler and known by the wholesaler to be ineligible for sale prior to the actual sale to the retailer. The supplier shall repurchase the ineligible product from the wholesaler when the ineligibility is caused by the supplier. The supplier must give the wholesaler written notice specifying the ineligible product. This subdivision does not apply when a supplier ships a brand or brands to a wholesaler that must be removed within 60 days of the deadline for retail sale of the product. This 60-day period shall commence upon receipt of the product by the wholesaler.

(13) Notwithstanding subsections (7), (10), (11), and (12), a supplier may terminate, cancel, not renew, or discontinue an agreement upon not less than 30 days' prior written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler. Nothing in this section shall prohibit a supplier upon not less than 30 days' notice to discontinue the distribution of any particular brand or package of beer. This subsection does not

prohibit a supplier from conducting test marketing of a new brand of beer or from conducting the test marketing of a brand of beer which is not currently being sold in this state provided that the supplier has notified the commission in writing of its plans to test market. The notice shall describe the market area in which the test shall be conducted; the name or names of the wholesaler or wholesalers who will be selling the beer; the name or names of the brand of beer being tested; and the period of time during which the testing will take place. A market testing period shall not exceed 18 months.

(14) The wholesaler shall devote reasonable efforts and resources to sales and distribution of all the supplier's products which the wholesaler has been granted the right to sell and distribute and shall maintain reasonable sales levels.

(15) A brewer, an outstate seller of beer, or a master distributor that has designated a sales territory for a wholesaler shall not enter into an additional agreement with any other wholesaler for the same brand or brands of beer in the same territory or any portion of that territory.

(16) A supplier shall not withhold consent to any transfer of a wholesaler's business if the proposed transferee meets the material and reasonable qualifications and standards required by the supplier. A wholesaler shall give the supplier written notice of intent to transfer the wholesaler's business. A supplier shall not unreasonably delay a response to a request for a proposed transfer of a wholesaler's business. However, a transfer of a wholesaler's business which is not approved by the supplier shall be null and void. A supplier shall not interfere with, or prevent, the transfer of the wholesaler's business if the proposed transferee is a designated member.

(17) A supplier that has amended, canceled, terminated, or refused to renew any agreement; has caused a wholesaler to resign from an agreement; or has withheld consent to any assignment or transfer of a wholesaler's business, except as provided for in this section, shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business or of any ancillary business which has been negatively affected by the act of the supplier, or both. The value of the wholesaler's business or ancillary business shall include, but not be limited to, its good will.

(18) Either party may, at any time, determine that mutual agreement on the amount of reasonable compensation cannot be reached. Should such a determination be made, the supplier or the wholesaler shall send written notice to the other party declaring their intention to proceed with arbitration. Arbitration shall proceed only by mutual agreement of both parties.

(19) The matter of determining the amount of compensation under arbitration may, by agreement of the parties, be submitted to a 5-member arbitration panel consisting of 2 representatives selected by the supplier but unassociated with the affected supplier, 2 wholesaler representatives selected by the wholesaler but unassociated with the wholesaler, and an impartial arbitrator.

(20) Not more than 10 days after the notice to enter into arbitration has been sent, each party shall request, in writing, a list of 5 arbitrators from the American arbitration association. Not more than 10 days after the receipt of the list of 5 choices, the wholesaler arbitrators and the supplier arbitrators may strike and disqualify up to 2 names each from the list. Should either party fail to respond within the 10 days or should more than 1 name remain, the American arbitration association shall make the selection of the impartial arbitrator.

(21) Not more than 30 days after the list of arbitrators is received, the wholesaler and supplier shall exchange in writing the names of their respective arbitration panel representatives.

(22) Not more than 30 days after the final selection of the arbitration panel is made, the arbitration panel shall convene to decide the dispute. The panel shall render a decision by majority vote of the participants within 20 days from the conclusion of the arbitration.

(23) The cost of the impartial arbitrator, the stenographer, and the meeting site shall be equally divided between the wholesaler and the supplier. All other costs shall be paid by the party incurring them. The award of the arbitration panel shall be final and binding on the parties.

(24) After both parties have agreed to arbitrate should either party fail to abide by the time limitations as prescribed in subsections (20), (21), and (22), or fail or refuse to make the selection of any arbitrators, or fail to participate in the arbitration hearings, the other party shall make the selection of their arbitrators and proceed to arbitration. The party who has failed or refused to comply as prescribed in this subsection shall be considered to be in default. Any party considered to be in default pursuant to this subsection shall have waived any and all rights the party would have had in the arbitration and shall be considered to have consented to the determination of the arbitration panel.

(25) A wholesaler shall not waive any of the rights granted in any provision of this section. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.
(26) A successor to a supplier that continues in business as a brewer, an outstate seller of beer, or a master distributor shall be bound by all terms and conditions of each agreement of the supplier with a wholesaler licensed in this state that were in effect on the date on which the successor received the distribution rights of the previous supplier.
(27) This section shall apply to agreements in existence on June 26, 1984, as well as agreements entered into or renewed after that date.
(28) If a supplier engages in conduct prohibited under this section, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under this section, a supplier with which the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.
(29) A supplier that violates any provision of this section is liable for all actual damages and all court costs and reasonable attorney fees incurred by a wholesaler as a result of that violation. A wholesaler that violates any provision of this section is liable for all actual damages and all court costs and reasonable attorney fees incurred by the supplier as a result of that violation.
(30) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to this section.
(31) Except as otherwise provided in this section, if a court finds that a supplier has not acted in good faith in effecting an amendment, termination, cancellation, or nonrenewal of any agreement; or has unreasonably withheld its consent to any assignment, transfer, or sale of a wholesaler's business, it may award exemplary damages, as well as actual damages, court costs, and reasonable attorney fees to the wholesaler who has been damaged by the action of the supplier.
(32) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this section. If the court grants injunctive relief or issues a temporary restraining order, bond shall not be required to be posted.
(33) The procedure for resolving any violation of subsection (3)(a), (b), (c), (e), (f), (h), (i), (j), (k), (l), or (4) shall be the procedure prescribed by this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Any other violation of or dispute regarding this section, unless the dispute is resolved pursuant to subsections (18) to (24), shall only be resolved by a civil action in court as provided in this section and not by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1405 Brewpub license; requirements for issuance.

Sec. 405.

(1) Subject to section 407, the commission shall issue a brewpub license to a person who is licensed as a food service establishment under part 129 of the public health code, 1978 PA 368, MCL 333.12901 to 333.12922, and who at the time of application for the brewpub license is licensed and continues to be licensed as 1 or more of the following:
    (a) Class C.
    (b) Tavern.
    (c) Class A hotel.
    (d) Class B hotel.
(2) A brewpub shall possess the necessary equipment for a satisfactory operation which shall be maintained in good working order and in a sanitary condition.
(3) Agricultural products processed by a manufacturer shall comply with state law and with rules of the department of agriculture.
(4) A brewpub shall not sell beer in this state unless it provides for each brand or type of beer sold a label that truthfully describes the content of each container and provides proof that a valid “application for

and certification/exemption of label/bottle approval" has been obtained and is unrevoked under the federal malt beverage labeling requirements as published in title 27, part 7, subpart C, C.F.R. 1935, which are hereby adopted by reference.

(5) Each location of a brewpub shall have a manufacturing operation on the licensed premises that complies with subsection (6). A brewpub shall apply for and obtain a license for each location of that brewpub. In determining the 5,000-barrel threshold, all brands and labels of the brewpub produced in this state shall be combined.

(6) Beer shall be manufactured pursuant to federal malt beverage regulations published in title 27, part 25, C.F.R. 1935, which are hereby adopted by reference.

(7) Each brewpub shall submit to the commission, on forms acceptable to the commission and postmarked not later than January 15, April 15, July 15, and October 15 of each year, a beer tax report of all beer sold under their brewpub license during the preceding quarter. Each brewpub shall also submit, with the beer tax report, the payment of the required beer excise tax due pursuant to section 409.

(8) A brewpub shall be the holder of a "brewers notice" as issued by the United States department of treasury, bureau of alcohol, tobacco and firearms in accordance with title 27, part 25, subpart G, C.F.R. 1935.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1407 Brewpub license; additional requirements; renewal and revocation of license.

Sec. 407.

(1) The commission shall grant a brewpub license to a person who, in addition to complying with section 405, does all of the following:
   (a) Pays the fee as prescribed in section 525.
   (b) Provides evidence to the commission that not less than 25% of the gross sales of the restaurant during the 1-year licensure period are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.
   (c) Complies with section 405(3) through (8).

(2) The commission shall renew a brewpub license of a person who does all of the following:
   (a) Pays the fee as prescribed in section 525.
   (b) Provides evidence to the commission that not less than 25% of the gross sales of the restaurant during the 1-year licensure period are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.
   (c) Complies with section 405(3) through (8).

(3) The commission shall revoke a brewpub license if, during the 1-year licensure period, less than 25% of the gross sales of the restaurant are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1409 Beer; taxation; rules; exemptions; rebate; barrel as containing 31 gallons; rule prohibiting licensees from purchasing, receiving, possessing, or selling beer manufactured in designated states; judicial review; tax credit for eligible brewer; "eligible brewer" defined.

Sec. 409.

(1) Except as provided in this section, the commission shall levy and collect a tax on all beer manufactured or sold in this state at the rate of $6.30 per barrel if the beer is sold in bulk or in different quantities. The tax shall be paid by the brewer or brewpub if manufactured in this state or by the wholesaler or the person from whom purchased if manufactured outside this state, whichever is designated by the commission. The commission shall establish by rule a method for the collection of

the tax levied in this subsection. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The tax levied in subsection (1) shall not be collected with respect to beer that is consumed on the premises of the manufacturer or is damaged in the process of brewing, packaging, and storage and is not offered for sale, except that beer sold by a brewpub for consumption on the premises or beer produced and consumed on the premises of a micro brewer is subject to the tax levied under subsection (1).

(3) The tax levied under subsection (1) shall be rebated to the person who paid the tax if that person provides satisfactory proof to the commission that the beer was shipped outside of this state for sale and consumption outside this state.

(4) For the purposes of the tax levied under subsection (1), a barrel of beer contains 31 gallons.

(5) The commission may promulgate a rule that designates the states or the laws or the rules of other states that require a licensed wholesaler of beer to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; that denies the issuance of a license authorizing the importation of beer to any licensed wholesaler of beer in that state who may make application for the license; that prohibits licensed wholesalers of beer in that state from possessing or selling beer purchased in this state, unless the person from whom purchased has secured a license and paid a fee in that state, if the seller does not transport the beer into the state and does not sell the beer in the state; or that imposes any higher taxes or inspection fees upon beer manufactured in this state when transporting the beer into or selling the beer in that state than taxes or fees imposed upon beer manufactured and sold within that state. A rule promulgated under this subsection shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state designated in the rule. A rule promulgated under this subsection becomes effective as provided in section 47 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.247. Any licensee or person adversely affected by a rule promulgated under this subsection is entitled to review by leave to a court of competent jurisdiction regarding the question as to whether the commission acted illegally or in excess of its authority in making its finding under this subsection with respect to any state.

(6) An eligible brewer may claim a credit against the tax levied under subsection (1) in the amount of $2.00 per barrel for the first 30,000 barrels. As used in this subsection, “eligible brewer” means a brewer, whether or not located in this state, or brewpub that manufactures not more than 50,000 barrels of beer during the tax year for which the credit is claimed. In determining the number of barrels for purposes of the credit, all brands and labels of a brewer shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2000, Act 395, Imd. Eff. Jan. 8, 2001

436.1411 Brewer not licensed as microbrewer producing under 200,000 barrels per year; sale of beer for on-premises consumption on licensed brewery premises.

Sec. 411.

A brewer that is not licensed as a microbrewer but produces under 200,000 barrels of beer per calendar year may sell its beer for on-premises consumption at not more than 1 location in this state that is on any of its licensed brewery premises.

History: Add. 2000, Act 395, Imd. Eff. Jan. 8, 2001

436.1413 Participation in beer festival; direct sale by licensed brewpub to holder of special license.

Sec. 413.

Notwithstanding any provision of this act or rule promulgated under this act, a licensed brewpub may directly sell to a holder of a special license issued under section 526, for the purpose of conducting a beer festival, a quantity of beer determined appropriate by the commission for the purpose of participating in a beer festival.

History: Add. 2008, Act 259, Imd. Eff. Aug. 4, 2008

436.1501 Licenses; issuance; fees; bonds or liability insurance; expiration of full-year license; license as contract; operation of establishment upon death of licensee; approval of receiver or trustee; part-year license; transfer of license; approval of application; request for revocation of license or permit by local legislative body; hotels; zones and anniversary dates for renewal of licenses; rules; nontransferable tavern licenses for concessionaires at state fairgrounds; notice contained in application.

Sec. 501.

(1) The commission may issue licenses as provided in this act upon the payment of the fees provided in section 525 and the filing of the bonds required in section 801 or liability insurance as provided in section 803. The commission shall provide a notification of the ability of the purchaser or transferee to obtain a tax clearance certificate, in the manner provided for in subsection (6). Subject to section 906(2) and (3), the commission shall not issue a new on premises license or transfer more than 50% interest in an existing on premises license unless the applicant or transferee offers proof acceptable to the commission that he or she has employed or has present on the licensed premises, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served who have successfully completed a server training program as further described in section 906. The commission may consider an individual enrolled and actively participating in a server training program as having successfully completed the program for such time as the individual is participating. The commission may allow an applicant or a conditionally approved licensee at least 180 days, or more upon a showing of good cause, to meet the minimum personnel training requirements of this subsection. The commission may suspend the license of a conditionally approved licensee for failure to comply with this subsection. The commission may waive the server training requirements of this subsection on the basis of either of the following circumstances:
    (a) The licensee's responsible operating experience or training.
    (b) The person's demonstration of an acceptable level of responsible operation either as a licensee during the preceding 3 years or as a manager with substantial experience in serving alcoholic liquor.

(2) A full-year license issued by the commission shall expire on April 30 following the date of issuance or the date fixed by the commission. A license issued under this act shall be construed as a contract between the commission and the licensee and shall be signed by both parties. If a licensee dies, the commission may approve the operation of the establishment by a personal representative or independent personal representative duly appointed by a court of competent jurisdiction, pending the settlement of the estate of the deceased licensee. The commission may approve a receiver or trustee appointed by a court of competent jurisdiction to operate the licensed establishment of a licensee. The commission may grant a part-year license for a proportionate part of the license fee specified in section 525. In a resort area the commission shall grant a license for a period of time as short as 3 months. A license may be transferred with the consent of the commission. A class C or specially designated distributor license obtained in a manner other than by transfer shall not be transferred within 3 years after its issuance except under circumstances where the licensee clearly and convincingly demonstrates that unusual hardship will result if the transfer does not receive the consent of the commission. An application for a license to sell alcoholic liquor for consumption on the premises, except in a city having a population of 750,000 or more, shall be approved by the local legislative body in which the applicant's place of business is located before the license is granted by the commission, except that in the case of an application for renewal of an existing license, if an objection to a renewal has not been filed with the commission by the local legislative body not less than 30 days before the date of expiration of the license, the approval of the local legislative body shall not be required. The commission shall provide the local legislative body and the local chief of police with the name, home and business addresses, and home and business phone numbers to accomplish the local legislative reviews of new and transferred license applications required by this subsection. Upon request of the local legislative body after due notice and proper hearing by the local

legislative body and the commission, the commission shall revoke the license of a licensee granted a license to sell alcoholic liquor for consumption on the premises or any permit held in conjunction with that license.

(3) A local legislative body, by resolution, may request that the commission revoke the license of a licensee granted a license to sell alcoholic liquor for consumption off the premises whose place of business is located within the local legislative body's jurisdiction and who has been determined pursuant to commission violation hearings to have sold or furnished alcoholic liquor, on at least 3 separate occasions in a single calendar year, to a minor if those violations did not involve the use of falsified or fraudulent identification by the minor. If the commission verifies that the licensee who is the subject of the resolution has been found to have committed the violations as prescribed in this subsection, the commission may suspend or revoke the licensee's license and any permit held in conjunction with that license.

(4) This act does not prohibit a hotel which is or was the holder of a license authorizing the retail sale of alcoholic liquor for consumption on the premises from applying for and receiving under this act any other and different type of license authorizing the retail sale of alcoholic liquor for consumption on the premises, and the application for the license shall not be considered a new application for a license so long as the total number of public licenses for consumption on the premises does not exceed the authorized total established in this act and the sale of alcoholic liquor is approved by the electors. The commission may divide the state into 3 zones and establish for each zone an anniversary date for renewal of full-year retail licenses in the licensing year. The commission shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the effective administration of the renewal of licenses.

(5) The commission, with the written approval of the department of agriculture in the case of the Michigan state fairgrounds and the Upper Peninsula state fairgrounds, may issue without regard to the quota provision of section 531 a tavern license to a person as concessionaire leasing or renting a portion of either the Upper Peninsula state fairgrounds or the state fairgrounds, or both, to service the licensed area in use for recreational or exhibition purposes other than at the time of the annual Upper Peninsula state fair under section 2 of 1927 PA 89, MCL 285.142. A license issued under this subsection is not transferable.

(6) The application for initial licensure or for a transfer of a license shall contain a notice in substantial compliance with the following:

> When purchasing a license, a buyer can be held liable for tax debts incurred by the previous owner. Prior to committing to the purchase of any license or establishment, the buyer should request a tax clearance certificate from the seller that indicates that all taxes have been paid up to the date of issuance. Obtaining sound professional assistance from an attorney or accountant can be helpful to identify and avoid any pitfalls and hidden liabilities when buying even a portion of a business. Sellers can make a request for the tax clearance certificate through the Michigan department of treasury.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 2000, Act 431, Imd. Eff. Jan. 9, 2001 ;-- Am. 2006, Act 547, Imd. Eff. Dec. 29, 2006

436.1503 Licenses; proximity of contemplated location to church or school building; measurement of distance; exceptions; waiver; objection; hearing; transfer to location farther from church or school.

Sec. 503.

(1) A new application for a license to sell alcoholic beverages at retail, or a request to transfer location of an existing license, shall be denied if the contemplated location is within 500 feet of a church or a school building. The distance between the church or school building and the contemplated location shall be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the church or school building nearest to the contemplated location and from the part of the contemplated location nearest to the church or school building.

(2) This section does not apply to specially designated merchants not in conjunction with on the premise licenses.
(3) This section does not apply to an outstanding license issued before March 1, 1949, for a location within the aforesaid distance or to the renewal or transfer of the outstanding license at that location, or to a resort license in effect during the 1948-1949 licensing year, or to the renewal or transfer of the resort at that location or to an application for a license at that location which has been approved by the commission before March 1, 1949, and licenses so issued, renewed, transferred, or approved shall be conclusively presumed to be valid for purposes of this section only.
(4) The commission may waive this section in the case of other classes of licenses. If an objection is not filed by the church or school, the commission may issue the license pursuant to this act. If an objection is filed, the commission shall hold a hearing pursuant to rules established by the commission before making a decision on the issuance of the license.
(5) This section shall not be construed to prevent the transfer of a license to a location farther from a church or school, if the license to be transferred is within the 500-foot radius.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Admin Rule: R 436.1951 et seq. and R 436.1963 of the Michigan Administrative Code.

436.1505 Class “C” or class “B” hotel license; state-owned airport; nontransferable.

Sec. 505.

Notwithstanding section 501, the commission, with the approval of the bureau of aeronautics, may issue without regard to the quota provision of section 531, not more than 1 class C or class B hotel license for each state-owned airport serviced by scheduled commercial passenger airlines. Such license shall not be transferable.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1507 Liquor licenses; publicly owned airports; issuance.

Sec. 507.

The commission may issue, without regard to the quota provisions of section 531, licenses to the owner or lessee, or both, to sell alcoholic beverages for consumption on the premises of buildings in the passenger terminal complex of each publicly owned airport that is served by scheduled commercial passenger airlines certificated to enplane and deplane passengers on a scheduled basis by the federal aviation agency or the civil aeronautics board. A license issued under this section is not transferable.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1509 Liquor licenses; municipal civic center or civic auditorium; conditions and limitations.

Sec. 509.

The commission may issue, without regard to the quota provisions of section 531, licenses to a commission, board, or authority, governing or operating any municipal civic center or civic auditorium or to 1 or more of its concessionaires, or to both, if the center or auditorium is within a city or township having a population of not less than 9,500, if the center or auditorium is owned and operated as a municipal enterprise and if the legislative body of the municipality first authorizes the operating authority of the civic center or civic auditorium or its concessionaire to apply to the commission for a license. Licenses issued under this section shall not be transferable, shall not be issued to an educational institution or for a facility operated in connection with an educational institution, and shall authorize the sale of alcoholic liquor only in connection with a scheduled event at the licensed premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1511 Class “C” or class “B” hotel license for hotel located within Mackinac Island state park; class “C” license for certain concessionaire; license for sale of alcoholic liquor at Presque Isle harbor marina; nontransferability of license.

Sec. 511.

(1) Notwithstanding section 501, the commission may issue the following licenses without regard to the quota provisions of section 531:
   (a) With the approval of the Mackinac Island state park commission, not more than 1 class C or class B hotel license for each hotel which is located within the Mackinac Island state park and is owned by the Mackinac Island state park commission and not more than 1 class C license to a concessionaire of the Mackinac Island state park commission who operates a restaurant located within Fort Mackinac.
   (b) A license for the sale of alcoholic liquor for consumption on or off the premises at the Presque Isle harbor marina.
(2) A license issued under this section is not transferable as to ownership or location.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1513 Licenses; issuance to governing board of college or university; restrictions and prohibition; sale of alcoholic liquor on hotel premises located on land owned by central Michigan university or Wayne state university; conditions; nontransferability; fee; “college,” “university,” and “conference center” defined.

Sec. 513.

(1) The commission may issue to the governing board of a college or university, without regard to the quota provisions of section 531, a license to sell alcoholic liquor for consumption on the premises of a conference center operated by the governing board. Licenses granted under this subsection may be used only for the sale of alcoholic liquor at regularly scheduled conference center activities. The sale of alcoholic liquor to unscheduled patrons or at unscheduled events is prohibited under this subsection.
(2) Subject to the provisions of section 531, the commission may issue a license to a private entity for the sale of alcoholic liquor for consumption on the premises of a hotel located on land owned by central Michigan university if both of the following circumstances exist:
   (a) The land is leased or subleased at fair market value to a private entity that owns, leases, or subleases the hotel building and its fixtures.
   (b) The hotel and land are located within an industrial, research, or commercial development park established by the governing board of central Michigan university.
(3) Subject to the provisions of section 531, the commission may issue a license to a private entity for the sale of alcoholic liquor for consumption on the licensed premises of a restaurant located on land owned by Wayne state university if both of the following circumstances exist:
   (a) The land is leased or subleased at fair market value to a private entity that owns, leases, or subleases the licensed premises for the operation of a restaurant.
   (b) The restaurant is located within an area designated for industrial, research, or commercial development by the governing board of Wayne state university.
(4) Licenses issued pursuant to this section are nontransferable, and the licensee shall pay the fee required under section 525.
(5) As used in this section:
   (a) "College" or "university" means a 2-year or 4-year state supported institution of higher education.
   (b) "Conference center" means a building or portion of a building, other than a student residence hall or student center, which has meeting rooms, banquet areas, social halls, overnight

accommodations, and related facilities for special activities scheduled by the college or university, which in the judgment of the commission, has been regularly used for conferences and lodging of guests. The convocation center and the corporate education center at eastern Michigan university, the Kirkhof and Eberhard centers at Grand Valley state university, the Bernhard center at western Michigan university, the Wadsworth center at Michigan technological university, the West complex at Saginaw Valley state university, the conference center at Big Rapids, the applied technology center at Grand Rapids and the FSU-GR conference center of Ferris state university, Grand Rapids junior college, the Waterman campus center at Schoolcraft college, the Mendel center at Lake Michigan community college, the McGregor memorial conference center at Wayne state university, the Michigan state university management educational center, the Superior dome at northern Michigan university, the Walker Cisler center at Lake Superior state university, the Marie Prahl college center at Mott community college, the John T. Parsons and Frank L. Stulen Michigan technical education center, the Gerald and Frances Oleson center, the Dennos museum center, and the Great Lakes campus at northwestern Michigan college, the farmhouse at Delta college, the Oakland community college culinary studies institute, and the performing arts and cultural center complex at Macomb community college are considered conference centers for the purposes of this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 400, Imd. Eff. Dec. 17, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 2000, Act 344, Imd. Eff. Dec. 27, 2000 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002 ;-- Am. 2004, Act 141, Imd. Eff. June 15, 2004 ;-- Am. 2007, Act 11, Imd. Eff. May 24, 2007 ;-- Am. 2009, Act 48, Imd. Eff. June 18, 2009

436.1514 Hotel and conference center owned and operated by university; issuance of class B hotel license; conditions; limitation; “hospitality program” defined.

Sec. 514.

(1) Notwithstanding section 501 and subject to the quota system under this act, the commission may issue a class B hotel license to a hotel and conference center owned and operated by a university meeting at least all of the following:
   (a) Contains a hotel with at least 150 guest rooms.
   (b) Has a restaurant seating at least 125 guests that serves a full-menu breakfast, lunch, and dinner.
   (c) Has over 30,000 square feet of flexible meeting space.
   (d) Is open year-round to provide services to the public and to serve the mission of the hospitality program.
   (e) Has a hospitality program providing at least all of the following at the site of the hotel and conference center as part of that program:
      (i) Student education classrooms.
      (ii) A working hospitality laboratory setting.
      (iii) Utilization of rotational interns each semester or equivalent time period.
(2) In public areas of the hotel and conference center, the sale and consumption of alcoholic liquor is limited to table service only unless the public areas are reserved for private functions.
(3) As used in this section, “hospitality program” means a course of academic study that, at a minimum, is a nationally accredited program at baccalaureate and graduate levels in the hospitality business that requires at least 120 semester credits or the equivalent for completion of the baccalaureate degree and that has a teaching and research staff predominated by individuals with at least doctoral degrees.

History: Add. 2000, Act 166, Imd. Eff. June 20, 2000

436.1514a Hotel and conference center owned and operated by university with class B hotel license; issuance of additional class B hotel license at another location; conditions; limitation; "hospitality program" defined.

Sec. 514a.

(1) Notwithstanding section 501 and subject to the quota system under this act, the commission may issue a class B hotel license to a hotel and conference center owned and operated by a university that holds a class B hotel license issued under section 514 and meets at least all of the following:
   (a) Contains a hotel with at least 45 guest rooms.
   (b) Has a restaurant seating at least 90 guests that serves a full-menu breakfast, lunch, and dinner.
   (c) Has over 13,000 square feet of flexible meeting space.
   (d) Is open year-round to provide services to the public and to serve the mission of the hospitality program.
   (e) Has a hospitality program providing at least 2 of the following at the site of the hotel and conference center as part of that program:
      (i) Student education classrooms.
      (ii) A working hospitality laboratory setting.
      (iii) Utilization of rotational interns each semester or during the summer.
(2) In public areas of the hotel and conference center, the sale and consumption of alcoholic liquor is limited to table service only unless the public areas are reserved for private functions.
(3) As used in this section, "hospitality program" means a course of academic study that, at a minimum, is a nationally accredited program at baccalaureate and graduate levels in the hospitality business that requires at least 120 semester credits or the equivalent for completion of the baccalaureate degree and that has a teaching and research staff predominated by individuals with at least doctoral degrees.

History: Add. 2004, Act 194, Imd. Eff. July 8, 2004

436.1515 Class "C" license for certain golf courses; tavern license for certain golf courses; transfer of license to another location prohibited; surrender of license.

Sec. 515.

(1) The commission may issue in a county with a population of 1,000,000 or more, without regard to the quota provisions of section 531, a class C license for a golf course that is owned by a county, city, village, or township and is open to the public.
(2) The commission may issue in a county with a population of between 500,000 and 700,000, without regard to the quota provisions of section 531, 1 tavern license for a golf course that is owned by a city with a population of over 190,000 but under 300,000 and is open to the public.
(3) The commission shall not transfer a license issued under this section to another location. If a licensee who receives a license under this section goes out of business, the license issued under this section shall be surrendered to the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2004, Act 192, Imd. Eff. July 8, 2004

436.1517 International sporting event licenses; issuance; circumstances; duration; limitation; list; recommendation by governing body; certification of compliance; fee.

Sec. 517.

(1) The commission may issue international sporting event licenses for the sale of alcoholic liquor for consumption on the premises in connection with an international golf tournament conducted during calendar year 2004 if all of the following circumstances are found by the commission to exist:

(a) The local governmental unit in which the international sporting event is to be conducted is the host governmental unit for that event.
(b) The premises to be licensed are located in a theme area or theme areas designated by the governing body of the host governmental unit in connection with the international sporting event or are operated in conjunction with that event.
(c) The commission determines that the international sporting event will attract a substantial number of tourists from outside this state.
(d) The international sporting event is conducted under the auspices of a national or international sanctioning body.
(e) The applicant is any of the following:
(i) A Michigan licensee for the sale of alcoholic liquor for consumption on the premises.
(ii) The promoter of the international sporting event or an affiliate of the promoter.
(iii) A person who has entered into a written concession or catering agreement with the promoter of the international sporting event or its affiliate, which agreement has been approved by the commission.
(iv) An organization qualified for licensure as a special licensee under section 111(10) and the rules of the commission.

(2) Licenses issued under this section shall be for a period of not more than 30 consecutive days and are not transferable as to ownership or location. The license shall be for specific designated time periods that include the international sporting event and activities associated with the event.
(3) Not more than 40 licenses shall be issued under this section for use at the same time in a theme area or theme areas.
(4) The governing body of a host governmental unit described in subsection (1) shall supply to the commission for the commission's review a list containing the names of applicants and the locations of the premises to be licensed under this section. The governing body of the host governmental unit shall recommend the number of licenses to be issued pursuant to this section in the theme area or theme areas. The commission shall not issue any licenses pursuant to this section that are not recommended by the governing body of the host governmental unit.
(5) The governing body of the host governmental unit shall provide, in conjunction with the list described in subsection (4), written certification to the commission that all premises to be licensed under this section comply with applicable state and local building, safety, and health laws, rules, and regulations.
(6) A license issued pursuant to this section is not subject to section 503.
(7) An applicant for a license under this section shall pay to the commission a license fee of $1,000.00 at the time of application.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2004, Act 169, Imd. Eff. June 24, 2004

436.1517a National sporting event licenses; issuance; circumstances; duration; limitation; list; recommendation by governing body; certification of compliance; fee; “national sporting event” defined.

Sec. 517a.

(1) The commission may issue national sporting event licenses for the sale of alcoholic liquor for consumption on the premises concerning a national sporting event, if all of the following circumstances are found by the commission to exist:
(a) The local governmental unit in which the national sporting event is to be conducted is the host governmental unit for that event.
(b) The premises to be licensed are located in a theme area or theme areas designated by the governing body of the host governmental unit in connection with the national sporting event or are operated in conjunction with that event.
(c) The commission determines that the national sporting event will attract a substantial number of tourists from outside this state.
(d) The national sporting event is conducted under the auspices of a national sanctioning body.

(e) The applicant is any of the following:

(i) A Michigan licensee for the sale of alcoholic liquor for consumption on the premises.

(ii) The promoter of the national sporting event or an affiliate of the promoter.

(iii) A person who has entered into a written concession or catering agreement with the promoter of the national sporting event or its affiliate, which agreement has been approved by the commission.

(iv) An organization qualified for licensure as a special licensee under section 111(10) and the rules of the commission.

(2) Licenses issued under this section shall be for a period of not more than 30 consecutive days and are not transferable as to ownership or location. The license shall be for specific designated time periods that include the national sporting event and activities associated with the national sporting event.

(3) Not more than 40 licenses shall be issued under this section for use at the same time in a theme area or theme areas.

(4) The governing body of a host governmental unit described in subsection (1) shall supply to the commission for the commission's review a list containing the names of applicants and the locations of the premises to be licensed under this section. The governing body of the host governmental unit shall recommend the number of licenses to be issued pursuant to this section in the theme area or theme areas. The commission shall not issue any licenses pursuant to this section that are not recommended by the governing body of the host governmental unit.

(5) The governing body of the host governmental unit shall provide, in conjunction with the list described in subsection (4), written certification to the commission that all premises to be licensed under this section comply with applicable state and local building, safety, and health laws, rules, and regulations.

(6) A license issued pursuant to this section is not subject to section 503.

(7) An applicant for a license under this section shall pay to the commission a license fee of $1,000.00 at the time of application.

(8) As used in this section, “national sporting event” means a sports related event considered of national prominence and includes only the following:

(a) The major league baseball all-star game during calendar year 2005.

(b) The national football league super bowl during calendar year 2006.

(c) The professional golfers association championship during calendar year 2008.

(d) The national college athletic association final four games during calendar year 2009.

History: Add. 2004, Act 170, Imd. Eff. June 24, 2004

436.1518 Definitions; consumption of alcohol on premises of motorsports entertainment complex.

Sec. 518.

(1) As used in this section:

(a) "Motorsports entertainment complex" means a closed-course motorsports facility and its ancillary grounds that comply with all of the following:

(i) Has at least 1,500 fixed seats for race patrons.

(ii) Has at least 7 scheduled days of motorsports events each calendar year.

(iii) Serves food and beverages at the facility during sanctioned motorsports events each calendar year through concession outlets, which may be staffed by individuals who represent or are members of 1 or more nonprofit civic or charitable organizations that directly financially benefit from the concession outlets' sales.

(iv) Engages in tourism promotion.

(b) "Motorsports event" means a motorsports race and its ancillary activities that have been sanctioned by a sanctioning body.

(c) "Owner" means a person who owns and operates a motorsports entertainment complex.

(d) "Sanctioning body" means the American motorcycle association (AMA); auto racing club of America (ARCA); championship auto racing teams (CART); grand American road racing association (GRAND AM); Indy racing league (IRL); national association for stock car auto racing (NASCAR); nation hot rod association (NHRA); professional sportscar racing (PSR); sports car club of America (SCCA); United States auto club (USAC); Michigan state promoters association; or any successor organization or any other nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events and grants rights to conduct the events, that has established and administers rules and regulations governing all participants involved in the events and all persons conducting the events, and that requires certain liability assurances, including insurance.

(2) Notwithstanding the quota provisions of section 531, the commission may issue motorsports event licenses for the sale of beer and wine or beer, wine, mixed spirit drink, and spirits for consumption on the premises to the owner of a motorsports entertainment complex for use during sanctioned motorsports events only. The sale of beer, wine, mixed spirit drink, and spirits at concession outlets or additional locations within the motorsports entertainment complex during motorsports sanctioned events shall not be considered additional bars for the purpose of determining a license fee pursuant to section 525(1)(o). An applicant for a license under this section that elects to sell beer and wine only shall pay to the commission a license fee of $250.00. An applicant for a license under this section that elects to sell beer, wine, mixed spirit drink, and spirits shall pay to the commission a license fee of $600.00.

(3) For a period of time not to exceed 7 consecutive days during which public access is permitted to a motorsports entertainment complex in connection with a motorsports event, members of the general public at least 21 years or older may bring beer and wine not purchased at the licensed motorsports entertainment complex into the motorsports entertainment complex and possess and consume that beer and wine. Possession and consumption of beer and wine under this section are allowed only in portions of the motorsports entertainment complex open to the general public that are also part of the licensed premises of a retail licensee under both of the following circumstances:

(a) The licensed premises are located within the motorsports entertainment complex.

(b) The retail licensee holds a license for consumption on the licensed premises of the motorsports entertainment complex.

(4) A person holding a license for the sale of alcoholic liquor for consumption on the premises at a motorsports entertainment complex is subject to the civil liability provisions of section 801 if the civil action is brought by or on behalf of an individual who suffers damage or is personally injured by a minor or visibly intoxicated person by reason of the unlawful consumption of alcoholic liquor on the licensed premises by that minor or visibly intoxicated person if the unlawful consumption is proven to be a proximate cause of the damage, injury, or death of the individual, whether the alcoholic liquor was sold or furnished by the licensee or was brought onto the licensed premises under subsection (3).

History: Add. 2002, Act 725, Imd. Eff. Dec. 30, 2002 ;-- Am. 2005, Act 166, Imd. Eff. Oct. 6, 2005 ; Am. 2010, Act 279, Imd. Eff. Dec. 16, 2010.

436.1519 Property or establishment situated in or on state-owned land.

Sec. 519.

(1) Except as otherwise provided in this act, the commission shall not issue a license to sell alcoholic liquor, either on or off the premises, if the property or establishment to be covered by the license is situated in or on state owned land.

(2) Subsection (1) does not apply to a special license which has been approved by the governing authority of that state owned land.

(3) Subsection (1) does not apply to the following land:

(a) The Michigan state fairgrounds.

(b) The Upper Peninsula state fairgrounds.

(c) Armories, air bases, and naval installations owned or leased by the state or provided by the federal government by either lease, license, or use permit and used by outside parties of a nonmilitary or nonstate governmental nature.

(d) Land which was under lease to a person licensed in the calendar year 1954 and on which a licensed establishment is presently located.

(e) Land located in the Upper Peninsula which was owned or leased by the federal government, used as a military installation, and transferred to this state before December 31, 2000 pursuant to 1978 PA 151, MCL 3.551 to 3.561, or 1993 PA 159, MCL 3.571 to 3.580. The commission may issue 2 additional licenses pursuant to this subdivision for establishments located on this state land without regard to or without the effect upon the quota provisions of section 531 in the local governmental unit in which the license will be issued subject to the recommendation of the authority established pursuant to those acts. A person issued a license pursuant to this subdivision may renew the license and transfer ownership of the license, without regard to or without the effect upon the quota provisions of section 531, if title to the property covered by the license is transferred from the state to another person or to another governmental unit. The commission shall not transfer a license issued under this subdivision to another location. Before the issuance of a license, and annually thereafter before the issuance of a license for a new licensing period, the applicant for a license shall submit to the commission a certificate from the department or agency charged with control of the land setting forth that the issuance of a license is not incompatible with the objects and purposes entrusted to that department or agency under the law establishing control of the land in the department or agency. This subsection does not prohibit the issuance of a license pursuant to section 513.

(f) Property owned by the Michigan state waterways commission and leased to persons under part 791 (harbor development) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.79101 to 324.79118. A license may be issued under this subdivision to a lessee without regard to the quota provisions of section 531, but the license shall not be issued without the written approval of the Michigan state waterways commission or its designee. A license issued under this subdivision shall not be transferable as to ownership or location, and, if the licensee goes out of business, the license shall be surrendered to the commission.

(g) Property owned by the state treasurer of this state when acting in the capacity of custodian of the assets of the state retirement systems created by the public school employees retirement act of 1979, 1979 PA 300, MCL 38.1301 to 38.1437; the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648; and the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1521 Limitation on tavern or class C licenses; renewal of license; conditions; revocation; transfer of license; issuance of certain licenses prohibited; “development district defined.

Sec. 521.

(1) Beginning on the effective date of the amendatory act that added section 521a, the commission shall not issue any tavern or class C licenses under this section. However, those licenses issued under this section before the effective date of the amendatory act that added section 521a remain valid and may be renewed if in compliance with this section. The commission shall renew licenses issued under this section before the effective date of the amendatory act that added section 521a for persons who operate businesses that meet all of the following conditions:

(a) The business is a full service restaurant, is open to the public, and prepares food on the premises.

(b) The business is open for food service not less than 10 hours per day, 5 days a week.

(c) At least 50% of the gross receipts of the business are derived from the sale of food for consumption on the premises. For purposes of this subdivision, food does not include beer and wine.
(d) The business has dining facilities to seat not less than 25 persons.
(e) The business is located in a development district with a population of not more than 50,000, in which the district, after a public hearing, has found that the issuance of the license would prevent further deterioration within the development district and promote economic growth within the development district.

(2) If in any licensing year the sale of food for consumption on the premises of the business represents less than 50% of the gross receipts for the business, the commission, after due notice and proper hearing, shall revoke the license issued under subsection (1).

(3) A license issued under this section is transferable as to ownership or location only within the development district.

(4) The commission shall not issue a specially designated merchant license, specially designated distributor license, or any other license that allows the sale of alcoholic liquor for consumption off the premises in conjunction with a license issued under this section or at the premises for which a license has been issued under this section.

(5) As used in this section, "development district" means any of the following:
(a) An authority district established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.
(b) An authority district established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.
(c) A downtown district established under 1975 PA 197, MCL 125.1651 to 125.1681.
(d) A principal shopping district established under 1961 PA 120, MCL 125.981 to 125.990m, before January 1, 1996.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 282, Imd. Eff. July 27, 1998 ;-- Am. 2006, Act 502, Imd. Eff. Dec. 29, 2006

436.1521a Public on-premises licenses; issuance to businesses; conditions; commercial investment in redevelopment project area; time period; total investment; number of licenses; requirements; fees; transfer of license prohibited; attempt to secure on-premise escrowed license or quota license; definitions.

Sec. 521a.

(1) In order to allow cities to enhance the quality of life for their residents and visitors to their communities, the commission may issue public on-premises licenses in addition to those quota licenses allowed in cities under section 531(1). The licenses under this section shall be issued to businesses that meet 1 of the following conditions:
(a) Are located in a city redevelopment project area meeting the criteria described in subsections (3) and (4) and are engaged in activities determined by the commission to be related to dining, entertainment, or recreation.
(b) Are located in a development district or area that is any of the following:
(i) An authority district established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.
(ii) A development area established under the corridor improvement authority act, 2005 PA 280, MCL 125.2871 to 125.2899.
(iii) A downtown district established under 1975 PA 197, MCL 125.1651 to 125.1681.
(iv) A principal shopping district established under 1961 PA 120, MCL 125.981 to 125.990m.

(2) The commission shall not issue a license under subsection (1)(a) unless the applicant fulfills the following in relation to the licensed premises:
(a) Provides the activity described in subsection (1)(a) not less than 5 days per week.
(b) Is open to the public not less than 10 hours per day, 5 days per week.

(c) Presents verification of redevelopment project area status to the commission that shall include the following:

(i) A resolution of the governing body of the city establishing its status as a redevelopment project area.

(ii) An affidavit from the assessor, as certified by the city clerk, stating the total amount of investment in real and personal property within the redevelopment project area of the city during the preceding 3 years. In the case of an applicant seeking a license under this section within the first license cycle after December 29, 2006, the time period described in this subdivision may be up to 5 years, or 7 years for a city having a population between 80,000 and 85,000 according to the 2000 federal decennial census and the application is submitted within the first 6 months after December 29, 2006.

(iii) An affidavit from the assessor, as certified by the city clerk, separately stating the amount of investment money expended for manufacturing, industrial, residential, and commercial development within the redevelopment project area of the city during the preceding 3 years. In the case of an applicant seeking a license under this section within the first license cycle after December 29, 2006, the time period described in this subdivision may be up to 5 years, or 7 years for a city having a population between 80,000 and 85,000 according to the 2000 federal decennial census and the application is submitted within the first 6 months after December 29, 2006.

(3) Relative to the licenses issued under subsection (1)(a), the amount of commercial investment in the redevelopment project area within the city shall constitute not less than 25% of the total investment in real and personal property in that redevelopment project area as evidenced by an affidavit of the city assessor. This subsection does not prevent the city from realigning the redevelopment project area in the presentment of verification provided for under subsection (2)(c).

(4) In relation to a license issued under subsection (1)(a), an applicant shall be located in a city that meets at least 1 of the investment requirements of subsection (1)(a) during the 3 years preceding the submission of its application, or within the preceding 5 years in the case of an applicant applying during the first license cycle after December 29, 2006. The total investment in real and personal property in the redevelopment project area within the city over the appropriate time period described in this subsection shall be at least 1 of the following:

(a) Not less than $50,000,000.00 in cities having a population of 50,000 or more.

(b) Not less than an amount reflecting $1,000,000.00 per 1,000 people in cities having a population of less than 50,000.

(5) The commission may issue a license under subsection (1)(a) for each monetary threshold described in subsection (4)(a) and (b), and, after reaching the initial threshold, 1 additional license for each major fraction thereof above that original threshold.

(6) The following apply to a license issued under subsection (1)(b):

(a) The amount expended for the rehabilitation or restoration of the building that housed the licensed premises shall be not less than $75,000.00 over a period of the preceding 5 years or a commitment for a capital investment of at least that amount in the building that houses the licensed premises, which must be expended before the issuance of the license.

(b) The total amount of public and private investment in real and personal property within the qualified redevelopment project area shall not be less than $200,000.00 over a period of the preceding 5 years as verified to the commission by means of an affidavit from the assessor, as certified by the clerk of the local governmental unit.

(c) The licensed business is engaged in dining, entertainment, or recreation, is open to the general public, and has a seating capacity of not less than 25 persons.

(7) The commission may issue 1 license for each monetary threshold described in subsection (6)(b), or for each major fraction thereof. The initial enhanced license fee for a license issued under this section is $20,000.00.

(8) The commission shall not transfer a license issued under this section to another location. If the

licensee goes out of business, the licensee shall surrender the license to the commission. The governing body of the local governmental unit may approve another applicant within a city redevelopment project area to replace a licensee who has surrendered the license issued under this section provided the new applicant's business meets the requirements of this section but without regard to subsections (2)(c), (3), and (4) or subsection (6)(b).

(9) The individual signing the application for the license shall state and demonstrate that the applicant attempted to secure an appropriate on-premise escrowed license or quota license issued under section 531 and that, to the best of his or her knowledge, an on-premise license or quota license issued under section 531 is not readily available within the local unit of government in which the applicant proposes to operate.

(10) As used in this section:

(a) "City" means a city established under either of the following:

(i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(ii) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(b) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(c) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(i) The fair market value of the license, if determinable.

(ii) The size and scope of the proposed operation.

(iii) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

History: Add. 2006, Act 501, Imd. Eff. Dec. 29, 2006; Am. 2010, Act 369, Imd. Eff. Dec. 22, 2010.

436.1522 Banquet facility permits.

Sec. 522.

(1) The commission may issue 1 banquet facility permit to an on-premise licensee, as an extension of that on-premise license, for the serving of alcoholic liquor only on the permitted premises. This section does not limit the number of banquet facility permits that the commission may issue within any local unit of government. The banquet facility shall be used only for scheduled functions and events, shall not have regular meal service, and shall not be generally open to the public. The applicant shall provide documentation that demonstrates a preexisting ownership or lease interest in the banquet facility.

(2) The commission shall charge an initial permit issuance fee and, upon renewal of the permit, a permit renewal fee sufficient to cover the cost of administering the issuance and renewal of the permit. The fees shall be $600.00.

(3) The banquet facility permit expires on the same date as the on-premise license and may be renewed in conjunction with that license. The commission shall issue the permit only to a licensee to which the following apply:

(a) The licensee does not have a record of any prior offenses or violations that the commission considers to be of such a nature as to pose a threat to the general public if a permit is issued.

(b) The licensee has demonstrated to the commission that at least 50% of the gross receipts of the on-premise license are derived from the sale of food and nonalcoholic beverages prepared for consumption on the licensed premises.

(4) The licensee shall apply on forms provided by the commission and provide information considered necessary by the commission to protect the public interest and welfare including, but not limited to, a diagram of the premises and evidence that the premises meets local safety, building, and health codes.

(5) The commission shall not issue a banquet facility permit unless issuance is approved through adoption of a resolution of the legislative body of the local unit of government within which the permitted facility is located.

History: Add. 1998, Act 282, Imd. Eff. July 27, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998

Admin Rule: R 436.1501 et seq. of the Michigan Administrative Code.

436.1523 Liquor licenses; ineligibility of law enforcement officers; exception; "law enforcement personnel" defined.

Sec. 523.

(1) A person who holds or whose spouse holds, either by appointment or election, a public office which involves the duty to enforce any of the penal laws of the United States, or the penal laws of this state, or a penal ordinance or resolution of any municipal subdivision of the state, except civil defense volunteer police, mayors or council members of cities, or village presidents, or mayors of home rule cities whose law enforcement authority under the city charter is restricted to emergency situations, or the state treasurer of this state when acting in the capacity of custodian of the assets of the state retirement systems created by the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408; the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648; and the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and members of these state retirement systems only if the state treasurer makes an investment in the name of the respective retirement system to which such members belong, shall not be issued a license, or have an interest, directly or indirectly, in a license if the activity regulated by the license occurs in the same local unit of government within which the person enforces those state or local penal laws unless the official is contractually prohibited from enforcing this act. This subsection does not apply to a spouse of an appointed or elected official holding an office which involves the duty to enforce a penal law described in this subsection if the spouse held a license or an interest in a license for not less than 3 years before marrying the appointed or elected official or if the spouse has voting rights in a public or private club holding the license, which voting rights are derived from ownership of shares to the club, and the spouse participates as a member in good standing of the public or private club or of an advisory board but does not participate in the day-to-day operation of the club. In the case of any licensee excepted from the general prohibition contained in this section, the commission may periodically review all circumstances of the licensee and his or her spouse regarding the exception. The commission has the authority to review and monitor any complaints it receives regarding inappropriate enforcement of this act by or against a person excepted from this section. However, a nonprofit fraternal organization incorporated under the laws of this state, whose membership is not totally composed of law enforcement personnel or public officeholders charged with the duty of enforcing any penal laws or ordinances of a governmental body, may be issued a club liquor license if the organization is otherwise qualified.

(2) As used in this section, "law enforcement personnel" does not include the mayor of a city or the state treasurer of this state when acting in the capacity of custodian of the assets of the state retirement systems created by the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408, the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648, and the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and members of these state retirement systems only if the state treasurer makes an investment in the name of the respective retirement system to which such members belong.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1525 License fee; filing completed application; issuance of license within certain period of time; report; "completed application" defined.

Sec. 525.

(1) Except as otherwise provided for in this section, the following license fees shall be paid at the time of filing applications or as otherwise provided in this act and are subject to allocation under section 543:

(a) Manufacturers of spirits, but not including makers, blenders, and rectifiers of wines containing 21% or less alcohol by volume, $1,000.00.

(b) Manufacturers of beer, $50.00 per 1,000 barrels, or fraction of a barrel, production annually with a maximum fee of $1,000.00, and in addition $50.00 for each motor vehicle used in delivery to retail licensees. A fee increase does not apply to a manufacturer of less than 15,000 barrels production per year.

(c) Outstate seller of beer, delivering or selling beer in this state, $1,000.00.

(d) Wine makers, blenders, and rectifiers of wine, including makers, blenders, and rectifiers of wines containing 21% or less alcohol by volume, $100.00. The small wine maker license fee is $25.00.

(e) Outstate seller of wine, delivering or selling wine in this state, $300.00.

(f) Outstate seller of mixed spirit drink, delivering or selling mixed spirit drink in this state, $300.00.

(g) Dining cars or other railroad or Pullman cars selling alcoholic liquor, $100.00 per train.

(h) Wholesale vendors other than manufacturers of beer, $300.00 for the first motor vehicle used in delivery to retail licensees and $50.00 for each additional motor vehicle used in delivery to retail licensees.

(i) Watercraft, licensed to carry passengers, selling alcoholic liquor, a minimum fee of $100.00 and a maximum fee of $500.00 per year computed on the basis of $1.00 per person per passenger capacity.

(j) Specially designated merchants, for selling beer or wine for consumption off the premises only but not at wholesale, $100.00 for each location regardless of the fact that the location may be a part of a system or chain of merchandising.

(k) Specially designated distributors licensed by the commission to distribute spirits and mixed spirit drink in the original package for the commission for consumption off the premises, $150.00 per year, and an additional fee of $3.00 for each $1,000.00 or major fraction of that amount in excess of $25,000.00 of the total retail value of merchandise purchased under each license from the commission during the previous calendar year.

(l) Hotels of class A selling beer and wine, a minimum fee of $250.00 and, for all bedrooms in excess of 20, $1.00 for each additional bedroom, but not more than $500.00.

(m) Hotels of class B selling beer, wine, mixed spirit drink, and spirits, a minimum fee of $600.00 and, for all bedrooms in excess of 20, $3.00 for each additional bedroom. If a hotel of class B sells beer, wine, mixed spirit drink, and spirits in more than 1 public bar, the fee entitles the hotel to sell in only 1 public bar, other than a bedroom, and a license shall be secured for each additional public bar, other than a bedroom, the fee for which is $350.00.

(n) Taverns, selling beer and wine, $250.00.

(o) Class C license selling beer, wine, mixed spirit drink, and spirits, $600.00. Subject to section 518(2), if a class C licensee sells beer, wine, mixed spirit drink, and spirits in more than 1 bar, a fee of $350.00 shall be paid for each additional bar. In municipally owned or supported facilities in which nonprofit organizations operate concession stands, a fee of $100.00 shall be paid for each additional bar.

(p) Clubs selling beer, wine, mixed spirit drink, and spirits, $300.00 for clubs having 150 or fewer duly accredited members and $1.00 for each additional member. The membership list for the purpose only of determining the license fees to be paid under this subdivision shall be the accredited list of members as determined by a sworn affidavit 30 days before the closing of the license year. This subdivision does not prevent the commission from checking a membership list and making its own determination from the list or otherwise. The list of

members and additional members is not required of a club paying the maximum fee. The maximum fee shall not exceed $750.00 for any 1 club.

(q) Warehousers, to be fixed by the commission with a minimum fee for each warehouse of $50.00.

(r) Special licenses, a fee of $50.00 per day, except that the fee for that license or permit issued to any bona fide nonprofit association, duly organized and in continuous existence for 1 year before the filing of its application, is $25.00. Not more than 12 special licenses may be granted to any organization, including an auxiliary of the organization, in a calendar year.

(s) Airlines licensed to carry passengers in this state that sell, offer for sale, provide, or transport alcoholic liquor, $600.00.

(t) Brandy manufacturer, $100.00.

(u) Mixed spirit drink manufacturer, $100.00.

(v) Brewpub, $100.00.

(w) Class G-1, $1,000.00.

(x) Class G-2, $500.00.

(y) Motorsports event license, the amount as described and determined under section 518(2).

(z) Small distiller, $100.00.

(aa) Wine auction license, $50,000.00.

(bb) Nonpublic continuing care retirement center license, $600.00.

(2) The fees provided in this act for the various types of licenses shall not be prorated for a portion of the effective period of the license. Notwithstanding subsection (1), the initial license fee for any licenses issued under section 531(3) or (4) is $20,000.00. The renewal license fee shall be the amount described in subsection (1). However, the commission shall not impose the $20,000.00 initial license fee for applicants whose license eligibility was already approved on July 20, 2005.

(3) Beginning July 23, 2004, and except in the case of any resort or resort economic development license issued under section 531(2), (3), (4), or (5) or a license issued under section 521, the commission shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the commission, the commission shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility upon an applicant determined otherwise ineligible for issuance of a license. The 90-day period is tolled under any of the following circumstances:

(a) Notice sent by the commission of a deficiency in the application until the date all of the requested information is received by the commission.

(b) The time period during which actions required by a party other than the applicant or the commission are completed that include, but are not limited to, completion of construction or renovation of the licensed premises; mandated inspections by the commission or by any state, local, or federal agency; approval by the legislative body of a local unit of government; criminal history or criminal record checks; financial or court record checks; or other actions mandated by this act or rule or as otherwise mandated by law or local ordinance.

(4) If the commission fails to issue or deny a license within the time required by this section, the commission shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the commission to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The commission shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(5) Beginning October 1, 2005, the chair of the commission shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with liquor license issues. The chair of the commission shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the commission received and completed within the 90-day time period described in subsection (3).

(b) The number of applications denied.
(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees under subsection (4).

(6) As used in this section, “completed application” means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2002, Act 76, Imd. Eff. Mar. 15, 2002 ;-- Am. 2004, Act 266, Imd. Eff. July 23, 2004 ;-- Am. 2005, Act 97, Imd. Eff. July 20, 2005 ;-- Am. 2005, Act 166, Imd. Eff. Oct. 6, 2005 ;-- Am. 2006, Act 539, Imd. Eff. Dec. 29, 2006 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010; Am. 2010, Act 213, Eff. November 17, 2010; Am. 2010, Act 279, Imd. Eff. Dec. 16, 2010.

Constitutionality: In Granholm v Heald, 544 US 460 (2005), the United States Supreme Court held that Michigan laws regulating direct shipment of alcohol to in-state consumers discriminated against interstate commerce in violation of clause 3 of section 8 of article 1 of the United States Constitution, and that the powers granted to states under the 21st Amendment to the United States Constitution do not authorize violation of other constitutional provisions.

436.1526 Beer festival; issuance of special license; limitation; buying directly from licensed brewpub; “beer festival” defined.

Sec. 526.

(1) The commission may issue a special license under this section to any organization conducting a beer festival. The application shall conform to the following:
(a) Be submitted by a nonprofit entity composed primarily of brewers, microbrewers, and brewpubs, as determined by the commission.
(b) Involve an event having for its primary purpose the showcasing of beer and its production.
(c) Be accompanied by a fee of $25.00 per day of the event.

(2) The special license shall not allow more than 6 events per calendar year conforming to the requirements of subsection (1).

(3) A holder of a special license issued under this section may buy a quantity of beer, as determined appropriate under the circumstances by the commission, directly from any licensed brewpub for consumption only at the licensed event.

(4) As used in this section and section 413, "beer festival" means an event at which the various types and kinds of beer and the production of that beer are showcased to the general public and at which the general public can purchase and sample the beer being showcased for consumption on the licensed premises.

History: Add. 2008, Act 258, Imd. Eff. Aug. 4, 2008

436.1527 Special license for nonprofit charitable organization; issuance; nontransferable; fee; auction.

Sec. 527.

(1) The commission may issue a special license to a nonprofit charitable organization that is exempt from the payment of taxes under the internal revenue code for the purpose of allowing the organization to sell, at auction, wine donated to the organization.

(2) A special license issued pursuant to subsection (1) is not transferable. The organization applying for the special license shall pay the fee required under section 525(1)(r).

(3) An auction permitted under subsection (1) may occur upon premises which are otherwise licensed under this act to allow the sale of alcoholic liquor for consumption on the licensed premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1529 Transfer of license or interest in license; notice of transfer of stock in licensed corporation or licensed limited partnership; investigation to ensure compliance; approval; transfer fee; inspection fee.

Sec. 529.

(1) A license or an interest in a license shall not be transferred from 1 person to another without the prior approval of the commission. For purposes of this section, the transfer in the aggregate to another person during any single licensing year of more than 10% of the outstanding stock of a licensed corporation or more than 10% of the total interest in a licensed limited partnership shall be considered to be a transfer requiring the prior approval of the commission.

(2) Not later than July 1 of each year, each privately held licensed corporation and each licensed limited partnership shall notify the commission as to whether any of the shares of stock in the corporation, or interest in the limited partnership, have been transferred during the preceding licensing year. The commission may investigate the transfer of any number of shares of stock in a licensed corporation, or any amount of interest in a licensed limited partnership, for the purpose of ensuring compliance with this act and the rules promulgated under this act.

(3) Except as otherwise provided in subdivisions (a) through (f), upon approval by the commission of a transfer subject to subsection (1), there shall be paid to the commission a transfer fee equal to the fee provided in this act for the class of license being transferred. A transfer fee shall not be prorated for a portion of the effective period of the license. If a person holding more than 1 license or more than 1 interest in a license at more than 1 location, but in the name of a single legal entity, transfers all of the licenses or interests in licenses simultaneously to another single legal entity, the transfers shall be considered 1 transfer for purposes of determining a transfer fee, payable in an amount equal to the highest license fee provided in this act for any of the licenses, or interests in licenses, being transferred. A transfer fee shall not be required in regard to any of the following:

(a) The transfer, in the aggregate, of less than 50% of the outstanding shares of stock in a licensed corporation or less than 50% of the total interest in a licensed limited partnership during any licensing year.

(b) The exchange of the assets of a licensed sole proprietorship, licensed general partnership, or licensed limited partnership for all outstanding shares of stock in a corporation in which either the sole proprietor, all members of the general partnership, or all members of the limited partnership are the only stockholders of that corporation. An exchange under this subdivision shall not be considered an application for a license for the purposes of section 501.

(c) The transfer of the interest in a licensed business of a deceased licensee, a deceased stockholder, or a deceased member of a general or limited partnership to the deceased person's spouse or children.

(d) The removal of a member of a firm, a stockholder, a member of a general partnership or limited partnership, or association of licensees from a license.

(e) The addition to a license of the spouse, son, daughter, or parent of any of the following:

(i) A licensed sole proprietor.

(ii) A stockholder in a licensed corporation.

(iii) A member of a licensed general partnership, licensed limited partnership, or other licensed association.

(f) The occurrence of any of the following events:

(i) A corporate stock split of a licensed corporation.

(ii) The issuance to a stockholder of a licensed corporation of previously unissued stock as compensation for services performed.

(iii) The redemption by a licensed corporation of its own stock.

(4) A nonrefundable inspection fee of $70.00 shall be paid to the commission by an applicant or licensee at the time of filing any of the following:

(a) An application for a new license or permit.

(b) A request for approval of a transfer of ownership or location of a license.

(c) A request for approval to increase or decrease the size of the licensed premises, or to add a bar.
(d) A request for approval of the transfer in any licensing year of any of the shares of stock in a licensed corporation from 1 person to another, or any part of the total interest in a licensed limited partnership from 1 person to another.

(5) An inspection fee shall be returned to the person by whom it was paid if the purpose of the inspection was to inspect the physical premises of the licensee, and the inspection was not actually conducted. An inspection fee shall not be required for any of the following:
(a) The issuance or transfer of a special license, salesperson license, limited alcohol buyer license, corporate salesperson license, hospital permit, military permit, or Sunday sale of spirits permit.
(b) The issuance of a new permit, or the transfer of an existing permit, if the permit is issued or transferred simultaneously with the issuance or transfer of a license or an interest in a license.
(c) The issuance of authorized but previously unissued corporate stock to an existing stockholder of a licensed corporation.
(d) The transfer from a corporation to an existing stockholder of any of the corporation's stock that is owned by the corporation itself.

(6) All inspection fees collected under this section shall be deposited in the special fund in section 543 for carrying out of the licensing and enforcement provisions of this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1531 Public licenses and resort licenses; on-premise escrowed licenses; limitations and quotas; additional licenses for certain establishments; license for certain events at public university; economic development factors; exceptions as to certain veterans and airports; special state census of local governmental unit; rules; availability of transferable licenses held in escrow; on-premise escrowed or quota license; issuance of available licenses; report; hotels; definitions.

Sec. 531.

(1) A public license shall not be granted for the sale of alcoholic liquor for consumption on the premises in excess of 1 license for each 1,500 of population or major fraction thereof. On-premises escrowed licenses issued under this subsection may be transferred subject to local legislative approval under section 501(2) to an applicant whose proposed operation is located within any local governmental unit in a county in which the escrowed license was located. However, beginning July 8, 2004, and until July 1, 2009, if the on-premises escrowed license was issued to a location within a city with a population of over 190,000 but under 300,000, the on-premises escrowed license shall not be transferred to an applicant whose proposed operation is located within any other local governmental unit in the county in which that city is located and, in addition, an escrowed license located within any local governmental unit in that county is not transferable into the city with a population of over 190,000 but under 300,000. If the local governmental unit within which the former licensee's premises were located spans more than 1 county, an escrowed license is available subject to local legislative approval under section 501(2) to an applicant whose proposed operation is located within any local governmental unit in either county. If an escrowed license is activated within a local governmental unit other than that local governmental unit within which the escrowed license was originally issued, the commission shall count that activated license against the local governmental unit originally issuing the license. This quota does not bar the right of an existing licensee to renew a license or transfer the license and does not bar the right of an on-premise licensee of any class to reclassify to another class of on-premises license in a manner not in violation of law or this act, subject to the consent of the commission. The upgrading of a license resulting from a request under this subsection shall be approved by the local governmental unit having jurisdiction.

(2) In a resort area, the commission may issue 1 or more licenses for a period not to exceed 12 months without regard to a limitation because of population, but not in excess of 550, and with respect to the

resort license the commission, by rule, shall define and classify resort seasons by months and may issue 1 or more licenses for resort seasons without regard to the calendar year or licensing year.

(3) In addition to the resort licenses authorized in subsection (2), the commission may issue not more than 5 additional licenses per year to establishments whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area, whose primary purpose is not for the sale of alcoholic liquor, and whose capital investment in real property, leasehold improvement, and fixtures for the premises to be licensed is $75,000.00 or more. Further, the commission shall issue 1 license under this subsection per year to an applicant located in a rural area that has a poverty rate, as defined by the latest decennial census, greater than the statewide average, or that is located in a rural area that has an unemployment rate higher than the statewide average for 3 of the 5 preceding years. In counties having a population of less than 50,000, as determined by the last federal decennial census or as determined pursuant to subsection (11) and subject to subsection (16) in the case of a class A hotel or a class B hotel, the commission shall not require the establishments to have dining facilities to seat more than 50 persons. The commission may cancel the license if the resort is no longer active or no longer qualifies for the license. Before January 16 of each year the commission shall transmit to the legislature a report giving details as to the number of applications received under this subsection; the number of licenses granted and to whom; the number of applications rejected and the reasons; and the number of the licenses revoked, suspended, or other disciplinary action taken and against whom and the grounds for revocation, suspension, or disciplinary action.

(4) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under subsection (1) and the resort licenses authorized in subsections (2) and (3), the commission may issue not more than 15 resort economic development licenses per year. A person is eligible to apply for a resort economic development license under this subsection upon submitting an application to the commission and demonstrating all of the following:

    (a) The establishment's business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area.
    (b) The establishment's primary business is not the sale of alcoholic liquor.
    (c) The capital investment in real property, leasehold improvement, fixtures, and inventory for the premises to be licensed is in excess of $1,500,000.00.
    (d) The establishment does not allow or permit casino gambling on the premises.

(5) In governmental units having a population of 50,000 persons or less, as determined by the last federal decennial census or as determined pursuant to subsection (11), in which the quota of specially designated distributor licenses, as provided by section 533, has been exhausted, the commission may issue not more than a total of 10 additional specially designated distributor licenses per year to established merchants whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area. A specially designated distributor license issued pursuant to this subsection may be issued at a location within 2,640 feet of existing specially designated distributor license locations. A specially designated distributor license issued pursuant to this subsection shall not bar another specially designated distributor licensee from transferring location to within 2,640 feet of said licensed location. A specially designated distributor license issued pursuant to section 533 may be located within 2,640 feet of a specially designated distributor license issued pursuant to this subsection.

(6) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under subsection (1), and the resort or resort economic development licenses authorized in subsections (2), (3), and (4), and notwithstanding section 519, the commission may issue not more than 5 additional special purpose licenses in any calendar year for the sale of beer and wine for consumption on the premises. A special purpose license issued pursuant to this subsection shall be issued only for events which are to be held from May 1 to September 30, are artistic in nature, and which are to be held on the campus of a public university with an enrollment of 30,000 or more students. A special purpose license shall be valid for 30 days or for the duration of the event for which it is issued, whichever is less. The fee for a special purpose license shall be $50.00. A special purpose license may be issued only to a corporation which is all of the following:

    (a) Is a nonprofit corporation organized pursuant to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(b) Has a board of directors constituted of members of whom half are elected by the public university at which the event is scheduled and half are elected by the local governmental unit.
(c) Has been in continuous existence for not less than 6 years.

(7) Notwithstanding the local legislative body approval provision of section 501(2) and notwithstanding the provisions of section 519, the commission may issue, without regard to the quota provisions of subsection (1) and with the approval of the governing board of the university, either a tavern or class C license which may be used only for regularly scheduled events at a public university's established outdoor program or festival at a facility on the campus of a public university having a head count enrollment of 10,000 students or more. A license issued under this subsection may only be issued to the governing board of a public university, a person that is the lessee or concessionaire of the governing board of the university, or both. A license issued under this subsection is not transferable as to ownership or location. A license issued under this subsection may not be issued at an outdoor stadium customarily used for intercollegiate athletic events.

(8) In issuing a resort or resort economic development license under subsection (3), (4), or (5), the commission shall consider economic development factors of the area in the issuance of licenses to establishments designed to stimulate and promote the resort and tourist industry. The commission shall not transfer a resort or resort economic development license issued under subsection (3), (4), or (5) to another location. If the licensee goes out of business the license shall be surrendered to the commission.

(9) The limitations and quotas of this section are not applicable to the issuance of a new license to a veteran of the armed forces of the United States who was honorably discharged or released under honorable conditions from the armed forces of the United States and who had by forced sale disposed of a similar license within 90 days before or after entering or while serving in the armed forces of the United States, as a part of the person's preparation for that service if the application for a new license is submitted for the same governmental unit in which the previous license was issued and within 60 days after the discharge of the applicant from the armed forces of the United States.

(10) The limitations and quotas of this section shall not be applicable to the issuance of a new license or the renewal of an existing license where the property or establishment to be licensed is situated in or on land on which an airport owned by a county or in which a county has an interest is situated.

(11) For purposes of implementing this section a special state census of a local governmental unit may be taken at the expense of the local governmental unit by the federal bureau of census or the secretary of state under section 6 of the home rule city act, 1909 PA 279, MCL 117.6. The special census shall be initiated by resolution of the governing body of the local governmental unit involved. The secretary of state may promulgate additional rules necessary for implementing this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(12) Before granting an approval as required in section 501(2) for a license to be issued under subsection (2), (3), or (4), a local legislative body shall disclose the availability of transferable licenses held in escrow for more than 1 licensing year within that respective local governmental unit. Public notice of the meeting to consider the granting of the license by the local governmental unit shall be made 2 weeks before the meeting.

(13) The person signing the application for an on-premise resort or resort economic development license shall state and verify that he or she attempted to secure an on-premise escrowed license or quota license and that, to the best of his or her knowledge, an on-premise escrowed license or quota license is not readily available within the county in which the applicant for the on-premise resort or resort economic development license proposes to operate, except that until July 1, 2009, and in the case involving a city with a population of over 190,000 but under 300,000 that verification is not required.

(14) The commission shall not issue an on-premise resort or resort economic development license if the county within which the resort or resort economic development license applicant proposes to operate has not issued all on-premise licenses available under subsection (1) or if an on-premise escrowed license exists and is readily available within the local governmental unit in which the applicant for the on-premise resort or resort economic development license proposes to operate, except until July 1, 2009, in the case involving a city with a population of over 190,000 but under 300,000. The commission may waive the provisions of this subsection upon a showing of good cause.

(15) The commission shall annually report to the legislature the names of the businesses issued licenses under this section and their locations.

(16) The commission shall not require a class A hotel or a class B hotel licensed pursuant to subsection (2), (3), or (4) to provide food service to registered guests or to the public.

(17) Subject to the limitation and quotas of subsection (1) and to local legislative approval under section 501(2), the commission may approve the transfer of ownership and location of an on-premises escrowed license within the same county to a class G-1 or class G-2 license or may approve the reclassification of an existing on-premises license at the location to be licensed to a class G-1 license or to a class G-2 license, subject to subsection (1). Resort or economic development on-premises licenses created under subsection (3) or (4) may not be issued as, or reclassified to, a class G-1 or class G-2 license.

(18) As used in this section:

(a) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(b) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(i) The fair market value of the license, if determinable.

(ii) The size and scope of the proposed operation.

(iii) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 282, Imd. Eff. July 27, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 1999, Act 91, Imd. Eff. June 30, 1999 ;-- Am. 2000, Act 399, Imd. Eff. Jan. 8, 2001 ;-- Am. 2001, Act 223, Eff. Mar. 22, 2002 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002 ;-- Am. 2004, Act 191, Imd. Eff. July 8, 2004 ;-- Am. 2005, Act 97, Imd. Eff. July 20, 2005

436.1532 Issuance of club license; public notice; annual filing by club; conduct of club affairs and management.

Sec. 532.

(1) A club license allows the licensee to sell, for consumption on the licensed premises, beer, wine, mixed spirit drink, and spirits only to bona fide members of the club who have attained the age of 21 years. Except as otherwise provided in subsection (2), the commission shall not issue a license to a club unless the club has been in existence for a period of not less than 2 years before the application for the license.

(2) Public notice of the intent of the commission to issue the club license shall be given by publication in some newspaper published or in general circulation within the local governmental unit at least 10 days before the issuance of the license. A club that is a chapter of a national organization that has had a license for 10 or more years may apply for a license without a waiting period. Public notice of the commission's intent to renew the club license is not required.

(3) Except in the case of a club paying a maximum fee, within 10 days after February 1 of each year the club shall file with the commission a list of names and residences of its members and make a similar filing of the name and residence with the commission within 10 days after the election of an additional member. The annual filing shall also include a statement that the club's annual aggregate membership fees or dues and other income, exclusive of the proceeds from the sale of alcoholic liquor, are sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, are sufficient to meet the taxes, insurance, repairs, and interest on a mortgage on the premises.

(4) The affairs and management of the club shall be conducted by a board of directors, executive committee, or similar body chosen by the members. A member, officer, agent, or employee of the club shall not be paid, or directly or indirectly receive in the form of salary or other compensation, profits from the disposition of alcoholic liquor to the club or to the members of the club, beyond the amount of salary fixed and voted at meetings by the members or by its directors or other governing body and as reported by the club to the commission, within 3 months after the meeting.

History: Add. 2001, Act 223, Eff. Mar. 22, 2002

436.1533 Eligibility for license as specially designated merchant or specially designated distributor.

Sec. 533.

A retail vendor licensed under this act to sell for consumption on the premises may apply for a license as a specially designated merchant. A specially designated distributor may apply for a license as a specially designated merchant. In cities, incorporated villages, or townships, the commission shall issue only 1 specially designated distributor license for each 3,000 of population, or fraction of 3,000. The quota requirement may be waived at the discretion of the commission if there is no existing specially designated distributor licensee within 2 miles of the applicant, measured along the nearest traffic route.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998

436.1534 Small distiller license.

Sec. 534.

(1) Upon application in a manner acceptable to the commission and payment of the appropriate license fee, the commission shall issue a small distiller license to a person annually manufacturing in Michigan spirits in an amount not exceeding 60,000 gallons, of all brands combined.
(2) A small distiller may only sell at retail from the licensed premises either or both of the following:
    (a) Brands it manufactures on the licensed premises for consumption off the licensed premises, at a price posted by the commission under section 233.
    (b) Brands it manufactures on the licensed premises for consumption on the licensed premises.
(3) A small distiller may give samplings or tastings of brands it manufactures on the licensed premises.
(4) A small distiller shall comply with the server training requirements of section 906.
(5) This section does not allow the sale of spirits transacted or caused to be transacted by means of any mail order, internet, telephone, computer, device, or other electronic means.

History: Add. 2008, Act 218, Imd. Eff. July 16, 2008

436.1535 Vendor as authorized to do business.

Sec. 535.

A vendor shall be a person authorized to do business under the laws of this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1537 Classes of vendors permitted to sell alcoholic liquors at retail; sale of wine by wine maker; wine tastings.

Sec. 537.

(1) The following classes of vendors may sell alcoholic liquors at retail as provided in this section:
    (a) Taverns where beer and wine may be sold for consumption on the premises only.
    (b) Class C license where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises.
    (c) Clubs where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to bona fide members where consumption is limited to these members and their bona fide guests, who have attained the age of 21 years.
    (d) Direct shippers where wine may be sold and shipped directly to the consumer.
    (e) Hotels of class A where beer and wine may be sold for consumption on the premises and in the rooms of bona fide registered guests. Hotels of class B where beer, wine, mixed spirit

drink, and spirits may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(f) Specially designated merchants, where beer and wine may be sold for consumption off the premises only.

(g) Specially designated distributors where spirits and mixed spirit drink may be sold for consumption off the premises only.

(h) Special licenses where beer and wine or beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only.

(i) Dining cars or other railroad or Pullman cars, watercraft, or aircraft, where alcoholic liquor may be sold for consumption on the premises only, subject to rules promulgated by the commission.

(j) Brewpubs where beer manufactured on the premises by the licensee may be sold for consumption on or off the premises by any of the following licensees:

(i) Class C.

(ii) Tavern.

(iii) Class A hotel.

(iv) Class B hotel.

(k) Micro brewers and brewers selling less than 200,000 barrels of beer per year where beer produced by the micro brewer or brewer may be sold to a consumer for consumption on or off the brewery premises.

(l) Class G-1 license where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.

(m) Class G-2 license where beer and wine may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.

(n) Motorsports event license where beer and wine may be sold for consumption on the premises during sanctioned motorsports events only.

(o) Wine maker where wine may be sold by direct shipment, at retail on the licensed premises, and as provided for in subsections (2) and (3).

(p) Small distiller selling not more than 60,000 gallons of spirits manufactured by that licensee to the consumer at retail for consumption on or off the licensed premises in the manner provided for in section 534.

(q) Nonpublic continuing care retirement center license, where beer, wine, mixed spirit drink, mixed wine drink, and spirits may be sold at retail and served on the licensed premises to residents and bona fide guests accompanying the resident for consumption only on the licensed premises.

(2) A wine maker may sell wine made by that wine maker in a restaurant for consumption on or off the premises if the restaurant is owned by the wine maker or operated by another person under an agreement approved by the commission and located on the premises where the wine maker is licensed.

(3) A wine maker, with the prior written approval of the commission, may conduct wine tastings of wines made by that wine maker on the premises where the wine maker is licensed to manufacture wine. The wine maker may charge for the samples.

(4) A wine maker, with the prior written approval of the commission, may conduct wine tastings of wines made by that wine maker and may sell the wine made by that wine maker for consumption off the premises at a location other than the premises where the wine maker is licensed to manufacture wine, under the following conditions:

(a) The premises upon which the wine tasting occurs conforms to local and state sanitation requirements.

(b) Payment of a $100.00 fee per location is made to the commission.

(c) The wine tasting locations shall be considered licensed premises, and the wine maker may include a charge for the samples.

(d) Wine tasting takes place during the legal hours for the sale of alcoholic liquor by the licensee.

(e) The premises and the licensee comply with and are subject to all applicable rules promulgated by the commission.

(5) Notwithstanding section 1025(1), an outstate seller of beer, an outstate seller of wine, a wine maker, a brewer, a micro brewer, or a specially designated merchant, or an agent of any of those persons, who does not hold a license allowing the consumption of alcoholic liquor on the premises at the same licensed address, may conduct beer and wine tastings on the licensed premises of a specially designated merchant under the following conditions:
    (a) A customer is not charged for the tasting of beer or wine.
    (b) The tasting samples provided to a customer do not exceed 3 servings at up to 3 ounces per serving of beer or 3 servings at up to 2 ounces of wine. A customer shall not be provided more than a total of 3 samples of beer or wine within a 24-hour period per licensed premises.
    (c) The specially designated merchant, outstate seller of beer, outstate seller of wine, wine maker, micro brewer, or brewer has first obtained an annual beer and wine tasting permit approved by the commission.
    (d) The commission is notified, in writing, a minimum of 10 working days prior to the event, regarding the date, time, and location of the event.
(6) During the time a beer or wine tasting is conducted under subsection (5), specially designated merchant, outstate seller of beer, outstate seller of wine, wine maker, micro brewer, or brewer, or its agent or employee who has successfully completed a server training program as provided for in section 906, shall devote full time to the beer and wine tasting activity and shall perform no other duties, including the sale of alcoholic liquor for consumption off the licensed premises. Beer and wine used for the tasting must come from the specially designated merchant's inventory, and all open bottles must be removed from the premises on the same business day or resealed and stored in a locked, separate storage compartment on the licensed premises when not being used for the activities allowed by the permit.
(7) A wholesaler is prohibited from conducting or participating in beer and wine tastings allowed by the permit created in subsection (5).
(8) A beer and wine tasting under subsection (5) may only be conducted during the legal hours for sale of alcoholic liquor by the licensee.
(9) A brandy manufacturer or small distiller, with the prior written approval of the commission, may conduct tastings of brandy and spirits made by that brandy manufacturer or small distiller and may sell the brandy and spirits made by that brandy manufacturer or small distiller for consumption off the licensed premises at a location other than the licensed premises where the brandy manufacturer or small distiller is licensed to manufacture brandy or spirits under the following conditions:
    (a) The premises upon which the brandy and spirits tastings occur conform to local and state sanitation requirements.
    (b) Payment of a $100.00 fee per location is made to the commission.
    (c) The brandy and spirits tasting locations shall be considered licensed premises.
    (d) Brandy and spirits tasting shall take place during the legal hours for selling alcoholic liquor by the licensee.
    (e) The premises and the license comply with and are subject to all applicable rules promulgated by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2001, Act 223, Eff. Mar. 22, 2002 ;-- Am. 2005, Act 166, Imd. Eff. Oct. 6, 2005 ;-- Am. 2005, Act 269, Imd. Eff. Dec. 16, 2005 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008; Am. 2010, Act 213, Eff. November 17, 2010

436.1539 Marina as specially designated merchant or distributor; license; conditions.

Sec. 539.

A marina that is situated on 1 of the Great Lakes, on that part of an inland waterway or tributary connected to and navigable to 1 of the Great Lakes, or on a Great Lakes connecting waterway may be issued a license as a specially designated merchant or specially designated distributor, notwithstanding the fact that the marina maintains motor vehicle fuel pumps on or adjacent to the licensed premises, or maintains a financial interest in any motor vehicle fuel pumps if both of the following conditions are met:

(a) The marina's primary business is the sale of boats or the provision of services and supplies to recreational power cruisers and sailboats of the type that typically travel on the Great Lakes.

(b) The fuel pumps are used for dispensing fuel only to boats described in subdivision (a).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1541 Motor vehicle fuel pumps.

Sec. 541.

(1) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license or specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises, if both of the following conditions are met:
   (a) One or both of the following conditions exist:
      (i) The applicant or licensee is located in a neighborhood shopping center composed of 1 or more commercial establishments organized or operated as a unit which is related in location, size, and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable retail space, and which provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space.
      (ii) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than $250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.
   (b) The site of payment and selection of alcoholic liquor is not less than 50 feet from that point where motor vehicle fuel is dispensed.

(2) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license or specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises, if all of the following conditions are met:
   (a) The applicant is located in a township with a population of 7,000 or less, which township is not contiguous with any other township. For purposes of this subdivision, a township is not considered contiguous by water.
   (b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than $12,500.00 at cost, of those goods and services customarily marketed by approved types of businesses.
   (c) The applicant has the approval of the township, as evidenced by a resolution duly adopted by the township and submitted with the application to the commission.

(3) The commission shall not prohibit an applicant for or the holder of a specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:
   (a) The applicant or licensee is located in either of the following:
      (i) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of 31,000 or more.
      (ii) A city, incorporated village, or township with a population of 4,000 or less and a county with a population of less than 31,000.
   (b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than $10,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(4) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:
   (a) The applicant or licensee is located in either of the following:
      (i) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of 31,000 or more.
      (ii) A city, incorporated village, or township with a population of 4,000 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than $12,500.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(5) A person who was issued a specially designated merchant license or specially designated distributor license at a location at which another person owned, operated or maintained motor vehicle fuel pumps at the same location may have or acquire an interest in the ownership, operation or maintenance of those motor vehicle fuel pumps.

(6) The commission may transfer ownership of a specially designated merchant license or specially designated distributor license to a person who owns or is acquiring an interest in motor vehicle fuel pumps already in operation at the same location at which the license is issued.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- 2006, Act 253, Imd. Eff. July 3, 2006 ;-- Am. 2008, Act 489, Imd. Eff. Jan. 13, 2009

436.1543 Disposition and use of retailers' license and license renewal fees; special fund; "license fee enhancement" defined.

Sec. 543.

(1) Quarterly, upon recommendation of the commission, the state shall pay pursuant to appropriation in the manner prescribed by law to the city, village, or township in which a full-time police department or full-time ordinance enforcement department is maintained or, if a police department or full-time ordinance enforcement department is not maintained, to the county, to be credited to the sheriff's department of the county in which the licensed premises are located, 55% of the amount of the proceeds of the retailers' license fees and license renewal fees collected in that jurisdiction, for the specific purpose of enforcing this act and the rules promulgated under this act. Forty-one and one-half percent of the amount of the proceeds of retailers' license and license renewal fees collected shall be deposited in a special fund to be annually appropriated to the commission for carrying out the licensing and enforcement provisions of this act. Any unencumbered or uncommitted money in the special fund shall revert to the general fund of the state 12 months after the end of each fiscal year in which the funds were collected. The legislature shall appropriate 3-1/2% of the amount of the proceeds of retailers' license and license renewal fees collected to be credited to a special fund in the state treasury for the purposes of promoting and sustaining programs for the prevention, rehabilitation, care, and treatment of alcoholics. This subsection does not apply to retail license fees collected for railroad or Pullman cars, watercraft, aircraft, or wine auctions or to the transfer fees provided in section 529.

(2) All license and license renewal fees, other than retail license and license renewal fees, shall be credited to the grape and wine industry council created in section 303, to be used as provided in section 303. Money credited to the grape and wine industry council shall not revert to the state general fund at the close of the fiscal year, but shall remain in the account to which it was credited to be used as provided in section 303.

(3) All retail license fees collected for railroad or Pullman cars, watercraft, or aircraft and the transfer fees provided in section 529 shall be deposited in the special fund created in subsection (1) for carrying out the licensing and enforcement provisions of this act.

(4) The license fee enhancement imposed for licenses issued under section 531(3) and (4) shall be deposited into a special fund to be annually appropriated to the commission for enforcement and other related projects determined appropriate by the commission. The money representing that amount of the license fees for identical licenses not issued under section 531(3) and (4) shall be allocated and appropriated under subsection (1).

(5) The license fee imposed on direct shipper licenses and any violation fines imposed by the commission shall be deposited into the direct shipper enforcement revolving fund. The direct shipper enforcement revolving fund is created within the state treasury. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The commission shall expend money from the fund, upon appropriation, only for enforcement of the provisions of section 203 and related projects.

(6) One hundred percent of the wine auction license fee imposed in section 525(1)(aa) shall be deposited into the general fund.
(7) As used in this section, "license fee enhancement" means the money representing the difference between the license fee imposed for a license under section 525(1) and the additional amount imposed for resort and resort economic development licenses under section 525(2).
(8) Notwithstanding any other provision of this section, the additional $160.00 license fee imposed upon any licensee selling alcoholic liquor between the hours of 7 a.m. on Sunday and 12 noon on Sunday is allocated to the general fund.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 97, Imd. Eff. July 20, 2005 ;-- Am. 2005, Act 269, Imd. Eff. Dec. 16, 2005 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010; Am. 2010, Act 213, Eff. November 17, 2010

436.1545 "Nonpublic continuing care retirement center" defined; license.

Sec. 545.

(1) As used in this act, “nonpublic continuing care retirement center” means a residential community that, as determined by the commission, meets both of the following conditions:
    (a) Provides full-time residential housing predominantly for individuals over the age of 62.
    (b) Is registered as a facility under the living care disclosure act, 1976 PA 440, MCL 554.801 to 554.844.
(2) The commission, upon submission of a completed application, shall grant a nonpublic continuing care retirement center license to an applicant complying with this section. The total number of licenses issued under this section shall not exceed 20. If the holder of a license issued under this section goes out of business, the license shall be surrendered to the commission. The commission may allow the transfer of such a license to a new business owner upon transfer of the owner’s interest in the business.
(3) The nonpublic continuing care retirement center license allows the licensee to sell at retail and serve on the licensed premises beer, wine, mixed spirit drink, mixed wine drink, and spirits, for consumption by a resident or the bona fide guests accompanying the resident, only on the licensed premises.

History: Add. 2010, Act 213, Eff. November 17, 2010

CHAPTER 6

436.1601 Licensing qualifications; wholesale licensee or applicant for wholesale license as individual, partnership, limited partnership, or corporation; prohibitions.

Sec. 601.

(1) A wholesale licensee or an applicant for a wholesale license, if an individual, shall be licensed only if that individual has resided in this state for not less than 1 year immediately prior to the date of issuance of the license.
(2) A wholesale licensee or an applicant for a wholesale license, if a partnership other than a limited partnership, shall be licensed only if all of its members have resided in this state for not less than 1 year immediately prior to the date of issuance of the license.
(3) A wholesale licensee or an applicant for a wholesale license, if a limited partnership, shall be licensed only if the limited partnership is authorized to do business under the laws of this state, and if the general partner and all limited partners have resided in this state for not less than 1 year immediately preceding the date of issuance of the license. If the general partner is a corporation, the limited partnership shall be licensed only if the corporation has been authorized to do business under the laws of this state for not less than 1 year immediately preceding the date on which the corporation obtained an interest in the limited partnership. A limited partnership that holds a wholesale license shall not admit as a new limited partner an individual who has not resided in this state for at least 1 year immediately preceding the date on which the limited partnership interest was acquired by the individual.

(4) A wholesale licensee or an applicant for a wholesale license, if a corporation, shall be licensed only if the corporation is authorized to do business under the laws of this state and if all stockholders of the corporation have resided in this state for not less than 1 year immediately preceding the date of issuance of the license. A corporation that holds a wholesale license shall not issue shares of the corporation's stock to a person who has not resided in this state for at least 1 year immediately preceding the date on which the corporate stock was acquired by the person.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1603 Interest in business of other vendor prohibited; placing certain stock in portfolio under arrangement of trust agreement; issuance and sale of participating shares within state prohibited; sale of brandy by manufacturer; conditions; sale by small distiller; interest of brewpub in other locations; interest in business of other wholesaler prohibited; delivery of wine by wine maker to retail licensees prohibited; definitions.

Sec. 603.

(1) Except as provided in subsections (6) to (12) and section 605, a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not have any financial interest, directly or indirectly, in the establishment, maintenance, operation, or promotion of the business of any other vendor.
(2) Except as provided in subsections (6) to (12) and section 605, a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits or a stockholder of a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not have an interest by ownership in fee, leasehold, mortgage, or otherwise, directly or indirectly, in the establishment, maintenance, operation, or promotion of the business of any other vendor.
(3) Except as provided in subsections (6) to (12) and section 605, a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not have an interest directly or indirectly by interlocking directors in a corporation or by interlocking stock ownership in a corporation in the establishment, maintenance, operation, or promotion of the business of any other vendor.
(4) Except as provided in subsections (6) to (12) and section 605, a person shall not buy the stocks of a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits and place the stock in any portfolio under an arrangement, written trust agreement, or form of investment trust agreement and issue participating shares based upon the portfolio, trust agreement, or investment trust agreement, and sell the participating shares within this state.
(5) The commission may approve a brandy manufacturer or small distiller to sell brandy and spirits made by that brandy manufacturer or small distiller in a restaurant for consumption on or off the premises if the restaurant is owned by the brandy manufacturer or small distiller or operated by another person under an agreement approved by the commission and is located on premises where the brandy manufacturer or small distiller is licensed. Brandy and spirits sold for consumption off the premises under this subsection shall be sold at the uniform price established by the commission.
(6) The commission shall allow a small distiller to sell brands of spirits it manufactures for consumption on the licensed premises at that distillery.
(7) A brewpub may have an interest in up to 2 other brewpubs so long as the combined production of all the locations in which the brewpub has an interest does not exceed 5,000 barrels of beer per calendar year.
(8) This section does not prohibit a supplier from having any interest, directly or indirectly, in any other supplier.
(9) The commission may approve the following pursuant to R 436.1023(3) of the Michigan administrative code, subject to the written approval of the United States department of treasury, bureau of alcohol and tobacco tax and trade:

(a) A wine maker participating with 1 or more wine makers in an alternating proprietor operation in accordance with 27 CFR part 24, subpart D, section 24.136.
(b) A brewer participating with 1 or more brewers in an alternating proprietor operation in accordance with 27 CFR part 25, subpart F, section 25.52.

(10) A manufacturer is prohibited from having any interest, directly or indirectly, in a wholesaler.

(11) A wine maker is prohibited from collectively delivering wine, with any other wine maker, to retail licensees.

(12) Except in the case of a licensed warehouser, all licensees in this state shall be separated into 3 distinct and independent tiers composed of the following:
(a) Supplier tier, comprising manufacturers and suppliers.
(b) Wholesaler tier, comprising wholesalers.
(c) Retailer tier, comprising retailers.

(13) Beginning April 30, 2011, the commission shall not allow any of the following:
(a) A retailer to hold, directly or indirectly, a license in the wholesaler or supplier tier.
(b) A wholesaler to hold, directly or indirectly, a license in the retailer or supplier tier.
(c) A supplier to hold, directly or indirectly, a license in the wholesaler or retailer tier.

(14) Subsection (13) shall not be interpreted in a manner that would prohibit a class C, tavern, class A hotel, or class B hotel licensee from receiving a brewpub license or that would prohibit a micro brewer or brewer producing less than 200,000 barrels per year from having an on-site restaurant.

(15) As used in this section:
(a) "Manufacturer" means, notwithstanding section 109(1), a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, distiller, small distiller, brandy manufacturer, mixed spirit drink manufacturer, direct shipper, or a person licensed by the commission to perform substantially similar functions.
(b) "Supplier" means a manufacturer, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, and vendor of spirits or a person licensed by the commission to perform substantially similar functions but shall not include a master distributor.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008 ;-- Am. 2009, Act 2, Imd. Eff. Mar. 27, 2009; Am. 2010, Act 213, Eff. November 17, 2010

436.1605 Acquisition, development, sale, lease, financing, maintenance, operation, or promotion by brewer of real property occupied or to be occupied by another vendor; conditions; denial or approval of arrangement or contract; review; denial, revocation, or suspension of license; wholesaler as party to arrangement or contract prohibited; acquisition, development, sale, lease, financing, maintenance, operation, or promotion of condominium project or unit; exception.

Sec. 605.

(1) A brewer, or the parent company, a subsidiary or an affiliate of a brewer which parent company, subsidiary, or affiliate is located in this state may acquire, develop, sell, lease, finance, maintain, operate, or promote real property occupied or to be occupied by another vendor, except a wholesaler, if all of the following exist:
(a) The brewer has received written approval of the commission before entering into any arrangement or contract between the parties regarding the real property.
(b) The legislative body of the city, village, or township where the property is located certifies to the commission that the real property is in an urban, commercial, or community redevelopment area and is designated as such by a state or federal agency.
(c) Any arrangement or contract entered into between the brewer, its parent company, subsidiary, or affiliate and another vendor shall not directly or indirectly influence or control the brand of alcoholic liquor sold or to be sold by the vendor and shall only be concerned with real property.

(2) The commission may deny or approve an arrangement or contract to be entered into under this section. In denying or approving an arrangement or contract, the commission shall consider all of the following:
    (a) That the arrangement or contract to be entered into is concerned only with real property.
    (b) That the certification required under subsection (1)(b) has been received by the commission.
    (c) That the arrangement or contract does not violate this act or the rules promulgated under this act.
(3) The commission may review any arrangement or contract under this section at the time that 1 of the parties to the arrangement or contract applies for or renews a license. The commission may deny, revoke, or suspend the license of a party to the arrangement or contract if the commission finds that the party to the arrangement or contract has violated this act or the rules promulgated under this act.
(4) Except as otherwise provided in subsection (5), a wholesaler shall not be a party to, directly or indirectly, an arrangement or contract under this section.
(5) A manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, authorized distribution agent, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may acquire, develop, sell, lease, finance, maintain, operate, or promote a condominium project or own a condominium unit as its sole property, under the condominium act, 1978 PA 59, MCL 559.101 to 559.275, if that condominium unit is not the licensed premises owned separately by a retailer and if all of the following apply:
    (a) Condominium assessments in the condominium project are based on the proportional area each condominium unit has to the total area.
    (b) A condominium unit operating as a licensed premises operates under a separate name from the condominium project except that cooperative advertising shall be permitted among owners of condominium units for the purpose of promoting the condominium project if the name of a brand or brands of an alcoholic liquor is not mentioned in the advertising.
    (c) Ownership of a condominium unit and participation in a condominium association under this section is not considered a financial interest, interest by ownership, or interest by interlocking directors on stock ownership prohibited by section 603.
    (d) A retailer separately owning a separate condominium unit as sole property does not directly purchase alcoholic liquor from the manufacturer, warehouser, wholesaler, outstate seller of mixed spirit drink, or vendor of spirits who owns, leases, maintains, finances, or operates the condominium project.
    (e) A wholesaler who has a direct or indirect interest in a condominium unit in which a retailer is located does not sell alcoholic liquor to any licensed retail business in which that retailer, or any person having an ownership interest in that retailer, has an ownership interest; and, a retail licensed business in which that retailer, or any person having an ownership interest in that retailer, has an ownership interest does not purchase alcoholic liquor from a wholesaler who has a direct or indirect interest in a condominium or condominium unit in which that retailer is located.
    (f) A retailer acquiring a separate condominium unit as sole property pays the fair market value for the unit.
(6) Subsection (5) does not apply to a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, authorized distribution agent, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits with a direct or indirect interest in a license under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.216. Subsection (5) does not prohibit a direct physical connection between a condominium unit which is the licensed premises and a condominium unit which is not the licensed premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1607 Eligibility for license as specially designated merchant or specially designated distributor; prohibitions; small distiller; wine maker and small wine maker; brewer as specially designated merchant; brewery hospitality room; sales or deliveries by wholesaler.

Sec. 607.

(1) Except as provided in section 537(2), a warehouser, mixed spirit drink manufacturer, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not be licensed as a specially designated merchant or a specially designated distributor. A person licensed as a small distiller is not considered to be a specially designated distributor. Beginning December 23, 2007 and in addition to the persons described in this subsection, a wine maker and a small wine maker shall also not be licensed as a specially designated merchant or a specially designated distributor. Any wine maker or small wine maker holding a specially designated merchant or specially designated distributor license on December 23, 2007 may continue to hold a specially designated merchant or specially designated distributor license.

(2) A specially designated distributor or specially designated merchant or any other retailer shall not hold a mixed spirit drink manufacturer, wholesale, warehouse, outstate seller of beer, outstate seller of mixed spirit drink, or outstate seller of wine license. Beginning December 23, 2007, a specially designated distributor or specially designated merchant shall not hold a wine maker or small wine maker license in addition to being prohibited from holding any other license described in this subsection. Any specially designated distributor or specially designated merchant holding a wine maker or small wine maker license on December 23, 2007 may continue to hold a wine maker or small wine maker license.

(3) A brewer, warehouser, or wholesaler shall not be licensed as a specially designated merchant. This subsection does not affect the operation of a brewery hospitality room.

(4) A wholesaler may sell or deliver beer and alcoholic liquor to hospitals, military establishments, governments of federal Indian reservations, and churches requiring sacramental wines and may sell to the wholesaler's own employees to a limit of 2 cases of 24 12-ounce units or its equivalent of malt beverage per week, or 1 case of 12 1-liter units or its equivalent of wine or mixed spirit drink per week.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 269, Imd. Eff. Dec. 16, 2005 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008

436.1609 Aiding or assisting other vendor prohibited; exception; refunding amount of price reductions.

Sec. 609.

Except as provided in sections 605 and 1029, a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not aid or assist any other vendor by gift, loan of money or property of any description, or other valuable thing, or by the giving of premiums or rebates, and a vendor shall not accept the same. However, if manufacturers of spirits reduce the price of their products, the manufacturer of spirits may refund the amount of the price reductions to specially designated distributor licensees in a manner prescribed by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010

436.1611 Refund or credit of tax paid on wine, mixed spirit drink, or beer; conditions; time limitation; form and contents of claim; supporting evidence; removal or destruction of damaged wine, beer, or mixed spirit drink; applicability of section; rebate of tax paid on wine or mixed spirit drink.

Sec. 611.

(1) A refund or credit of the tax on wine or mixed spirit drink paid under section 301 and of the tax on beer paid under section 409 shall be made by the commission to a brewer, wine maker, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, manufacturer of mixed spirit drink, wholesaler, or retail licensee who paid the tax if the wine, beer, or mixed spirit drink was sold to a military installation or Indian reservation in this state or, subject to subsection (2), if the wine, beer, or mixed spirit drink is lost, made unmarketable, or condemned by order of the commission as the result of a fire, flood, casualty, or other occurrence. A refund or credit shall not be made as the result of theft.

(2) A refund or credit of taxes as provided in subsection (1) shall be made for damaged wine, beer, or mixed spirit drink only if all of the following circumstances exist:
   (a) At the time of the fire, flood, casualty, or other occurrence, the wine, beer, or mixed spirit drink was being held for sale by the vendor claiming the refund or credit.
   (b) The refund or credit of the amount claimed or any part of the amount claimed has not been and will not be claimed for the same wine, beer, or mixed spirit drink under any other law or rule.
   (c) The vendor claiming the refund or credit is not indemnifiable by any valid claim of insurance or otherwise for the tax on the wine, beer, or mixed spirit drink covered by the claim.
   (d) The amount claimed for a refund or credit is more than $250.00 or the refund or credit is claimed for defective wine, beer, or mixed spirit drink for which the commission has authorized a manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, manufacturer of mixed spirit drink, or wholesaler to make an exchange, have replaced, or be reimbursed.
   (e) The occurrence was not caused by an intentional act of the vendor claiming the refund or credit or an agent of that vendor.

(3) A claim for a refund or credit of the tax as provided in subsection (1) shall be made not later than 3 months after either of the following:
   (a) The date upon which the damage occurred or was first discovered.
   (b) The date of the sale to a military installation or Indian reservation in this state.

(4) A claim for a refund or credit of the tax as provided in subsection (1) shall be submitted to the commission on a form approved by the commission. The claim shall contain the following information, as applicable:
   (a) The name and business address of the vendor claiming the refund or credit.
   (b) The address where the wine, beer, or mixed spirit drink was lost, made unmarketable, or condemned, if different from the business address.
   (c) The address of the military installation or Indian reservation to which the wine, beer, or mixed spirit drink was sold.
   (d) The kind of wine, beer, or mixed spirit drink.
   (e) The size of bottles or containers.
   (f) The number of bottles or containers.
   (g) The total amount of wine, beer, or mixed spirit drink that was sold or damaged. The amount shall be stated in liters or portions of liters for wine and mixed spirit drink and barrels or portions of barrels for beer.
   (h) A statement that other claims for a refund or credit of the amount claimed or for any part of the amount claimed have not been and will not be made.
   (i) A statement that the vendor has not been indemnified by a valid claim of insurance or otherwise for the tax on the wine, beer, or mixed spirit drink covered by the claim.
   (j) Evidence that the tax on the wine, beer, or mixed spirit drink has been paid.

(k) Evidence that the wine, beer, or mixed spirit drink was lost, made unmarketable, or condemned by reason of damage sustained as the result of a fire, flood, casualty, or other occurrence.
(l) A statement as to the type and date of the occurrence.
(m) A statement that the occurrence was not caused by an intentional act of the vendor claiming the refund or credit or an agent of that vendor.

(5) The vendor claiming the refund or credit for damaged wine, beer, or mixed spirit drink shall support a claim with any evidence, such as an inventory, statement, invoice, bill, record, or label, relating to the quantity of wine, beer, or mixed spirit drink on hand at the time of the fire, flood, casualty, or other disaster and alleged to have been lost, made unmarketable, or condemned as a result of the damage.
(6) Before or after a tax refund or credit has been made for damaged wine, beer, or mixed spirit drink, the wine, beer, or mixed spirit drink upon which the refund or credit is based shall be removed from this state or destroyed under the supervision of the commission.
(7) In addition to the provisions of this section, the tax paid on wine or mixed spirit drink pursuant to section 301 shall be rebated to the person who paid the tax upon the presentation of satisfactory proof to the commission that the wine or mixed spirit drink was shipped outside of this state for sale and consumption outside of this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

CHAPTER 7

436.1701 Selling or furnishing alcoholic liquor to person less than 21 years of age; failure to make diligent inquiry; misdemeanor; signs; consumption of alcoholic liquor as cause of death or injury; felony; enforcement against licensee; consent of parent or guardian in undercover operation; defense in action for violation; report; definitions.

Sec. 701.

(1) Alcoholic liquor shall not be sold or furnished to a minor. Except as otherwise provided in subsection (2) and subject to subsections (4), (5), and (6), a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor. A retail licensee or a retail licensee's clerk, agent, or employee who violates this subsection shall be punished in the manner provided for licensees in section 909 except that if the violation is the result of an undercover operation in which the minor received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action, the retail licensee's clerk, agent, or employee is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00. Except as otherwise provided in subsection (2), a person who is not a retail licensee or a retail licensee's clerk, agent, or employee and who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 and imprisonment for not more than 60 days for a first offense, a fine of not more than $2,500.00 and imprisonment for not more than 90 days for a second or subsequent offense, and may be ordered to perform community service. For a second or subsequent offense, the secretary of state shall suspend the operator's or chauffeur's license of an individual who is not a retail licensee or retail licensee's clerk, agent, or employee and who is convicted of violating this subsection as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319. A suitable sign describing the content of this section and the penalties for its violation shall be posted in a conspicuous place in each room where alcoholic liquor is sold. The signs shall be approved and furnished by the commission.
(2) A person who is not a retail licensee or the retail licensee's clerk, agent, or employee and who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 10 years or a fine of not more than $5,000.00, or both, if the subsequent consumption of the alcoholic liquor by the minor is a direct and substantial cause of that person's death or an accidental injury that causes that person's death.
(3) If a violation occurs in an establishment that is licensed by the commission for consumption of alcoholic liquor on the licensed premises, a person who is a licensee or the clerk, agent, or employee

of a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a person less than 21 years of age possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.

(4) If the enforcing agency involved in the violation is the state police or a local police agency, a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless all of the following occur, if applicable:
    (a) Enforcement action is taken against the minor who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.
    (b) Enforcement action is taken under this section against the person 21 years of age or older who is not the retail licensee or the retail licensee's clerk, agent, or employee who sold or furnished the alcoholic liquor to the minor.
    (c) Enforcement action under this section is taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the minor.

(5) If the enforcing agency is the commission and an appearance ticket or civil infraction citation has not been issued, then the commission shall recommend to a local law enforcement agency that enforcement action be taken against a violator of this section or section 703 who is not a licensee. However, subsection (4) does not apply if the minor against whom enforcement action is taken under section 703, the clerk, agent, or employee of the licensee who directly sold or furnished alcoholic liquor to the minor, or the person 21 years of age or older who sold or furnished alcoholic liquor to the minor is not alive or is not present in this state at the time the licensee is charged. Subsection (4)(a) does not apply under either of the following circumstances:
    (a) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
    (b) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action.

(6) Any initial or contemporaneous purchase or receipt of alcoholic liquor by the minor under subsection (5)(a) or (b) must have been under the direction of the state police, the commission, or the local police agency and must have been part of the undercover operation.

(7) If a minor participates in an undercover operation in which the minor is to purchase or receive alcoholic liquor under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if that person is less than 18 years of age.

(8) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a minor, a motor vehicle operator's or chauffeur's license, a military identification card, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.

(9) The commission shall provide, on an annual basis, a written report to the department of state police as to the number of actions heard by the commission involving violations of this section and section 801(2). The report shall include the disposition of each action and contain figures representing the following categories:
    (a) Decoy operations.
    (b) Off-premises violations.
    (c) On-premises violations.
    (d) Repeat offenses within the 3 years preceding the date of that report.

(10) As used in this section:
    (a) "Corrective action" means action taken by a licensee or a clerk, agent, or employee of a licensee designed to prevent a minor from further possessing or consuming alcoholic liquor on the licensed premises. Corrective action includes, but is not limited to, contacting a law enforcement agency and ejecting the minor and any other person suspected of aiding and abetting the minor.

(b) "Diligent inquiry" means a diligent good faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification which establishes the identity and age of the person.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002 ; Am. 2006, Act 682, Imd. Eff. Jan. 10, 2007; Am. 2010, Act 266, Imd. Eff. Dec. 14, 2010.

436.1703 Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; screening and assessment; chemical breath analysis; notice to parent, custodian, or guardian; construction of section; exceptions; "any bodily alcohol content" defined.

Sec. 703.

(1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions and is not subject to the penalties prescribed in section 909:

(a) For the first violation a fine of not more than $100.00, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(b) For a violation of this subsection following a prior conviction or juvenile adjudication for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 30 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than $200.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(c) For a violation of this subsection following 2 or more prior convictions or juvenile adjudications for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than $500.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(2) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (1) a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(3) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (1) or offers a plea of admission in

a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (1)(a), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions or juvenile adjudications under subsection (1)(b) and (c). There may be only 1 discharge and dismissal under this subsection as to an individual. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

(a) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.

(b) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.

(ii) The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

(4) The court may order the person convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, in order to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The court may order a person subject to a conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (1) to submit to a random or regular preliminary chemical breath analysis. In the case of a minor under 18 years of age not emancipated under 1968 PA 293, MCL 722.1 to 722.6, the parent, guardian, or custodian may request a random or regular preliminary chemical breath analysis as part of the probation.

(5) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (1) or (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(6) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require the person to submit to a preliminary chemical breath analysis. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

(7) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The notice may be made by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(8) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(9) This section does not limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(10) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.

(11) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.

(12) Subsection (1) does not apply to a minor who participates in either or both of the following:

(a) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.

(13) The state police, the commission, or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (1), section 801(2), or section 701(1).

(14) In a criminal prosecution for the violation of subsection (1) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.

(15) As used in this section, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 353, Eff. Oct. 1, 1999 ;-- Am. 1999, Act 53, Eff. Oct. 1, 1999 ;-- Am. 2004, Act 63, Eff. Sept. 1, 2004 ;-- Am. 2006, Act 443, Imd. Eff. Nov. 27, 2006

436.1705 Power of peace officer or law enforcement officer witnessing violation to stop and detain person; issuance of appearance ticket.

Sec. 705.

A peace officer or law enforcement officer described under section 201 or an inspector of the commission who witnesses a violation of section 701(1) or 703, or a local ordinance corresponding to section 701(1) or 703, may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor,

and issue an appearance ticket as prescribed in section 9c of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002

436.1707 Selling, serving, or furnishing alcohol; prohibitions.

Sec. 707.

(1) A vendor shall not sell, serve, or furnish any alcoholic liquor to any person in an intoxicated condition.
(2) A licensee shall not allow a person who is in an intoxicated condition to consume alcoholic liquor on the licensed premises.
(3) A licensee, or the clerk, servant, agent, or employee of a licensee, shall not be in an intoxicated condition on the licensed premises.
(4) A licensee shall not allow an intoxicated person to frequent or loiter on the licensed premises except where the intoxicated person has been refused service of further alcoholic liquor and continues to remain on the premises for the purpose of eating food, seeking medical attention, arranging transportation that does not involve driving himself or herself, or any other circumstances where requiring the person to vacate the premises immediately would be considered dangerous to that person or to the public.
(5) A licensee shall not allow a minor to consume alcoholic liquor or to possess alcoholic liquor for personal consumption on the licensed premises.
(6) A licensee shall not allow any person less than 18 years of age to sell or serve alcoholic liquor.
(7) A licensee shall not allow any person less than 18 years of age to work or entertain on a paid or voluntary basis on the licensed premises unless the person is employed in compliance with the youth employment standards act, 1978 PA 90, MCL 409.101 to 409.124. This subsection does not apply to an entertainer under the direct supervision and control of his or her parent or legal guardian.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 11, Imd. Eff. Feb. 29, 2008

CHAPTER 8

436.1801 Granting or renewing license; surety; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; general reputation as evidence of relation; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.

Sec. 801.

(1) Except as otherwise provided in this act, before the approval and granting, or renewal, of a license, the following licensees or applicants for that license shall make, execute, and deliver to the commission a bond executed by a surety company authorized to do business in the state or, in the discretion of the commission, by approved personal surety running to the people of the state, in the following amounts:
    (a) A manufacturer of beer, a manufacturer of wine, a mixed spirit drink manufacturer, an outstate seller of beer, an outstate seller of mixed spirit drink, and an outstate seller of wine, a bond in an amount equal to 1/12 of the total beer, mixed spirit drink, or wine excise taxes paid to the state in the last calendar year or a bond in the sum of $1,000.00, whichever is greater, for the faithful performance of the conditions of the license issued and for compliance with this act. A surety shall not cancel a bond issued under this subdivision except upon 30 days' written notice to the commission.

(b) A special license authorizing the sale of beer, mixed spirit drink, wine, or spirits for consumption on the premises, a bond in the sum of $1,000.00. A bond issued under this subdivision shall remain in effect for 60 days after the expiration of the special license. A bond is not required for a church or school.

(2) A retail licensee shall not directly, individually, or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a minor except as otherwise provided in this act. A retail licensee shall not directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated.

(3) Except as otherwise provided in this section, an individual who suffers damage or who is personally injured by a minor or visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or visibly intoxicated person, if the unlawful sale is proven to be a proximate cause of the damage, injury, or death, or the spouse, child, parent, or guardian of that individual, shall have a right of action in his or her name against the person who by selling, giving, or furnishing the alcoholic liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the damage, injury, or death. In an action pursuant to this section, the plaintiff shall have the right to recover actual damages in a sum of not less than $50.00 in each case in which the court or jury determines that intoxication was a proximate cause of the damage, injury, or death.

(4) An action under this section shall be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified shall be grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section shall survive to or against his or her personal representative. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of the relation, and the amount recovered by either the husband, wife, parent, or child shall be his or her sole and separate property. The damages, together with the costs of the action, shall be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.

(5) An action under this section against a retail licensee shall not be commenced unless the minor or the alleged intoxicated person is a named defendant in the action and is retained in the action until the litigation is concluded by trial or settlement.

(6) Any licensee subject to the provisions of subsection (3) regarding the unlawful selling, furnishing, or giving of alcoholic liquor to a visibly intoxicated person shall have the right to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee.

(6) All defenses of the alleged visibly intoxicated person or the minor shall be available to the licensee. In an action alleging the unlawful sale of alcoholic liquor to a minor, proof that the defendant retail licensee or the defendant's agent or employee demanded and was shown a Michigan driver license or official state personal identification card, appearing to be genuine and showing that the minor was at least 21 years of age, shall be a defense to the action.

(7) There shall be a rebuttable presumption that a retail licensee, other than the retail licensee who last sold, gave, or furnished alcoholic liquor to the minor or the visibly intoxicated person, has not committed any act giving rise to a cause of action under subsection (3).

(8) The alleged visibly intoxicated person shall not have a cause of action pursuant to this section and a person shall not have a cause of action pursuant to this section for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged visibly intoxicated person.

(9) This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor to a minor or intoxicated person.

(10) Except as otherwise provided for under this section and section 815, a civil action under subsection (3) against a retail licensee shall be subject to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 11, Imd. Eff. Feb. 29, 2008

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1803 Retailer or applicant for retail license; liability insurance in lieu of bond; limits; proof of financial responsibility of retail licensee or applicant for retail license; waiver; naming insurer or surety as defendant prohibited; effect of bankruptcy; policies and bonds to be continued from year to year; cancellation of liquor liability insurance; section inapplicable to special licensee or applicant for special license; rules.

Sec. 803.

(1) Except as otherwise provided in subsection (2), before the renewal or approval and granting of a retail license, a retail licensee or applicant for a retail license shall file with the commission proof of financial responsibility providing security for liability under section 801(3) of not less than $50,000.00. The proof of financial responsibility may be in the form of cash, unencumbered securities, a policy or policies of liquor liability insurance, a constant value bond executed by a surety company authorized to do business in this state, or membership in a group self-insurance pool authorized by law that provides security for liability under section 801.
(2) If the commissioner of insurance certifies, pursuant to section 2409b of the insurance code of 1956, 1956 PA 218, MCL 500.2409b, that liquor liability insurance is not reasonably available in this state or is not available at a reasonable premium, the commission may waive the requirements of subsection (1) with regard to any affected retail licensees and applicants for a retail license until the commissioner of insurance certifies that liquor liability insurance is reasonably available or is available at a reasonable premium, as applicable, to the affected licensees and applicants.
(3) A licensee may furnish proof of financial responsibility that exceeds the requirements of this section.
(4) An insurer under a policy or policies of liquor liability insurance or a surety under such a bond shall not be named as a defendant in an action brought against the insured or bonded licensee for liability under section 801. Bankruptcy of the insured shall not discharge an insurer or surety under this section from liability. Insurance policies and bonds issued for purposes under this section shall continue from year to year unless sooner canceled by the insurer.
(5) An insured retail licensee shall not cancel any such liquor liability insurance except upon 30 days' prior written notice to the commission and unless new proof of financial responsibility complying with this section is procured by the retail licensee and delivered to the commission prior to the expiration of the 30-day period, the license of that licensee shall be revoked.
(6) This section does not apply to a special licensee or applicant for a special license.
(7) The commission shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and enforce this section.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

Admin Rule: R 436.2001 et seq. of the Michigan Administrative Code.

436.1805 Suit to enforce liability when service of process not effected; affidavit; service upon commission in duplicate; return; copy served on defendant; hearing; duty of commission.

Sec. 805.

If an action is instituted against a retailer as defendant in any court of competent jurisdiction to enforce the liability provided in section 801 and service of process has not been effected in the manner provided for by law, and either the sheriff or constable to whom process has been delivered for service shall make return that he or she has not been able to serve the defendant for a period of 30 days, in which period he or she has made 3 or more attempts to serve the defendant at his or her residence or place of business, or the plaintiff or another person with knowledge of the facts files an affidavit in the cause stating that the defendant has ceased to be a resident of the state of Michigan or has been absent from the state for a continuous period of 6 months, then it shall be competent for the plaintiff to cause service of process to be made upon the defendant by service of the process upon the commission, the liability for which suit is brought arose during the period in which the defendant was a licensed retailer and was insured under the provisions of section 803. Such service of process shall be made in duplicate on the commission, and return showing such service shall be made to the court. The commission shall mail a copy of the process served upon it to the defendant at the address shown in the consent to service of process, and shall immediately transmit to the clerk of the court in which the action is pending an acknowledgment of the mailing of the copy of that process by the commission to the defendant. Whenever the foregoing provisions of this section have been complied with, the court may proceed to hear and determine the matter as fully and effectually as though the defendant retailer had been personally served with process within the jurisdiction of the court. The commission shall also notify the insurer under the liability policy of the defendant, on file with the commission, that the commission has received service of that process, stating the names of the parties to the action and the court in which the action is pending. If the defendant retailer is deceased, service of process may be made upon the executor or administrator of the deceased defendant by service on the commission, in an action in which that service would be authorized by this section upon the defendant if he or she were living, in the manner provided in this section.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the “Dram Shop Act.”

Popular Name: Dram Shop Act

436.1807 Insurer to file notice of termination or cancellation of contract or policy; effective date.

Sec. 807.

The insurer shall file with the commission, at Lansing, Michigan, at least 30 days before the effectiveness of any termination or cancellation of the contract or policy, a notice giving the date at which it is proposed to terminate or cancel the contract or policy. Any termination of the contract or policy shall not be effective as far as the insured covered by the policy is concerned until 30 days after such notice of the proposed termination or cancellation is received by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the “Dram Shop Act.”

Popular Name: Dram Shop Act

436.1809 Payment of judgment and costs; time; failure or neglect to pay judgment and costs; punitive damages; action against insurer.

Sec. 809.

Except as otherwise provided for by law or the Michigan court rules, when an action for damages brought under this act has been reduced to a judgment, the insurer shall, within 90 days from the date of the judgment, pay the judgment together with the costs in full, unless the judgment has been paid or settled by the insured. If the insurer fails or neglects to pay the judgment and costs within 90 days, it shall be subject to punitive damages in the amount of $1,000.00, in addition to the amount of the judgment and interest on the judgment. The amount of the judgment, with interest on the judgment, and the punitive damages provided for in this section may be recovered by the person or persons entitled to damages under the judgment in an action against the insurer in any court of competent jurisdiction in this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1811 Insurance policy; coverage, conditions.

Sec. 811.

The insurance policy described in this chapter shall cover the liability imposed by section 801 and shall contain the following conditions:

That no condition, provision, stipulation or limitation contained in the policy, or any other endorsement thereon, shall relieve the insurer from liability (within the statutory limits provided by section 803 of the Michigan liquor control code of 1998), for the payment of any claim for which the insured may be held legally liable under section 801 of said act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998

436.1813 False statement or breach of authority; cancellation of insurance.

Sec. 813.

No false statement or breach of authority or act or omission on the part of the insured shall vitiate this insurance, unless the intention of the insured to conceal a hazard of perpetrating fraud is proven; and this policy cannot be cancelled by the insured or the company without first giving thirty days' written notice to the commission in Lansing, Michigan.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1815 Adherence to responsible business practices as defense; compensation of employee on commission basis.

Sec. 815.

(1) In defense of a civil action under section 801, a retail licensee may present evidence that, at the time of the selling, giving, or furnishing of the alcoholic liquor, the retail licensee was adhering to responsible business practices. Responsible business practices are those business policies, procedures, and actions which an ordinarily prudent person would follow in like circumstances. The compensating of an employee of an on-premises retail licensee on a commission basis constitutes an unreasonable business practice for purposes of this section.
(2) The compensation of an employee of an on-premises retail licensee shall not be on a commission basis.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1901 Compliance required; prohibited acts.

Sec. 901.

(1) A person, directly or indirectly, himself or herself or by his or her clerk, agent, or employee, shall not manufacture, manufacture for sale, sell, offer or keep for sale, barter, furnish, import, import for sale, transport for hire, transport, or possess any alcoholic liquor unless the person complies with this act.
(2) A licensee shall not allow unlawful gambling on the licensed premises and shall not allow on the licensed premises any gaming devices prohibited by law.
(3) A licensee shall not sell, offer or keep for sale, furnish, possess, or allow a customer to consume alcoholic liquor that is not authorized by the license issued to the licensee by the commission.
(4) A person, whether or not a licensee, shall not sell, deliver, or import spirits unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent certified by order of the commission, a person licensed by the commission, or by prior written order of the commission. A person who violates this subsection is subject to the sanctions and penalties contained in section 909(4) and, in the case of a violation of section 909(4)(a), is subject to forfeiture of proceeds or an instrumentality as provided for in chapter XXVA of the Michigan penal code, 1931 PA 328, MCL 750.159f to 750.159x.
(5) A licensee shall not sell or furnish alcoholic liquor to a person who maintains, operates, or leases premises that are not licensed by the commission and upon which other persons unlawfully engage in the sale or consumption of alcoholic liquor for consideration as prohibited by section 913.
(6) A retail licensee shall not, on his or her licensed premises, sell, offer for sale, accept, furnish, possess, or allow the consumption of alcoholic liquor that has not been purchased by the retail licensee from the commission, the commission's authorized agent or distributor, an authorized distribution agent certified by order of the commission, or a licensee of the commission authorized to sell that alcoholic liquor to a retail licensee. This subsection does not apply to the consumption of alcoholic liquor in the bedrooms or suites of registered guests of licensed hotels or in the bedrooms or suites of bona fide members of licensed clubs.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 11, Imd. Eff. Feb. 29, 2008 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010

436.1903 Suspension or revocation of license; violation of act or rules; penalty; disposition; hearing; procedure; fee; right of appeal; institution of criminal prosecutions; defense; rules; appointment of agents to hear violation cases; authority and responsibility; ineligibility of designated agent for appointment to commission.

Sec. 903.

(1) The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, upon due notice and proper hearing, may suspend or revoke any license upon a violation of this act or any of the rules promulgated by the commission under this act. The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, may assess a penalty of not more than $300.00 for each violation of this act or rules promulgated under this act, or not more than $1,000.00 for each violation of section 801(2), in addition to or in lieu of revocation or suspension of the license, which penalty shall be paid to the commission and deposited with the state treasurer and shall be credited to the general fund of the state. The commission shall hold a hearing and order the suspension or revocation of a license if the licensee has been found liable for 3 or more separate violations of section 801(2) which violations occurred on different occasions within a 24-month period unless such violations for the sale, furnishing, or giving alcoholic liquor to a minor were discovered by the licensee and disclosed to an appropriate law enforcement agency immediately upon discovery. A retail licensee who sells, offers to sell, accepts, furnishes, possesses, or allows the consumption of spirits in violation of section 901(6)

is subject to an administrative fine of not more than $2,500.00 per occurrence and the following license sanctions after notice and opportunity for an administrative hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328:

(a) For a first violation, a license revocation or suspension for between 1 and 30 days.

(b) For a second violation, a license revocation or suspension for between 31 and 90 days.

(c) For a third or subsequent violation, revocation of the license.

(2) The commission shall provide a procedure by which a licensee who is aggrieved by any penalty imposed under subsection (1) and any suspension or revocation of a license ordered by the commission, a commissioner, or a duly authorized agent of the commission may request a hearing for the purpose of presenting any facts or reasons to the commission as to why the penalty, suspension, or revocation should be modified or rescinded. Any such request shall be in writing and accompanied by a fee of $25.00. The commission, after reviewing the record made before a commissioner or a duly authorized agent of the commission, may allow or refuse to allow the hearing in accordance with the commission's rules. The right to a hearing provided in this subsection, however, shall not be interpreted by any court as curtailing, removing, or annulling the right of the commission to suspend or revoke licenses as provided for in this act. A licensee does not have a right of appeal from the final determination of the commission, except by leave of the circuit court. Notice of the order of suspension or revocation of a license or of the assessment of a penalty, or both, shall be given in the manner prescribed by the commission. The suspension or revocation of a license or the assessment of a penalty, or both, by the commission or a duly authorized agent of the commission does not prohibit the institution of a criminal prosecution for a violation of this act. The institution of a criminal prosecution for a violation of this act or the acquittal or conviction of a person for a violation of this act does not prevent the suspension or revocation of a license or the assessment of a penalty, or both, by the commission. In a hearing for the suspension or revocation of a license issued under this act, proof that the defendant licensee or an agent or employee of the licensee demanded and was shown, before furnishing any alcoholic liquor to a minor, a motor vehicle operator or chauffeur license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of the person, may be offered as evidence in a defense to a proceeding for the suspension or revocation of a license issued under this act. A licensee who has reason to believe that a minor has used fraudulent identification to purchase alcoholic liquor in violation of section 703 shall file a police report concerning the violation with a local law enforcement agency and shall also present the alleged fraudulent identification to the local law enforcement agency at the time of filing the report if the identification is in the possession of the licensee. The commission may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding the utilization by licensees of equipment designed to detect altered or forged driver licenses, state identification cards, and other forms of identification.

(3) In addition to the hearing commissioners provided for in section 209, the chairperson of the commission may designate not more than 2 duly authorized agents to hear violation cases. A person appointed under this subsection shall be a member in good standing of the state bar of Michigan.

(4) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall have, in the hearing of violation cases, the same authority and responsibility as does a hearing commissioner under this act and the rules promulgated under this act.

(5) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall be ineligible for appointment to the commission for a period of 1 year after the person ceases to serve as a duly authorized agent.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 2000, Act 431, Imd. Eff. Jan. 9, 2001 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010

436.1904 Consumption or possession of alcoholic liquor on school property; prohibition; violation as misdemeanor; exceptions; other violations; application of section to minor; definitions.

Sec. 904.

(1) A person shall not consume alcoholic liquor or school property or possess alcoholic liquor on school property with the intent to consume it on school property.
(2) A person who violates this section is guilty of a misdemeanor punishable as follows:
   (a) If the person has no prior convictions, by imprisonment for not more than 93 days or a fine of not more than $250.00, or both.
   (b) If the person has 1 prior conviction, by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.
   (c) If the person has 2 or more prior convictions, by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.
(3) This section does not prohibit a person from consuming alcoholic liquor on school property or possessing alcoholic liquor on school property with the intent to consume it on school property under any of the following circumstances:
   (a) As part of a generally recognized religious service or religious ceremony.
   (b) At a nonschool function or event on school property if the superintendent of the school district or, if the school is not operated by a school district, the administrator of the school, or his or her designee, has approved consuming alcoholic liquor on school property or possessing alcoholic liquor on school property with the intent to consume it on school property during that function or event.
(4) This section does not prohibit an individual from being convicted of or found responsible for any other violation of law arising out of the same transaction as the violation of this section.
(5) This section does not apply to a minor who could be subject to prosecution under section 703 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.
(6) As used in this section:
   (a) “Prior conviction” means a conviction for violating this section or a local ordinance substantially corresponding to this section.
   (b) “School” means a public school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.
   (c) “School property” means a building, playing field, vehicle, or other property used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

History: Add. 1999, Act 274, Eff. Apr. 3, 2000

Popular Name: Act 306

436.1905 Selling or furnishing alcoholic liquor to minor; enforcement actions prohibited; conditions; exception.

Sec. 905.

(1) Notwithstanding section 903, if a retail licensee or a retail licensee's clerk, agent, or employee violates this act by selling or furnishing alcoholic liquor to a minor, or by allowing a minor to consume alcoholic liquor or possess alcoholic liquor for personal consumption on the licensed premises, and if the enforcing agency involved in the prosecution of the violation is the state police or a local police agency, the commission shall not take any action under section 903 to suspend or revoke the licensee's license or assess an administrative fine against the licensee unless all of the following occur, if applicable:
   (a) Enforcement action is taken against the minor who purchased, consumed, or received the alcoholic liquor from the retail licensee or the retail licensee's clerk, agent, or employee.

(b) Enforcement action is taken under section 701 against the person 21 years of age or older that is not the retail licensee or the retail licensee's clerk, agent, or employee but who sold or furnished the alcoholic liquor to the minor.
(c) Enforcement action is taken under section 701 against the retail licensee's clerk, agent, or employee.

(2) Subsection (1) does not apply if the enforcing agent involved in the prosecution is a commission inspector rather than a police agency.

(3) Subsection (1)(a) does not apply if the prosecution of the violation is the result of an undercover operation in which the minor who purchased, consumed, or received the alcoholic liquor acted under the direction of the state police or a local police agency as part of the enforcement action and such enforcement action is otherwise in compliance with section 701(4), (5), and (6).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002

436.1906 Definitions; server training program.

Sec. 906.

(1) As used in this section:
(a) "Administrator" means a qualifying company, postsecondary educational institution, or trade association authorized by the commission to offer server training programs and instructor certification classes in compliance with this section and to certify to the commission that those persons meet the requirements of this section.
(b) "Instructor" means an individual certified by an administrator and approved by the commission to teach server training programs. An instructor may be a licensee or an employee of a licensee.
(c) "Prohibited sale" means the sale of alcoholic liquor by an employee of a licensee to a visibly intoxicated person or to a minor, or both.
(d) "Responsible vendor" means a designation by the commission of a retail licensee meeting the standards of this section.
(e) "Server training program" means an educational program whose curriculum has been approved by the commission under the standards described in this section and is offered by an administrator or instructor to a retail licensee, or a licensee operating a tasting room or providing samples of alcoholic liquor, for its employees.

(2) The commission shall approve the establishing of a server training program designed for all new on premises licensees or transferees of more than a 50% interest in an on premises license on or after the commencement of the mandatory server training program, and for any existing retail licensees the commission determines to be in need of training due to the frequency or types of violations of this act involving the serving of alcoholic liquor. This subsection does not apply to special licenses except that the commission may require server training for certain special licensees based upon the size and nature of the licensed event. The commission may adopt the existing standards and programmatic framework of private entities and may delegate nondiscretionary administrative functions to outside private entities.

(3) The commission shall establish a program in which the commission designates certain retail licensees, except special licenses, as responsible vendors. The commission may adopt the existing standards and programmatic framework of private entities and may delegate nondiscretionary administrative functions to outside private entities.

(4) The commission shall designate as a responsible vendor a retail licensee who makes available to all full-time and part-time retail employees, within 60 days after being hired, a server training program and who is also free of convictions or administrative determinations involving prohibited sales for not less than 12 months before applying for the designation. The designation continues until suspended by the commission.

(5) A person may apply to the commission for qualification as an administrator for the offering of server training programs and instructor certification classes.

(6) The commission shall approve a curriculum for a server training program presented by a certified instructor in a manner considered by the commission to be adequate that includes, but is not limited to, all of the following topics:
    (a) The identification of progressive stages of intoxication and the visible signs associated with each stage.
    (b) The identification of the time delay between consumption and visibility of signs of progressive intoxication.
    (c) Basic alcohol content among different types of measured drinks containing alcoholic liquor.
    (d) Variables associated with visible intoxication, including the rate of drinking, experience, weight, food consumption, sex, and use of other drugs.
    (e) Personal skills to handle slow-down of service and intervention procedures.
    (f) Procedures for monitoring consumption and maintaining incident reports.
    (g) The understanding of acceptable forms of personal identification, techniques for determining the validity of identification, and procedures for dealing with fraudulent identification.
    (h) Assessment of the need to ask for identification based on appearance or company policy.
    (i) The identification of potential second-party sales and furnishing of alcoholic liquor to minors by persons 21 years of age or over.
    (j) The understanding of possible legal, civil, and administrative consequences of violations of this act, the rules of the commission, and other pertinent state laws.
    (k) The understanding of Michigan laws pertaining to minors attempting to purchase, minors in possession, and second-party sales or furnishing of alcoholic liquor from adults to minors.
    (l) Knowledge of the legal hours of alcoholic liquor service and occupancy.
    (m) The identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales.
    (n) Any other pertinent laws as determined by the commission.

(7) The commission shall issue an instructor certification to an individual presenting evidence acceptable to the commission of having successfully completed instructor certification classes and shall issue an identification card indicating that certification by the commission.

(8) Upon approval by the commission of a server training program, the commission shall appoint the person sponsoring the server training program as an administrator of that program. The administrator shall provide a certification to the commission that a retail licensee has successfully completed the server training program offered by a certified instructor and approved by the commission and shall recommend that the commission designate the licensee as a responsible vendor.

(9) A certified instructor who is a licensee or an employee of a licensee may offer server training programs approved by the commission to the employees of the licensee and certify to the commission those persons who successfully completed the program.

(10) An on premises licensee whose license was issued or who was the transferee of more than a 50% interest in an on premises license on or after the commencement of the mandatory server training program or an on premises licensee determined by the commission to be in need of training due to the frequency or types of violations of this act involving the serving of alcoholic liquor must have employed or present on the licensed premises, at a minimum, supervisory personnel who have successfully completed a server training program on each shift and during all hours in which alcoholic liquor is served. An on premises licensee must keep a copy of the responsible vendor designation or proof of completion of server training on the licensed premises to facilitate the verification of such designation by the commission, agent of the commission, or law enforcement officer. An on premises licensee determined by the commission to have violated this subsection is subject to revocation, suspension, or other sanction as provided for in section 903. A violation of this subsection is not a violation of section 909.

(11) As a condition of the designation of a licensee as a responsible vendor, the licensee shall make available to the administrator in not less than 60-day time increments records sufficient to verify the names and social security numbers of his or her employees. The administrator shall provide to the commission a list of names and social security numbers of individuals who have successfully completed the server training program and shall monitor the licensee in a manner approved by the commission in order to verify continued compliance of the licensee's status as a responsible vendor. The administrator shall notify the commission in writing as soon as it determines that the licensee has failed to maintain the standards for server training or has failed to cooperate with the administrator's

verification procedure. Upon receipt of such a notice from the administrator, the commission shall suspend the licensee's designation as a responsible vendor.

(12) The commission may suspend the designation of a retail licensee as a responsible vendor upon a conviction or administrative determination of a prohibited sale on the licensee's licensed premises. The retail licensee losing such a designation may reapply for designation as a responsible vendor upon the passage of 12 months from the date of the conviction or administrative determination of a prohibited sale if the licensee is not convicted or administratively determined to have engaged in a prohibited sale on the licensed premises. After the first instance of a retail licensee losing its designation as a responsible vendor, that retail licensee is not eligible to reapply for such a designation until an additional 3 months for each subsequent conviction or determination. The 3-month time periods are to be in addition to the 12-month period described in this subsection.

(13) A responsible vendor is not considered to be in violation of the prohibition contained in section 707(4) regarding allowing an intoxicated person to frequent or loiter on the licensed premises unless the facts demonstrate otherwise.

History: Add. 1998, Act 391, Imd. Eff. Dec. 1, 1998 ;-- Am. 2000, Act 431, Imd. Eff. Jan. 9, 2001 ;-- Am. 2008, Act 11, Imd. Eff. Feb. 29, 2008 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008

436.1907 Revocation of license; forfeiture of privileges; seizure of alcoholic liquor.

Sec. 907.

(1) Upon revocation of a license issued under this act, any and all privileges conferred by that license shall be forfeited and the commission shall seize any and all alcoholic liquor found in the possession of the licensee.

(2) The commission shall remit to that licensee the purchase price less 10%, paid by the licensee to the commission for all alcoholic liquor seized. All other alcoholic liquor seized shall be disposed of by order of the commission and no payment shall be made for that alcoholic liquor.

(3) A person whose license has been revoked for cause or whose license has been ordered transferred to another person for cause is not eligible for issuance or reissuance of a license under this act for a period of at least 2 years.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1909 Violation of act as misdemeanor; penalties; legislative intent.

Sec. 909.

(1) Except as otherwise provided in this act, a person, other than a person required to be licensed under this act, who violates this act is guilty of a misdemeanor.

(2) Except as otherwise provided in this act, a licensee who violates this act, or a rule or regulation promulgated under this act, is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(3) A person who performs any act for which a license is required under this act without first obtaining that license or who sells alcoholic liquor in a county that has prohibited the sale of alcoholic liquor under section 1107 is guilty of a felony punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00, or both.

(4) A person, whether or not a licensee, who violates section 901(4) is subject to the following penalties or sanctions:

   (a) A person who sells, delivers, or imports spirits in violation of section 901(4) in the amount of at least 80,000 milliliters is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

   (b) A person who sells, delivers, or imports spirits in violation of section 901(4) in the amount of at least 8,000 milliliters but less than 80,000 milliliters is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $2,500.00, or both.

(c) A person who sells, delivers, or imports spirits in violation of section 901(4) in the amount of less than 8,000 milliliters is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $1,000.00.

(5) The remedies under this act are cumulative and independent. The use of 1 remedy by a person does not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(6) It is the intent of the legislature that the court, in imposing punishment under this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act or the rules or regulations promulgated under this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010

436.1911 Failure to pay tax; penalties; collection.

Sec. 911.

(1) If a person fails or refuses to pay the tax required by this act, the commission shall assess the tax against that person and the tax shall become due and payable together with a penalty or penalties that the commission considers appropriate, but not to exceed $5,000.00, upon demand by the commission or a person designated by the commission. If the tax remains unpaid for 15 days after that demand is made, the commission may issue its warrant under its official seal, directed to the sheriff of any county or other officer, to levy upon and sell the taxpayer's property, either personal or real, used in connection with the business for the privilege of doing which the tax is levied, found within his or her jurisdiction, for the payment of the amount of the tax with the added penalties, interest, and cost of executing the warrant. A warrant issued under this section shall be returned to the commission, together with the money collected by virtue of the warrant, within the time specified in the warrant, which time shall be not less than 20 or more than 90 days from the date of the warrant. The sheriff or other officer to whom the warrant is directed shall proceed upon the warrant in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his service in executing the warrant, to be collected in the same manner. The state of Michigan, through the commission or an officer or agent designated by it, is authorized to bid for and purchase any property sold under this section.

(2) In addition to the mode of collection provided in subsection (1), the commission may bring an action at law in the county in which the business or any part of the business is carried on, to collect and recover the amount of taxes, interest, or penalties, or any combination of taxes, interest, or penalties, due from a taxpayer.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1913 Unlicensed premises or place; unlawful consumption of alcoholic liquor; exceptions; construction of section; “consideration” defined.

Sec. 913.

(1) A person shall not do either of the following:
   (a) Maintain, operate, or lease, or otherwise furnish to any person, any premises or place that is not licensed under this act within which the other person may engage in the drinking of alcoholic liquor for consideration.
   (b) Obtain by way of lease or rental agreement, and furnish or provide to any other person, any premises or place that is not licensed under this act within which any other person may engage in the drinking of alcoholic liquor for consideration.

(2) A person shall not consume alcoholic liquor in a commercial establishment selling food if the commercial establishment is not licensed under this act. A person owning, operating, or leasing a commercial establishment selling food which is not licensed under this act shall not allow the consumption of alcoholic liquor on its premises.

(3) This section shall not apply to any hotel or any licensee under this act.

(4) This section shall not be construed to repeal or amend section 1019.
(5) As used in this section, "consideration" includes any fee, cover charge, ticket purchase, the storage of alcoholic liquor, the sale of food, ice, mixers, or other liquids used with alcoholic liquor drinks, or the purchasing of any service or item, or combination of service and item; or includes the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2006, Act 131, Imd. Eff. May 5, 2006

436.1914 Alcohol vapor devices prohibited; penalty.

Sec. 914.

(1) Except as otherwise provided in subsection (3), a person shall not use or offer for use, possess, sell, or offer for sale an alcohol vapor device.
(2) A person who violates subsection (1) is guilty of a misdemeanor punishable in the manner provided for in section 909.
(3) The commission may jointly promulgate rules with the department of community health to allow for the sale or use of an alcohol vapor device for research purposes.

History: Add. 2005, Act 320, Imd. Eff. Dec. 27, 2005

436.1915 Possessing or consuming alcoholic liquor on public highway or in park, place of amusement, or publicly owned area; authority of local governmental unit or state department or agency to prohibit possession or consumption of alcoholic liquor; definitions.

Sec. 915.

(1) Alcoholic liquor shall not be consumed on the public highways.
(2) Except as provided in subsections (3) and (4), alcoholic liquor may be possessed or consumed in public parks, public places of amusement, or a publicly owned area not licensed to sell for consumption on the premises.
(3) The governing body of a local governmental unit may prohibit by ordinance, order, or resolution the possession or consumption of alcoholic liquor in any public park, public place of amusement, or publicly owned area that is owned or administered, or both, by that local governmental unit. When land is leased from a department or agency of this state, an ordinance, order, or resolution adopted pursuant to this subsection shall be subject to the approval of the department or agency.
(4) A department or agency of this state that administers public lands may prohibit by rule, order, or resolution the possession or consumption of alcoholic liquor on the public land under its jurisdiction.
(5) As used in this section:
    (a) “Local governmental unit” means a county, city, township, village, or charter authority.
    (b) “Publicly owned area” means an area under the jurisdiction of a local governmental unit.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1916 Entertainment, dance, or topless activity permits; issuance; prohibited activity; exceptions; permits issued under administrative rule; fees; definitions.

Sec. 916.

(1) An on-premises licensee shall not allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises unless the licensee has applied for and been granted an entertainment permit by the commission. Issuance of an entertainment permit under this subsection does not allow topless activity on the licensed premises.

(2) An on-premises licensee shall not allow dancing by customers on the licensed premises unless the licensee has applied for and been granted a dance permit by the commission. Issuance of a dance permit under this subsection does not allow topless activity on the licensed premises.
(3) An on-premises licensee shall not allow topless activity on the licensed premises unless the licensee has applied for and been granted a topless activity permit by the commission. This section is not intended to prevent a local unit of government from enacting an ordinance prohibiting topless activity or nudity on a licensed premises located within that local unit of government. This subsection applies only to topless activity permits issued by the commission to on-premises licensees located in counties with a population of 95,000 or less.
(4) The commission may issue to an on-premises licensee a combination dance-entertainment permit or topless activity-entertainment permit after application requesting a permit for both types of activities.
(5) An on-premises licensee shall not allow the activities allowed by a permit issued under this section at any time other than the legal hours for sale and consumption of alcoholic liquor.
(6) An extended hours permit is required for an on-premises licensee to engage in any of the following activities on the licensed premises at any time other than the legal hours for the sale and consumption of alcoholic liquor:
    (a) Monologues, dialogues, motion pictures, still slides, closed circuit television, contests, other performances for public viewing on the licensed premises, if holding a permit for those activities.
    (b) Patron dancing, if holding a permit for that activity.
    (c) The performance or playing of an orchestra, piano, or other types of musical instruments or singing or the viewing of any publicly broadcast television transmission from a federally licensed station.
(7) The commission may issue an extended hours permit to either of the following:
    (a) A licensee not holding an entertainment, dance, or combination dance-entertainment permit, who desires to conduct activities described under subsection (11).
    (b) A licensee who already holds, or submits an application for, an entertainment, dance, or combination dance-entertainment permit in order to conduct activities allowed by the permit.
(8) The applicant for only an extended hours permit shall obtain the local approval for the extended hours permit under subsection (10). An applicant for an extended hours permit who holds an entertainment, dance, or combination dance-entertainment permit shall obtain the local approval for the entertainment, dance, or combination dance-entertainment permit under subsection (10) as well as local approval for the extended hours permit under subsection (10). The commission shall waive the conditions contained in R 436.1437(1) of the Michigan administrative code relative to the application for an extended hours permit.
(9) An on-premises licensee issued an extended hours permit shall not allow customers on the licensed premises during the time period provided by the extended hours permit unless the activity, and only that activity, allowed by the extended hours permit is occurring. The issuance of an extended hours permit does not authorize any of the following:
    (a) Topless activity.
    (b) Except as otherwise provided under this subdivision, gaming as that term is defined in section 2 of the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.202. A licensee holding a casino license issued under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, may conduct gaming pursuant to the casino license only.
    (c) Keno or other gaming authorized under the McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47.
    (d) The extension of hours for the serving of alcoholic liquor.
    (e) The extension of hours for the consumption of alcoholic liquor as provided for in R 436.1403 of the Michigan administrative code.
(10) Before the issuance of any permit under this section, the on-premises licensee shall obtain the approval of all of the following:
    (a) The commission.
    (b) Except in cities with a population of 1,000,000 or more, the local legislative body of the jurisdiction within which the premises are located.

(c) The chief law enforcement officer of the jurisdiction within which the premises are located or the entity contractually designated to enforce the law in that jurisdiction.

(11) The following activities are allowed without the granting of a permit under this section:

(a) The performance or playing of an orchestra, piano, or other types of musical instruments, or singing.

(b) Any publicly broadcast television transmission from a federally licensed station.

(12) In the case of a licensee granted an entertainment or dance permit under R 436.1407 of the Michigan administrative code who, after January 1, 1998, extended the activities conducted under that permit to regular or full-time topless activity, that licensee shall apply to the commission for a topless activity permit under this section within 60 days after April 14, 1998 in order to continue topless activity. Except as otherwise provided for in this subsection, this section applies only to entertainment or dance permits issued after April 14, 1998.

(13) The fees imposed by the commission for a permit under this section remain the same as the fees imposed under a permit issued under R 436.1407 of the Michigan administrative code.

(14) Except as otherwise provided, this section does not change the renewal or application process for a license under section 501 or the renewal process for permits issued under R 436.1407 of the Michigan administrative code.

(15) As used in this section:

(a) "Nudity" means exposure to public view of the whole or part of the pubic region; the whole or part of the anus; the whole or part of the buttocks; the whole or part of the genitals; or the breast area including the nipple or more than 1/2 of the area of the breast.

(b) "Topless activity" means activity that includes, but is not limited to, entertainment or work-related activity performed by any of the following persons on the licensed premises in which the female breast area, including the nipple, or more than 1/2 of the area of the breast, is directly exposed or exposed by means of see-through clothing or a body stocking:

(i) A licensee.

(ii) An employee, agent, or contractor of the licensee.

(iii) A person acting under the control of or with the permission of the licensee.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 259, Imd. Eff. Dec. 16, 2005

436.1917 Liability of vendor.

Sec. 917.

(1) A person who engages in the business of selling or keeping for sale alcoholic liquor in violation of this act, whether as owner, clerk, agent, servant, or employee, is equally liable, as principal, both civilly and criminally, for the violation of this act.

(2) A person or principal is liable, both civilly and criminally, for the acts of his or her clerk, servant, agent, or employee, in violating this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1919 Forging documents, labels, or stamps; prohibited conduct; penalty.

Sec. 919.

A person who falsely or fraudulently makes, simulates, forges, alters, or counterfeits a document, label, or stamp prescribed by the commission under this act or rules promulgated under this act, or who causes or procures to be falsely or fraudulently made, simulated, forged, altered, or counterfeited any such document, label, or stamp, who knowingly and willfully utters, publishes, passes, or tenders as true, any such false, altered, forged, or counterfeited document, label, or stamp, or who uses more than once any label or stamp prescribed by the commission pursuant to this act or the rules promulgated under this act is guilty of a felony punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00, or both.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1921 Sale or exchange of ceramic commemorative bottles.

Sec. 921.

Notwithstanding section 203, a collector, who is 21 years of age or older, of ceramic commemorative bottles containing alcoholic liquor and bearing an unbroken federal tax stamp or seal may sell or trade the bottles to other such collectors of those bottles without obtaining a license under this act. All sales conducted under this subsection shall be for the purpose of exchanging ceramic commemorative bottles between private collectors of those bottles and shall not be for the purpose of selling alcoholic liquor for personal consumption. A sale or exchange conducted under this subsection shall not occur in any of the following ways:

(a) In connection with the business of a holder of an alcoholic liquor license.
(b) In connection with any other business.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1923 Warehouse receipts for alcoholic liquor; authority of commission.

Sec. 923.

The commission has complete power to regulate, limit, and control the sale, transfer, barter, or exchange in this state of warehouse receipts for alcoholic liquor wherever alcoholic liquor is situated.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1925 Construction of act.

Sec. 925.

This act shall be liberally construed to effect the intent and purposes set forth in this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

CHAPTER 10

436.2001 Armories, air bases, naval installations and state military reservation.

Sec. 1001.

The commanding general of the Michigan national guard may publish by general order such regulations and restrictions as to the transportation, possession, sale, and use of alcoholic liquor in armories, air bases, and naval installations owned or leased by the state or provided by the federal government by lease, license, or use permit and used by outside parties of a nonmilitary or state governmental nature and on the state military reservation during the field training periods of the Michigan national guard, either in state or federal service, as he or she determines are for the best interests of the military service.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2003 False or fraudulent statements.

Sec. 1003.

A person who makes a false or fraudulent statement to the commission, orally or in writing, for the purpose of inducing the commission to act or refrain from taking action or for the purpose of enabling or assisting a person to evade the provisions of this act is guilty of a violation of this act and is punishable in the manner provided for in section 909.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2005 Adulterated, misbranded, or refilled liquors.

Sec. 1005.

(1) A licensee who, by himself or herself or by his or her agent or employee, sells, offers for sale, exposes for sale, or possesses alcoholic liquor that is adulterated, misbranded, or in bottles that have been refilled is guilty of a violation of this act.
(2) For purposes of this section, alcoholic liquor is adulterated if it contains any liquid or other ingredient that was not placed there by the original manufacturer or bottler.
(3) For purposes of this section, alcoholic liquor is misbranded if it is not plainly labeled, marked, or otherwise designated.
(4) For purposes of this section, alcoholic liquor bottles have been refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer or bottler.
(5) This section does not apply to beer containers.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2007 Alcoholic liquor as contraband.

Sec. 1007.

All alcoholic liquor that is manufactured, transported, sold, or possessed without the consent of the commission is hereby declared contraband and shall be disposed of by order of the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2009 Delivery of seized alcoholic liquor; bankruptcy; payment.

Sec. 1009.

(1) If alcoholic liquor is seized under a judgment rendered against a licensee or if a licensee becomes insolvent, the officer seizing that alcoholic liquor or the trustee in bankruptcy of the insolvent licensee shall deliver to the commission all alcoholic liquor found in the licensee's possession.
(2) Within 1 month after the date of delivery of alcoholic liquor to the commission by an officer or trustee in bankruptcy under this section, the commission shall pay over to the officer or trustee in bankruptcy the purchase price, less 10%, paid by the licensee to the commission for all legal alcoholic liquor seized and the value, less 10%, as established by the commission, of other legally acquired alcoholic liquor delivered to the commission under this section. Alcoholic liquor delivered to the commission under this section that was illegally acquired by the licensee shall be disposed of by order of the commission and payment shall not be made for that alcoholic liquor.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2011 Printed price list; posting.

Sec. 1011.

Alcoholic liquor for consumption on the premises shall be sold only in accordance with a printed price list that is readily available to customers.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2013 Sale or purchase of alcoholic liquor for cash; exceptions.

Sec. 1013.

A sale or purchase of alcoholic liquor made in a state liquor store and by all types of licensees shall be for cash only, except for the following:

(a) A customer's charge account with a specially designated merchant who is not a holder of a license authorizing sale of alcoholic liquor for consumption on the premises.

(b) A sale to a bona fide registered guest of a class B hotel or class A hotel, if the extension of credit does not exceed 30 days.
(c) A sale to an industrial account if the extension of credit does not exceed 30 days.
(d) A sale to a person holding an authorized credit card from a credit card agency.
(e) A sale to a professional account, or an industrial account of class C licensee or a tavern, whose major business is food, if the extension of credit does not exceed 30 days.
(f) A sale by a private club to a bona fide member.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2015 Awarding unopened alcoholic liquor pursuant to lawful fund raising activity.

Sec. 1015.

(1) A nonlicensee, or a person who holds either a special license or a club license under this act, may offer and award unopened alcoholic liquor having a value of less than $200.00 to a person 21 years of age or older in a drawing or raffle or as a door prize, pursuant to a lawful fund raising activity. The alcoholic liquor awarded shall not be consumed on the premises at which it is awarded.
(2) A person who holds either a special license or a club license under this act and who has purchased alcoholic liquors to be awarded as provided for in subsection (1) shall be exempt from sections 1021(2) and 1025 for those purchases.
(3) A person who holds either a special license or a club license under this act shall not sell or award alcoholic liquor to a person who is in an intoxicated condition.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2017 Sterilization of glass; method and manner.

Sec. 1017.

Alcoholic liquor shall not be served to a person for consumption on the premises unless the glass in which the alcoholic liquor is to be served has been sterilized by a method and in a manner as prescribed by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2019 Sales in hotel rooms.

Sec. 1019.

(1) Alcoholic liquor may be served by any hotel licensed individually under this act in the room of a bona fide guest.
(2) A person shall not consume or offer for consumption spirits or mixed spirit drink in any place licensed under this act to sell beer or wine and not licensed to sell spirits or mixed spirit drink.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2021 Sale or serving of food; removal of liquor from premises; removal of partially consumed bottle of wine from premises; class A or B hotel.

Sec. 1021.

(1) The commission shall not require a licensee to sell or serve food to a purchaser of alcoholic liquor. The commission shall not require a class A hotel or class B hotel to provide food services to registered guests or to the public.
(2) Except as otherwise provided in subjection (3), a purchaser shall not remove alcoholic liquor sold by a vendor for consumption on the premises from those premises.
(3) A vendor licensed to sell wine on the premises may allow an individual who has purchased a meal and who has purchased and partially consumed a bottle of wine with the meal, to remove the partially consumed bottle from the premises upon departure. This subsection does not allow the removal of any additional unopened bottles of wine unless the vendor is licensed as a specially designated

merchant. The licensee or the licensee's clerk, agent, or employee shall reinsert a cork so that the top of the cork is level with the lip of the bottle. The transportation or possession of the partially consumed bottle of wine shall be in compliance with section 624a of the Michigan vehicle code, 1949 PA 300, MCL 257.624a.

(4) This act and rules promulgated under this act do not prevent a class A or B hotel designed to attract and accommodate tourists and visitors in a resort area from allowing its invitees or guests to possess or consume, or both, on or about its premises, alcoholic liquor purchased by the invitee or guest from an off-premises retailer, and does not prevent a guest or invitee from entering and exiting the licensed premises with alcoholic liquor purchased from an off-premises retailer.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;-Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002;-Am. 2005, Act 21, Imd. Eff. May 19, 2005.

436.2023 Pinball machines.

Sec. 1023.

The commission shall not prohibit licensees from allowing pinball machines on the premises for the purpose of amusement.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2025 Giving away alcoholic liquor; samplings or tastings of alcoholic liquor; sales to intoxicated persons prohibited; inadmissibility of breathalyzer or blood alcohol test results.

Sec. 1025.

(1) A vendor shall not give away any alcoholic liquor of any kind or description at any time in connection with his or her business, except manufacturers for consumption on the premises only.

(2) Subsection (1) does not prevent any of the following:

(a) A vendor of spirits, brewer, mixed spirit drink manufacturer, wine maker, small wine maker, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink, or a bona fide market research organization retained by 1 of the persons named in this subsection, from conducting samplings or tastings of an alcoholic liquor product before it is approved for sale in this state, if the sampling or tasting is conducted pursuant to prior written approval of the commission.

(b) A person from conducting of any sampling or tasting authorized by section 537 or rule of the commission.

(c) A class A or B hotel designed to attract and accommodate tourists and visitors in a resort area from giving away alcoholic liquor to an invitee or guest in connection with a business event or as a part of a room special or promotion for overnight accommodations.

(3) A vendor shall not sell an alcoholic liquor to a person in an intoxicated condition.

(4) Evidence of any breathalyzer or blood alcohol test results obtained in a licensed establishment, or on property adjacent to the licensed premises and under the control or ownership of the licensee, shall not be admissible to prove a violation of this section, section 707(1), (2), (3), or (4), or section 801(2). To establish a violation of this section, section 707(1), (2), (3), or (4), or section 801(2), the person's intoxicated condition at the time of the sale or consumption of alcohol must be proven by direct observation by law enforcement or commission enforcement personnel or through other admissible witness statements or corroborating evidence obtained as part of the standard investigation other than breathalyzer or blood alcohol test results.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;-Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002;-Am. 2008, Act 11, Imd. Eff. Feb. 29, 2008; Am. 2010, Act 213, Eff. November 17, 2010

436.2027 Samplings or tastings of alcoholic liquor generally.

Sec. 1027.

(1) Unless otherwise provided by rule of the commission, a person shall not conduct samplings or tastings of any alcoholic liquor for a commercial purpose except at premises that are licensed by the commission for the sale and consumption of alcoholic liquor on the premises.

(2) Notwithstanding section 1025(1), a retailer licensed by the commission for consumption on the premises may allow customers to sample beer, wine, and distilled spirits so long as the retailer does not charge for the samples provided to customers. Sample serving sizes shall not exceed 3 ounces for beer, 2 ounces for wine, and 1/2 ounce for distilled spirits. A customer shall not be provided more than 2 samples within a 24-hour period per licensed premises.

(3) This section does not prevent either of the following:

  (a) A vendor of spirits, brewer, wine maker, mixed spirit drink manufacturer, small wine maker, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink, or a bona fide market research organization retained by 1 of the persons named in this subsection, from conducting samplings or tastings of an alcoholic liquor product before it is approved for sale in this state if the sampling or tasting is conducted pursuant to prior written approval of the commission.

  (b) An on-premises licensee from giving a sampling or tasting of alcoholic liquor to an employee of the licensee during the legal hours for consumption for the purpose of educating the employee regarding 1 or more types of alcoholic liquor so long as the employee is at least 21 years of age.

  (c) A small distiller licensee from giving a sampling or tasting of brands it manufactures on the licensed premises or an off-site tasting facility operated by that small distiller.

(4) A vendor of spirits or a manufacturer may conduct a consumer sampling event on the premises of a holder of a specially designated distributor license upon submission of a completed application to the commission.

(5) The holder of the consumer sampling event license shall comply with the following:

  (a) The commission must be notified in writing a minimum of 10 working days prior to the event with the date, time, and location of the event.

  (b) The consumer sampling event is limited to 3 events per vendor of spirits or manufacturer per specially designated distributor license per month.

  (c) The vendor of spirits or manufacturer conducting the consumer sampling event must have a licensed representative present at the specially designated distributor's establishment.

  (d) Licensed representatives or an authorized representative may distribute merchandise, not to exceed $100.00 in value, to consumers 21 years of age or older during the event.

  (e) Participating specially designated distributor licensees do not receive any fee or other valuable consideration for participating in the event.

  (f) Each consumer is limited to 3 samples, which total no more than 1/3 ounce of distilled spirits per serving.

  (g) The consumer is not charged for and does not purchase any sample.

  (h) The alcoholic liquor used in the consumer sampling event is provided by the vendor of spirits or manufacturer, and purchased at the minimum retail selling price fixed by the commission from the specially designated distributor on whose premises the event is located. The vendor of spirits or manufacturer shall remove any unfinished product from the premises at which the event is held upon completion of the event.

  (i) A consumer sampling event shall not be allowed when the sale of alcoholic liquor is otherwise prohibited on the premises at which the event is conducted.

  (j) Samples are not to be offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic liquor.

  (k) A consumer sampling event may be advertised in any type of media and the advertisements may include the date, time, location, and other information regarding the event.

  (l) The participating vendor of spirits or manufacturer and specially designated distributor licensees must comply with this act and commission rules.

(m) The vendor of spirits or manufacturer must demonstrate that the individual actually conducting the sampling has successfully completed the server training program in the manner provided for in section 906 and rules promulgated by the commission.

(6) Violation of this section subjects the vendor of spirits or manufacturer to the sanctions and penalties as provided for under this act.

(7) The commission, by rule or issuance of an order, may further define eligibility for licensure and processes for conducting consumer sampling events.

(8) A sampling or tasting of any alcoholic liquor in a home or domicile for other than a commercial purpose is not subject to this section.

(9) For purposes of this section, “commercial purpose” means a purpose for which monetary gain or other remuneration could reasonably be expected.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;-Am 2001, Act 46, Imd. Eff. July 23, 2001;-Am. 2008, Act 218, Imd. Eff. July 16, 2008; Am. 2010 Act 175. Imd. Eff. Sept. 30, 2010; Am. 2010, Act 213, Eff. November 17, 2010.

436.2029 Packaging of nonalcoholic carbonated beverages with spirits.

Sec. 1029.

(1) The commission, by promulgation of a rule, issuance of an order, or execution of a memorandum of understanding with the department of treasury, or any combination thereof, may allow the conduct by a manufacturer or outstate seller of spirits of a preapproved program for marketing spirits by inclusion of nonalcoholic carbonated beverages to be packaged with spirits. The commission may, in conjunction with the department of treasury, adopt a program that disallows the redemption of returnable containers from the commission but otherwise allows redemption of Michigan-sold returnable containers at other venues, and shall allow for a system of appropriate allocation of funds under 1976 IL 1, MCL 445.571 to 445.576, by means of the issuance of an order or by adoption of a rule.

(2) The commission shall provide for a system of non-mail-in or instant coupon transactions that does not diminish the spirit product margins allocated to the state under this act by means of the issuance of an order or by adoption of a rule.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;Am. 2010 Act 175. Imd. Eff. Sept. 30, 2010.

436.2030 Sale of keg beer; duties of retailer; receipt; contents of receipt; signature of purchaser; notice; identification tags; availability; size; materials; retention of copy of receipt; violation; sanctions; attachment of tag to beer keg; return of untagged keg by commission agent or law enforcement agent; "keg" defined.

Sec. 1030.

(1) A retailer selling beer in a keg shall do all of the following:

(a) Attach an identification tag, as prescribed by the commission, on the keg before or at the time of the sale of the beer.

(b) Require the purchaser of the beer to complete and sign a receipt as prescribed by the commission under subsection (2) after presentation of a driver license or state of Michigan identification card. If the purchaser of the beer does not possess a driver license or state of Michigan identification card, the retailer shall not sell beer in a keg to the customer.

(c) Refuse to return the keg deposit if the identification tag is not attached when returned.

(d) Retain a keg deposit as specified in R 436.1629 of the Michigan administrative code.

(2) The commission shall prescribe the receipt described in subsection (1) for use in the sale of beer by the keg. The receipt shall contain at least a place for the printed name, address, telephone number of the purchaser of the beer, the driver license or state of Michigan identification number of the purchaser, and the beer keg tag number. The purchaser of the beer shall sign the receipt. The retailer shall not sell beer in a keg unless the receipt is completed and accompanied by the signature of the purchaser. A notice containing the information described in subdivisions (a), (b), and (c) shall be

printed on the receipt in boldfaced type the same size as the type used on other parts of the receipt. The notice shall state all of the following:

(a) That the retailer will not return the keg deposit to the purchaser of the beer if the tag is not attached to the keg upon its return.

(b) That the individual signing the receipt does so with the understanding that he or she agrees not to damage the keg and not to remove or alter the attached tag.

(c) That the individual signing the receipt does so with the understanding that he or she is subject to liability for serving the beer to any minor.

(3) The commission shall make identification tags available to retailers selling beer in a keg. The identification tags shall be of such size and materials as to make the identification tags easily removable for the purpose of the cleaning and the reusing of the keg by the owner of the keg. Upon request, the commission shall distribute and make available the tags in numbered lots to retailers selling beer in a keg.

(4) Retailers selling beer in a keg shall retain a copy of the receipt described in subsection (1) for not less than 30 days after the date the keg was returned and shall make the copy available for inspection by the commission and law enforcement agencies.

(5) Notwithstanding section 909, a person violating this section under the following circumstances is subject to the applicable sanctions:

(a) A retailer who has failed to apply an identification tag on a keg, intentionally failed to complete the receipt as prescribed by the commission, or failed to obtain the purchaser's signature on the receipt is liable for an administrative fine of not more than $50.00.

(b) A person who is not a retailer or a wholesaler licensed by the commission is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both, for any of the following:

(i) Removing an identification tag from a keg containing beer.

(ii) Allowing the removal of an identification tag from a keg of beer purchased by that individual.

(iii) Providing false information in the purchase of beer in a keg.

(6) This section requires the attaching of a tag to a beer keg sold at retail for use by a member of the general public and does not require a retailer or licensee to attach a tag to a keg that is being used for on-premises consumption only, being stored, being transported, or being used by a caterer providing the catering service.

(7) This section does not prohibit a commission agent or a law enforcement agent from returning an untagged keg and receiving the keg deposit on behalf of the commission or the law enforcement agency.

(8) As used in this section, "keg" means any brewery-sealed individual container having liquid capacity of 5 gallons or more.

History: Add. 2010, Act 344, Imd, Eff. Dec. 21, 2010

436.2031 "Wine auction license" defined; issuance of license; restrictions; payment of taxes; delivery, storage, warehousing, and delivery of wine; sale and resale of wine purchases at auction.

Sec. 1031.

(1) As used in this section, "wine auction license" means a license issued by the commission to sell wine by auction, subject to the following:

(a) The wine is sold through an auction by a person licensed as a specially designated merchant or through a seller partnering with a specially designated merchant, as evidenced by a written agreement of the parties.

(b) The owner of the wine is not licensed under this act.

(c) The wine is part of a private collection owned by a person not licensed under this act.

(d) The specially designated merchant ensures that each bottle sold from the private collection has a permanently affixed tag or label stating that the wine was acquired from a private collection.

(2) Upon submission of a completed application and the license fee described in section 525(1)(aa), the commission shall issue a wine auction license to a person licensed as a specially designated merchant, or a seller partnering with a specially designated merchant, who is arranging for the sale of wine by an owner that is not licensed under this act. The commission shall issue the license for a term of 1 year. The license allows the licensee to hold not more than 12 auctions per license year.
(3) The license restrictions as prescribed under this section and under this act are in addition to those requirements and prescriptions imposed by any local law or ordinance, or resolution of the local unit of government.
(4) The holder of the wine auction license is responsible for the payment of any applicable sales or excise taxes regarding the sale of the wine by auction.
(5) The holder of the wine auction license is responsible for the delivery, storing, and warehousing of the wine offered for sale and for the delivery of the wine to the purchasers.
(6) A person licensed to sell wine at wholesale or retail may purchase any wine offered at an auction under this section and may resell that wine in accordance with the terms of his or her license, so long as the tag or label remains permanently affixed to the bottle upon sale.
(7) The sale and resale of wine purchased at auction is subject to this act and any rules of the commission promulgated under this act.
(8) A person holding a wine auction license is not required to demonstrate compliance with the registration requirements of article 29 of the occupational code, 1980 PA 299, MCL 339.2901 to 339.2919.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;Am. 2010 Act 175. Imd. Eff. Sept. 30, 2010.

CHAPTER 11

436.2101 Sale of spirits and mixed spirit drink for consumption on premises; resolution; petition; notice; submission of question to electors; ballot; canvass; effect of tie vote; use of section to nullify referendum vote prohibited.

Sec. 1101.

(1) Spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, may be sold by restaurants, hotels, and establishments approved by the commission under this act in the following cities, villages, or townships if the legislative body of the city, village, or township by resolution of a majority vote of the members elect, votes in favor of allowing that sale. A petition may be filed with the city, village, or township clerk requesting the submission of the question of sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine. In the case of a city or township, the petition shall be signed by a number of the registered and qualified electors which shall be not less than 35% of the total number of votes cast for all candidates for the office of secretary of state in that city or township at the last general election held for that purpose. In the case of a village, the petition shall be signed by a number of the registered and qualified electors that is not less than 35% of the total number of votes cast for all candidates for the office of president of the village at the last village election held for that purpose. The question shall not be submitted to the electors of a city, village, or township more often than once in every 2 years. The city, village, or township clerk shall, within 10 days after the petition is filed with the clerk, give notice of the filing by publication of notice setting forth the essential facts of the petition in a newspaper published or in general circulation in the city, village, or township. The city, village, or township clerk shall submit the question at the next regular state election held in the city, village, or township if the petitions are filed at least 60 days before the election. Class C licensees in a newly incorporated city or village shall continue to be licensed by the commission until the question of the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, is submitted to the electors of the city or village as provided in this section. The question of the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, shall be submitted by ballot in substantially the following form:

"Shall the sale of spirits and mixed spirit drink in addition to beer and wine be permitted for consumption on the premises within the city, village, or township of ..... under the provisions of the law governing same?

Yes .....
No .....

(2) All votes on the question submitted by ballot under subsection (1) shall be taken, counted, and canvassed in the same manner as votes cast in city, village, or township elections, as applicable, are taken, counted, and canvassed. Ballots shall be furnished by the election commission or similar body of the respective city, village, or township. If a majority of the electors voting at an election conducted under this section shall vote in favor of the question submitted by ballot under subsection (1), spirits and mixed spirit drink may be sold under this act in that city, village, or township for consumption on the premises, in addition to beer and wine.
(3) At any time within 18 months after an election conducted under this section has resulted in a tie vote, the question shall be resubmitted to the electors upon the filing of a petition with the legislative body of the city, village, or township. The petition shall be signed by a number of electors not less than that required under subsection (1) for the calling of an election on an original petition. The question shall be resubmitted to the electors by the city, village, or township clerk at the next regular election if that election occurs not less than 30 days and not more than 60 days after the filing of the petition or at a special election called for that purpose and to be held within not less than 30 days and not more than 60 days after the filing of the petition.
(4) This section shall not be used by the legislative body of a city, village, or township to nullify the results of a referendum vote of the electors of the city, village, or township.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2101a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 1101a.

A petition under section 1101, 1107, 1111, or 1113, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 251, Eff. Mar. 23, 1999

436.2103 Sale of spirits and mixed spirit drink for consumption on premises; annexation of territory to city prohibiting sale; continuance of license; referendum.

Sec. 1103.

(1) If spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, may be sold by restaurants, hotels, and establishments approved by the commission in a city, village, or township and all or a part of that city, village, or township becomes annexed to and a part of a city or village that does not, at the time of annexation, permit those sales, class C licensees in that annexed area shall continue to be licensed by the commission until the next regular, city, or village election, at which election, without the need to file a petition, the question of the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, shall be submitted to the electors of the city or village to which the territory has been annexed.
(2) The form of the ballot, the voting and canvassing of votes, and the effect of the votes shall be as provided in section 1101.
(3) The fact that a vote has been taken upon that question either in the annexing municipality or in the annexed area, or in both, within 4 years before the annexation is not a bar to the submission of the question as provided in this section.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2105 Sale of spirits and mixed spirit drink for consumption on premises; referendum; license to serve spirits in addition to beer and wine for consumption on premises; application; approval; fee; referendum in certain townships.

Sec. 1105.

(1) When the question of the sale of spirits and mixed spirit drink for consumption on the premises is submitted to and approved by the electors of a city, village, or township, and immediately after certification of the results of the election, all currently approved licensed establishments for consumption of beer and wine on the premises in the city, village, or township shall be licensed to serve spirits and mixed spirit drink in addition to beer and wine for consumption on the premises upon application to and approval by the commission and payment of the applicable license fee as specified in section 525.

(2) A township having incorporated villages within its boundaries may submit to the voters in the unincorporated portion of the township the question of sale of spirits and mixed spirit drink for consumption on the premises and the will of the electors outside of the incorporated villages shall decide the question for the unincorporated portion of the township.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2107 Manufacture and sale of alcoholic liquor; county option; form of ballot; notice of prohibition.

Sec. 1107.

(1) Upon the filing with the county clerk of a petition signed by not less than 20% of the registered and qualified electors of any county of the entire vote cast for the office of secretary of state in that county at the last general election requesting the submission to the electors of that county of the question of the manufacture or sale of alcoholic liquor, or both, within that county, the county clerk shall submit the question at the next regular state election held in that county. A petition filed under this subsection shall be filed at least 60 days before the election. A ballot question under this subsection shall not be submitted to the electors more often than once in any 4-year period.

(2) All votes on the question shall be taken, counted, and canvassed in the same manner as votes cast for county offices are taken, counted, and canvassed. The vote on that question shall be by ballot, which ballots shall be furnished by the board of election commissioners of the county and shall be substantially in 1 of the following forms:

"1. Shall the manufacture of alcoholic liquor be prohibited in the county of .....?
Yes .....
No .....
2. Shall the sale of alcoholic liquor be prohibited in the county of .....?
Yes .....
No .....
3. Shall the manufacture and sale of alcoholic liquor be prohibited in the county of .....?
Yes .....
No .....".

(3) The effective date of the prohibition of the manufacture or sale, or both, as applicable, shall be 30 days after the board of county canvassers has determined that a majority of those voting on that question have voted in favor of the prohibition. The county clerk shall give notice of the effective date of the prohibition by publishing the date at least once in a newspaper published in that county or, if no newspaper is published within the county, in a newspaper published in an adjoining county.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2109 Ordinance prohibiting retail sale of alcoholic liquor; adoption; duration; election; affirmance or revocation; prohibition.

Sec. 1109.

(1) Notwithstanding section 1101, a city, village, or township in which there are no retail licenses for the sale of alcoholic liquor may, by ordinance, prohibit the retail sale of alcoholic liquor within its borders.
(2) An ordinance adopted under subsection (1) remains in effect until the next general or special election held not less than 45 days after the adoption of the ordinance. At that election, the ordinance shall be submitted to the electors of the city, village, or township for affirmance or revocation. A revocation of the ordinance is effective on the date the election results are certified.
(3) The commission shall not issue a license that violates an ordinance adopted under subsection (1).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2111 Beer and wine; referendum as to Sunday sale; petition; form of ballot; taking, counting, and canvassing votes; prohibition.

Sec. 1111.

(1) Except as otherwise provided for in subsection (6), the sale of beer and wine between the hours of 7 a.m. on Sunday and 2 a.m. on Monday is allowed, but may be prohibited, in any county, city, village, or township under the following circumstances:
    (a) By majority vote of the legislative body voting on the resolution to make such an authorization. Failure of the legislative body to act on such an authorization is grounds for the petitioning of the county, city, village, or township for submission of the question to the voters of the county, city, village, or township under subsection (2).
    (b) By submission of a petition under subsection (2) by a majority vote of the electors voting at a regular state election.
(2) Not more often than once in every 4 years, upon the filing of a petition with the county, city, village, or township clerk, by a majority of the electors voting at a regular state election within that county, village, city, or township, as applicable, requesting the submission of the question of the Sunday sale of beer and wine, the clerk shall submit that question to the electors of the county, city, village, or township at the next regular state election held in that county, city, village, or township. A petition filed under this subsection shall be filed not less than 60 days before the regular state election. A ballot question under this subsection shall not be submitted more often than once in any 4-year period.
(3) In the case of a county, city, or township, the petition shall be signed by a number of the registered and qualified electors of the county, city, or township that is not less than 35% of the total number of votes cast for all candidates for the office of secretary of state in that county, city, or township at the last general election held for that purpose and, in the case of a village the petition shall be signed by a number of the registered and qualified electors of the village that is less than 35% of the total number of votes cast for all candidates for the office of president of the village at the last village election held for that purpose.
(4) The question of the Sunday sale of beer and wine shall be submitted by ballot in substantially the following form:

    "Shall the sale of beer and wine within (the county, city, village, or township as the case may be) between the hours of 7 a.m. on Sunday and 2 a.m. on Monday be prohibited?
    Yes .....
    No .....".

(5) All votes on the question submitted to the electors under this section shall be taken, counted, and canvassed in the same manner as votes cast in county, city, village, or township election, as applicable, are taken, counted, and canvassed. Ballots shall be furnished by the election commission or similar body of the respective county, city, village, or township. If a majority of the electors voting at an election conducted under this section vote in favor of the question submitted, the sale of beer and

wine within that county, city, village, or township between the hours of 7 a.m. on Sunday and 2 a.m. on Monday is prohibited.

(6) The sale of beer and wine in any county between the hours of 7 a.m. on Sunday and 2 a.m. on Monday shall not be prohibited under the provisions of subsections (1) through (5) as applied to a motorsports entertainment complex located in more than 1 county if a resolution or referendum under this section results in the question's failing to pass in 1 county but passing in another. Under such circumstances, the commission shall determine the issue of the sale of beer and wine in the motorsports entertainment complex in those counties between the hours of 7 a.m. on Sunday and 2 a.m. on Monday. As used in this section, "motorsports entertainment complex" means a closed-course motorsports facility, and its ancillary grounds and facilities, that satisfies all of the following:

(a) Has at least 70,000 fixed seats for race patrons.

(b) Has at least 4 scheduled days of motorsports events each calendar year.

(c) Serves food and beverages at the motorsports entertainment complex during motorsports events each calendar year through concession outlets, which are staffed by individuals who represent or are members of 1 or more nonprofit civic or charitable organizations that directly benefit from the concession outlets' sales.

(d) Engages in tourism promotion.

(e) Has permanent exhibitions of motorsports history, events, or vehicles within the motorsports entertainment complex.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998; Am. 2010, Act 213, Eff. December 1, 2010

436.2113 Selling at retail, giving away, furnishing, or buying spirits or mixed spirit drink on Sunday; sale of spirits or mixed spirit drink for consumption on or off premises on Sunday; resolution; petition; election; form of ballot; voting; violation as misdemeanor; exception; selling and buying alcoholic liquor from December 24 to 26; legislative bodies authorized to prohibit sale of alcoholic liquor on certain days.

Sec. 1113.

(1) Except as provided in subsection (2), (3), or (5) and subject to subsection (6), a licensee enumerated under section 525 may sell at retail, and a person may buy, spirits or mixed spirit drink between the hours of 7 a.m. on Sunday and 2 a.m. on Monday.

(2) Unless the legislative body of a county has prohibited the sale of spirits and mixed spirit drink for consumption on the premises on Sunday, by resolution approved by a majority of the legislative body voting on that resolution, the spirits and mixed spirit drink may be sold after 7 a.m. on Sunday, in an establishment licensed under this act in which the gross receipts derived from the sale of food and other goods and services exceed 50% of the total gross receipts. With respect to an action taken by the legislative body or if the legislative body fails to act, a petition may be filed with the county clerk requesting the submission of the question regarding the prohibition of the sale of spirits and mixed spirit drink for consumption on the premises in addition to beer and wine on Sunday. The petition shall be signed by a number of the registered and qualified electors of the county that is not less than 8% of the total number of votes cast for all candidates for the office of secretary of state in the county at the last general election held for that purpose. The question shall not be submitted to the electors of a county more than once every 4 years. The county clerk shall submit the question at the next regular state election held in the county if the petitions are filed not less than 60 days before the election. The question regarding the prohibition of the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, on Sunday shall be submitted by ballot in substantially the following form:

"Shall the sale of spirits and mixed spirit drink for consumption on the premises be prohibited on Sunday in an establishment licensed under the Michigan liquor control code of 1998 in which the gross receipts derived from the sale of food or other goods and services exceed 50% of the total gross receipts within the county of ..... under the provisions of the law governing the sale of spirits and mixed spirit drink for consumption?

Yes .....
No .....

(3) Unless the legislative body of a county has prohibited the sale of spirits and mixed spirit drink for consumption off the premises on Sunday by resolution approved by a majority of the legislative body voting on the resolution, spirits and mixed spirit drink may be sold after 7 a.m., in a retail establishment licensed under this act. With respect to an action taken by the legislative body or if the legislative body fails to act, a petition may be filed with the county clerk requesting the submission of the question regarding the prohibition of the sale of spirits and mixed spirit drink for consumption off the premises, in addition to beer and wine, in a retail establishment licensed under this act on Sunday. The petition shall be signed by a number of the registered and qualified electors of the county that is not less than 8% of the total number of votes cast for all candidates for the office of secretary of state in the county at the last general election shall not be held for that purpose. The question submitted to the electors of a county more than once every 4 years. The county clerk shall submit the question at the next regular state election held in the county if the petitions are filed not less than 60 days before the election. The question regarding the prohibition of the sale of spirits and mixed spirit drink for consumption off the premises, in addition to beer and wine, in a retail establishment licensed under this act on Sunday shall be submitted by ballot in substantially the following form:

"Shall the sale of spirits and mixed spirit drink for consumption off the premises be prohibited on Sunday in a retail establishment licensed under the Michigan liquor control code of 1998 within the county of ..... under the provisions of the law governing the sale of spirits and mixed spirit drink for consumption?
Yes .....
No .....".

(4) Votes on a question submitted under this section shall be taken, counted, and canvassed in the same manner as votes cast in county elections are taken, counted, and canvassed. A ballot shall be furnished by the election commission or similar body of the county. If a majority of the electors voting at an election vote in favor of the proposal, the sale of spirits and mixed spirit drink may be prohibited in the county under this act for consumption on the premises or by a retail establishment for consumption off the premises, in addition to beer and wine, on Sunday. The sale shall not be permitted in a city, village, or township in which the sale of spirits and mixed spirit drink is prohibited under this act. A violation of this section is a misdemeanor. This section does not apply to spirits and mixed spirit drink served to a bona fide guest in the residence of a person or sold or furnished for medicinal purposes as provided for in this act.

(5) A licensee enumerated under section 525 or any other person shall not sell at retail, and a person shall not knowingly and willfully buy, alcoholic liquor between the hours of 11:59 p.m. on December 24 and 12 noon on December 25. If December 26 falls on Sunday, the hours of closing shall be determined pursuant to this act. The legislative body of a city, village, or township, by resolution or ordinance, may prohibit the sale of alcoholic liquor on Sunday or a legal holiday, primary election day, general election day, or municipal election day.

(6) The sale of spirits or mixed spirit drink in any county between the hours of 7 a.m. on Sunday and 2 a.m. on Monday shall not be prohibited under the provisions of subsections (1) through (5) as applied to a motorsports entertainment complex located in more than 1 county if a resolution or referendum under this section results in the question's failing to pass in 1 county but passing in another. Under such circumstances, the commission shall determine the issue of the sale of spirits and mixed spirit drink in the motorsports entertainment complex in those counties between the hours of 7 a.m. on Sunday and 2 a.m. on Monday. As used in this section, "motorsports entertainment complex" means a closed-course motorsports facility, and its ancillary grounds and facilities, that satisfies all of the following:
    (a) Has at least 70,000 fixed seats for race patrons.
    (b) Has at least 4 scheduled days of motorsports events each calendar year.
    (c) Serves food and beverages at the motorsports entertainment complex during motorsports events each calendar year through concession outlets, which are staffed by individuals who

represent or are members of 1 or more nonprofit civic or charitable organizations that directly benefit from the concession outlets' sales.

(d) Engages in tourism promotion.

(e) Has permanent exhibitions of motorsports history, events, or vehicles within the motorsports entertainment complex.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;-Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998;-Am. 2004, Act 134, Imd. Eff. 6/7/04; Am. 2010, Act 213, Eff. December 1, 2010

436.2114 Hours of sale.

Sec. 1114.

(1) Notwithstanding R 436.1403 and R 436.1503 of the Michigan administrative code and except as otherwise provided under this act or rule of the commission, an on-premises and an off-premises licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day.

(2) Subsection (1) does not prevent any local governmental unit from prohibiting the sale of beer and wine on Sundays under section 1111 and does not prevent any local governmental unit from prohibiting the sale of spirits and mixed spirit drink on Sundays under section 1113. A licensee selling alcoholic liquor between 7 a.m. and noon on Sunday shall obtain a permit and pay to the commission an annual fee of $160.00.

(3) A reference to the time of day under this act or a rule of the commission includes daylight savings time, when observed.

History: Added 2004, Act 134, Imd. Eff. 6/7/04; Am. 2010, Act 213, Eff. December 1, 2010

436.2115 Sale of spirits or mixed spirit drink on Sunday; additional fee; disposition of revenue.

Sec. 1115.

(1) A licensee who elects to sell spirits or mixed spirit drink between the hours of 12 noon on Sunday and 2 a.m. on Monday under section 1113 shall not do so until he or she first obtains a permit and pays to the commission an additional fee in the amount of 15% of the fee charged for the issuance of his or her license.

(2) The revenue received from subsection (1) for the sale of spirits or mixed spirit drink between 12 noon on Sunday and 2 a.m. on Monday shall be deposited with the state treasurer in a special fund to be used only by the department of public health in programs for the treatment of alcoholics. Any other revenue resulting from the additional $160.00 license fee as described in section 1114 for sales of alcoholic liquor permitted under sections 1111 and 1113 shall be deposited into the general fund.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998; Am. 2010, Act 213, Eff. December 1, 2010

CHAPTER 12

436.2201 Imposition of tax; levy; collection; computations; deposit of proceeds; general fund; inventory.

Sec. 1201.

(1) In addition to any and all taxes imposed by law, there is imposed and levied upon and collected a specific tax equal to 4% of the retail selling price of spirits. The tax shall be collected by the commission at the time of sale by the commission. In the case of sales to licensees, the tax shall be computed on the retail selling price established by the commission without allowance of discount.

(2) Upon collection, the commission shall deposit the entire proceeds in the state treasury, to the credit of the general fund.

(3) If section 1201 is repealed, every licensee, who has on hand any spirits on the effective date of the repeal, shall file a complete inventory of those spirits with the commission within 20 days after the repeal. The commission shall credit to such a licensee an amount equal to 4% of the retail selling price of those spirits on future purchases of spirits from the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2203 Imposition of tax; levy; collection; computation; deposit of proceeds; state school aid fund.

Sec. 1203.

(1) In addition to any and all taxes imposed by law, there is imposed, levied upon, and collected a specific tax equal to 4% retail selling price of spirits. The tax shall be collected by the commission at the time of sale by the commission. In the case of sales to licensees, the tax shall be computed on the retail selling price established by the commission without allowance of discount.
(2) Upon collection, the commission shall deposit the entire proceeds in the state treasury, to the credit of the state school aid fund established by sections 8, 10, and 11 of article IX of the state constitution.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2205 Imposition of tax; levy; collection; deposit of proceeds; liquor purchase revolving fund.

Sec. 1205.

(1) In addition to any and all taxes imposed by law, there is imposed and levied upon and collected a specific tax equal to 1.85% of the retail selling price of spirits for consumption off the premises. The tax shall be collected by the commission at the time of the sale by the commission.
(2) Upon collection, the commission shall deposit the entire proceeds in the state treasury, to the credit of the liquor purchase revolving fund.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2207 Legislative findings and declarations; programs to promote tourism and convention business; acquisition of convention facilities; imposition of tax on spirits for consumption off premises; deposit of proceeds; convention facility development fund.

Sec. 1207.

(1) The legislature finds and declares that there exists in this state a continuing need for programs to promote tourism and convention business in order to assist in the prevention of unemployment and the alleviation of the conditions of unemployment, to preserve existing jobs, and to create new jobs to meet the employment demands of population growth. In order to achieve these purposes, it is necessary to assist and encourage local units of government to acquire, construct, improve, enlarge, renew, replace, repair, furnish, and equip convention facilities and the real property on which they are located.
(2) In addition to any other taxes imposed by law, there is imposed, levied upon, and collected a specific tax equal to 4% of the retail selling price of spirits for consumption on the premises. The tax shall be collected by the commission at the time of sale by the commission. In the case of sales to licensees, the tax shall be computed on the retail selling price established by the commission without allowance of discount.
(3) In addition to any other taxes imposed by law, there is imposed, levied upon, and collected a specific tax equal to 4% of the retail selling price of spirits for consumption off the premises. The tax shall be collected by the commission at the time of the sale by the commission.
(4) Upon collection, the commission shall deposit the proceeds of the taxes imposed pursuant to subsections (2) and (3) in the state treasury to the credit of the convention facility development fund created by the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, for distribution and use only in the manner and for the purposes stated in that act.
(5) The tax imposed by this act shall not be levied during any period in which the tax imposed pursuant to the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, is not levied.
(6) This section shall not be construed as making appropriations.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

CHAPTER 13

436.2301 Repeal of acts and parts of acts.

Sec. 1301.

The following acts and parts of acts are repealed:

(a) The Michigan liquor control act, 1933 (Ex Sess) PA 8, MCL 436.1 to 436.58.
(b) 1959 PA 94, MCL 436.101 to 436.103.
(c) 1962 PA 218, MCL 436.121 to 436.125.
(d) 1972 PA 213, MCL 436.131 to 436.133.
(e) The tourism and convention facility promotion tax act, 1985 PA 107, MCL 436.141 to 436.148.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

436.2303 Prior acts or rights; rules; predecessor commission; editorial changes; references to act.

Sec. 1303.

(1) This act does not impair or affect any act done, offense committed or right accruing, accrued or acquired, or penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.
(2) When the commission is directed or authorized to promulgate rules by this act and rules exist on the date the requirement to promulgate rules takes effect, which rules the commission believes adequately cover the matter, the commission may determine that new rules are not required or may delay the promulgation of new rules until the commission considers it advisable. Those rules promulgated under former act 1933 (Ex Sess) PA 8 and in effect on the effective date of this act shall remain in effect until rescinded or otherwise changed according to law, as provided for in section 31 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.231.
(3) In the case of the commission created pursuant to this act which was preceded by a commission with the same or similar name and functions, members of the predecessor commission shall continue in office for the duration of the terms of office for which they were appointed and with the new members appointed shall constitute the new commission. Members shall be appointed under this act only as terms of the former members expire or vacancies occur. Members of the predecessor commission may be appointed to the new commission to succeed themselves subject to the limits for any total period of service that may be set forth in this act.
(4) It is the intention of the legislature that editorial changes in the language of the statutes recodified in this act not be construed as changes to the meanings of those statutes.
(5) A reference in any other law to the Michigan liquor control act, 1933 (Ex Sess) PA 8, being MCL 436.1 to 436.58, is considered to be a reference to this act.
(6) A reference to a provision in former 1933 (Ex Sess) PA 8 is considered to be a reference to the successor provision in this act. A reference in any application, document, authorization, order, license, or other document issued or provided by the commission or its authorized agent to former 1933 (Ex Sess) PA 8 is considered to be a reference to this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

BEVERAGE CONTAINERS
Initiated Law of 1976

445.571 Definitions.

Sec. 1.

As used is this act:

(a) "Beverage" means a soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink.

(b) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of a beverage.

(c) "Empty returnable container" means a beverage container which contains nothing except the residue of its original contents.

(d) "Returnable container" means a beverage container upon which a deposit of at least 10 cents has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, and for which a refund of at least 10 cents in cash is payable by every dealer or distributor in this state of that beverage in beverage containers, as further provided in section 2.

(e) "Nonreturnable container" means a beverage container upon which no deposit or a deposit of less than 10 cents has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, or for which no cash refund or a refund of less than 10 cents is payable by a dealer or distributor in this state of that beverage in beverage containers, as further provided in section 2.

(f) "Person" means an individual, partnership, corporation, association, or other legal entity.

(g) "Dealer" means a person who sells or offers for sale to consumers within this state a beverage in a beverage container, including an operator of a vending machine containing a beverage in a beverage container.

(h) "Operator of a vending machine" means equally its owner, the person who refills it, and the owner or lessee of the property upon which it is located.

(i) "Distributor" means a person who sells beverages in beverage containers to a dealer within this state, and includes a manufacturer who engages in such sales.

(j) "Manufacturer" means a person who bottles, cans, or otherwise places beverages in beverage containers for sale to distributors, dealers, or consumers.

(k) "Within this state" means within the exterior limits of the state of Michigan, and includes the territory within these limits owned by or ceded to the United States of America.

(l) "Commission" means the Michigan liquor control commission.

(m) "Sale or consumption area" means the premises within the property of the dealer or of the dealer's lessor where the sale is made, within which beverages in returnable containers may be consumed without payment of a deposit, and, upon removing a beverage container from which, the customer is required by the dealer to pay the deposit.

(n) "Nonrefillable container" means a returnable container which is not intended to be refilled for sale by a manufacturer.

(o) "Mixed wine drink" means a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any 1 or more of the following:

(i) Nonalcoholic beverages.
(ii) Flavoring.
(iii) Coloring materials.
(iv) Fruit juices.
(v) Fruit adjuncts.
(vi) Sugar.
(vii) Carbon dioxide.
(viii) Preservatives.

(p) "Mixed spirit drink" means a drink containing 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives; or any spirits based beverage, regardless of the percent of alcohol by volume, that is manufactured for sale in a metal container.

History: 1976, Initiated Law 1, Eff. Dec. 3, 1978 ;-- Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982 ;-- Am. 1982, Act 266, Imd. Eff. Oct. 5, 1982 ;-- Am. 1986, Act 235, Eff. June 1, 1989 ;-- Am. 1989, Act 93, Imd. Eff. June 20, 1989
Popular Name: Bottle Bill

445.572 Nonreturnable containers; prohibitions; means for return and refund; regional redemption centers; acceptance of containers and payment of refunds; indicating refund value and name of State on container; exception; metal containers with detachable parts prohibited; deposit previously refunded; refund upon reuse; maximum daily refund; agreement on deposit; refund by manufacturer.

Sec. 2.

(1) A dealer within this state shall not sell, offer for sale, or give to a consumer a nonreturnable container or a beverage in a nonreturnable container.
(2) A dealer who regularly sells beverages for consumption off the dealer's premises shall provide on the premises, or within 100 yards of the premises on which the dealer sells or offers for sale a beverage in a returnable container, a convenient means whereby the containers of any kind, size, and brand sold or offered for sale by the dealer may be returned by, and the deposit refunded in cash to, a person whether or not the person is the original customer of that dealer, and whether or not the container was sold by that dealer.
(3) Regional centers for redemption of returnable containers may be established, in addition to but not as substitutes for, the means established for refunds of deposits prescribed in subsection (2).
(4) Except as provided in subsections (5) and (7), a dealer shall accept from a person an empty returnable container of any kind, size, and brand sold or offered for sale by that dealer and pay to that person its full refund value in cash.
(5) A dealer who does not require a deposit on a returnable container when the contents are consumed in the dealer's sale or consumption area is not required to pay a refund for accepting that empty container.
(6) Except as provided in subsection (7), a distributor shall accept from a dealer an empty returnable container of any kind, size, and brand sold or offered for sale by that distributor and pay to the dealer its full refund value in cash.
(7) Each beverage container sold or offered for sale by a dealer within this state shall clearly indicate by embossing or by a stamp, a label, or other method securely affixed to the beverage container, the refund value of the container and the name of this state. A dealer or distributor may, but is not required to, refuse to accept from a person an empty returnable container which does not state on the container the refund value of the container and the name of this state. This subsection does not apply to a refillable container having a refund value of not less than 10 cents, having a brand name permanently marked on it, and having a securely affixed method of indicating that it is a returnable container.
(8) A dealer within this state shall not sell, offer for sale, or give to consumers a metal beverage container, any part of which becomes detached when opened.
(9) A person, dealer, distributor, or manufacturer shall not return an empty returnable container to a dealer for a refund of the deposit if a dealer has already refunded the deposit on that returnable container. This subsection does not prohibit a dealer from refunding the deposit on an empty returnable container each time the returnable container is sanitized by the manufacturer and reused as a beverage container.
(10) A dealer may accept, but is not required to accept, from a person, empty returnable containers for a refund in excess of $25.00 on any given day.
(11) A manufacturer licensed by the commission shall not require a distributor licensed by the commission to pay a deposit to the manufacturer on a nonrefillable container. However, a manufacturer licensed by the commission and a distributor licensed by the commission may enter into an agreement

providing that either or both may originate a deposit or any portion of a deposit on a nonrefillable container if the agreement is entered into freely and without coercion.

(12) A manufacturer shall refund the deposit paid on any container returned by a distributor for which a deposit has been paid by a distributor to the manufacturer.

(13) Subsections (4), (6), and (7) apply only to a returnable container that was originally sold in this state as a filled returnable container.

History: 1976, Initiated Law, Eff. Dec. 3, 1978; - Am. 1977, Act 270, Eff. Mar. 30, 1978; - Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982; - Am. 1982, Act 266, Imd. Eff. Oct. 5, 1982; - Am. 1986, Act 235, Eff. June 1, 1989;-Am. 1998, Act 473, Eff. Apr. 1, 1999..

445.572a Designated metal, glass, or plastic containers; sale or offer of sale of certain beverages; requirements; violations; definitions.

Sec. 2a.

(1) Except as provided in subsection (2), beginning 90 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce metal beverage container that is not a designated metal container if either of the following is met:
   (a) Sales of that brand of beverage in 12-ounce metal beverage containers in this state in the preceding calendar year were at least 500,000 cases, as determined by the department of treasury.
   (b) Sales of that brand of beverage in 12-ounce metal beverage containers in this state in the preceding calendar year were fewer than 500,000 cases, and 12-ounce metal beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(2) Beginning 90 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in the Upper Peninsula in a 12-ounce metal beverage container that is not a designated metal container if either of the following is met:
   (a) Sales of that brand of beverage in 12-ounce metal beverage containers in the Upper Peninsula were at least 500,000 cases, as determined by the department of treasury.
   (b) Sales of that brand of beverage in 12-ounce metal beverage containers in the Upper Peninsula in the preceding calendar year were fewer than 500,000 cases, and 12-ounce metal beverage containers of that brand of beverage were overredeemed in the Upper Peninsula by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(3) Except as provided in subsection (4), beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce glass beverage container that is not a designated glass container if either of the following is met:
   (a) Sales of that brand of beverage in 12-ounce glass beverage containers in this state in the preceding calendar year were at least 500,000 cases, as determined by the department of treasury.
   (b) Sales of that brand of beverage in 12-ounce glass beverage containers in this state in the preceding calendar year were fewer than 500,000 cases, and 12-ounce glass beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(4) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in the Upper Peninsula in a 12-ounce glass beverage container that is not a designated glass container if either of the following is met:
   (a) Sales of that brand of beverage in 12-ounce glass beverage containers in the Upper Peninsula were at least 500,000 cases, as determined by the department of treasury.
   (b) Sales of that brand of beverage in 12-ounce glass beverage containers in the Upper Peninsula in the preceding calendar year were fewer than 500,000 cases, and 12-ounce glass beverage containers of that brand of beverage were overredeemed in the Upper

Peninsula by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(5) Except as provided in subsection (6), beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in this state in a 20-ounce plastic beverage container that is not a designated plastic container if either of the following is met:
    (a) Sales of that brand of beverage in 20-ounce plastic beverage containers in this state in the preceding calendar year were at least 500,000 cases, as determined by the department of treasury.
    (b) Sales of that brand of beverage in 20-ounce plastic beverage containers in this state in the preceding calendar year were fewer than 500,000 cases, and 20-ounce plastic beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(6) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in the Upper Peninsula in a 20-ounce plastic beverage container that is not a designated plastic container if either of the following is met:
    (a) Sales of that brand of beverage in 20-ounce plastic beverage containers in the Upper Peninsula were at least 500,000 cases, as determined by the department of treasury.
    (b) Sales of that brand of beverage in 20-ounce plastic beverage containers in the Upper Peninsula in the preceding calendar year were fewer than 500,000 cases, and 20-ounce plastic beverage containers of that brand of beverage were overredeemed in the Upper Peninsula by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(7) Beginning 90 days after the effective date of the amendatory act that added this section, a manufacturer of alcoholic beverages shall not sell, offer for sale, or give an alcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce metal beverage container that is not a designated metal container if either of the following is met:
    (a) Sales of that brand of beverage in this state in the preceding calendar year were at least 500,000 case equivalents, as determined by the department of treasury.
    (b) Sales of that brand of beverage in this state in the preceding calendar year were fewer than 500,000 case equivalents, and beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(8) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of alcoholic beverages shall not sell, offer for sale, or give an alcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce glass beverage container that is not a designated glass container if either of the following is met:
    (a) Sales of that brand of beverage in this state in the preceding calendar year were at least 500,000 case equivalents, as determined by the department of treasury.
    (b) Sales of that brand of beverage in this state in the preceding calendar year were fewer than 500,000 case equivalents, and beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(9) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of alcoholic beverages shall not sell, offer for sale, or give an alcoholic beverage to a consumer, dealer, or distributor in this state in a 20-ounce plastic beverage container that is not a designated plastic container if either of the following is met:
    (a) Sales of that brand of beverage in this state in the preceding calendar year were at least 500,000 case equivalents, as determined by the department of treasury.
    (b) Sales of that brand of beverage in this state in the preceding calendar year were fewer than 500,000 case equivalents, and beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(10) A symbol, mark, or other distinguishing characteristic that is placed on a designated metal container, designated glass container, or designated plastic container by a manufacturer to allow a reverse vending machine to determine if that container is a returnable container must be unique to this state, or used only in this state and 1 or more other states that have laws substantially similar to this act.

(11) A person that violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than $2,000.00, or both. Section 4 does not apply to a violation described in this subsection.

(12) As used in this section:

(a) "Alcoholic beverage" means beer, ale, any other malt drink of whatever alcoholic content, a mixed wine drink, or a mixed spirit drink.

(b) "Brand" means any word, name, group of letters, symbol, or trademark, or any combination of them, adopted and used by a manufacturer to identify a specific flavor or type of beverage and to distinguish that flavor or type of beverage from another beverage produced or marketed by that manufacturer or another manufacturer.

(c) "Designated glass container" means a 12-ounce glass beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.

(d) "Designated metal container" means a 12-ounce metal beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.

(e) "Designated plastic container" means a 20-ounce plastic beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.

(f) "Glass beverage container" means a beverage container composed primarily of glass.

(g) "Metal beverage container" means a beverage container composed primarily of metal.

(h) "Nonalcoholic beverage" means a soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(i) "Plastic beverage container" means a beverage container composed primarily of plastic.

(j) "Reverse vending machine" means a device designed to properly identify and process empty beverage containers and provide a means for a deposit refund on returnable containers.

History: Add. 2008, Act 389, Eff. Dec. 1, 2009

Compiler's Notes: Enacting section 1 of Act 389 of 2008 provides:"Enacting section 1. This amendatory act takes effect on the date that deposits into the beverage container redemption antifraud fund created in the beverage container redemption antifraud act from money appropriated by the legislature equal or exceed $1,000,000.00."

445.573 Certification of beverage containers.

Sec. 3.

(1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the commission shall certify beverage containers which satisfy the requirements of this section.

(2) A beverage container shall be certified if:

(a) It is reusable as a beverage container by more than 1 manufacturer in the ordinary course of business.

(b) More than 1 manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(3) The commission shall not certify more than 1 beverage container of a particular manufacturer in each size classification. The commission shall by rule establish appropriate size classifications in accordance with the purposes set forth in subsection (1), each of which shall include a size range of at least 3 liquid ounces.

(4) A beverage container shall not be certified under this section:

(a) If by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting, or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name.

(b) If the commission finds that its use by more than 1 manufacturer is not of sufficient volume to promote the purposes set forth in subsection (1).

(5) Unless an application for certification under this section is denied by the commission within 60 days after the application is filed, the beverage container shall be deemed certified.
(6) The commission may at any time review certification of a beverage container. If, upon the review, after written notice and hearing afforded to the person who filed the original application for certification of the beverage container under this section, the commission determines that the beverage container is no longer qualified for certification, it shall withdraw certification. Withdrawal of certification shall be effective on a date specified by the commission, but not less than 30 days after written notice to the person who filed the original application for certification of the beverage container under this section, and to the manufacturer referred to in subsection (2).

History: 1976, Initiated Law 1, Eff. Dec. 3, 1978

Admin Rule: R 445.1 et seq. of the Michigan Administrative Code.

445.573a Report; filing; form and contents.

Sec. 3a.

(1) Not later than March 1, 1991 and not later than March 1 of each year thereafter, a distributor or manufacturer who originates a deposit on a beverage container shall file a report with the department of treasury containing the information required by subsection (2).
(2) The report required to be filed pursuant to subsection (1) shall indicate for the period of January 1, 1990 to December 31, 1990, and for the time period of January 1 to December 31 of each year thereafter, the dollar value of both the total deposits collected by the distributor or manufacturer on beverage containers sold within this state and total refunds made upon beverage containers redeemed by the distributor or manufacturer within this state.
(3) The reports required to be filed pursuant to subsection (1) shall be similar to the following and contain the following information:

REPORT
DEPOSITS ORIGINATED AND REFUNDS GRANTED ON BEVERAGE CONTAINERS
Reporting Period:_____
Company Name: _____
Company Address: _____
Number and Street
_____
City, State, Zip
$_____-$_____=$ _____
(Value of Deposits Originated) (Value of Refunds Made) (Difference)
$_____-$_____=$_____
(Difference) (Overredemption credit, (Amount owed to if applicable) department of treasury)
The undersigned states that the above information is true and accurate.
_____
Signature - Owner or President
_____
Date

History: Add. 1989, Act 148, Eff. July 27, 1989.

445.573b Unclaimed bottle deposits; audit, assessment, and collection by department of treasury; payment by under redeemer; over redemption credit; applying credit against prior years; definitions; report.

Sec. 3b.

(1) The department of treasury may audit, assess, and collect the amount of money reflecting unclaimed bottle deposits owed to this state, and enforce the obligation to pay the amount of money reflecting

unclaimed bottle deposits owed to this state, in the same manner as revenues and according to the provisions of 1941 PA 122, MCL 205.1 to 205.31.

(2) Not later than March 1, 1991 and not later than March 1 of each year thereafter, an underredeemer shall pay to the department of treasury that amount of money by which its annual total value of deposits exceeds its annual total value of refunds made on redeemed beverage containers, subject to the overredemption credit contained in this section.

(3) After March 1, 1991, an underredeemer who becomes an overredeemer in a subsequent year may credit the value of the overredemption in order to reduce the amount of money owed to the department of treasury under this section in 1 or more subsequent years as a result of that person again becoming an underredeemer. The value of the overredemption may be carried forward for not more than 3 years or until the credit granted in this section is completely depleted, whichever occurs first.

(4) A manufacturer who no longer originates deposits may carry the value of an overredemption back for prior years in order to utilize its credit, and reduce the amount of underredemption owed to the department of treasury under this section on a 1-time basis only. Utilization of this 1-time credit may be applied against underredemption amounts owed for reporting years commencing in 1990.

(5) As used in this section:

(a) "Overredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state is less than the annual total value of refunds made upon beverage containers redeemed within this state.

(b) "Underredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state exceeds annual total value of refunds made upon beverage containers redeemed within this state.

(6) In addition to the report prescribed in section 3a, if an underredeemer purchases empty returnable containers from an overredeemer, that purchase shall be reported by the underredeemer as a "refund made" and shall be reported by the overredeemer as a "deposit originated" in the report prescribed by section 3a. The report made by an underredeemer shall include the name and address of each overredeemer and the refund value of the empty returnable beverage containers purchased from each overredeemer. The report made by an overredeemer shall include the name and address of each underredeemer who purchased the returnable containers from that overredeemer and the refund value of the empty returnable beverage containers sold. The total consideration paid by an underredeemer to an overredeemer as authorized by this subsection shall equal the redemption value of the container.

(7) A purchase or sale made under subsection (6) during January of each year shall be included in the report for the previous calendar year only.

History: Add. 1989, Act 148, Eff. July 27, 1989;-Am. 1996, Act 384, Imd. Eff. July 23, 1996;-Am. 1998, Act 473, Eff. Apr. 1, 1999.

445.573c Bottle deposit fund; creation; administration; deposits; annual disbursement; report of information; rules.

Sec. 3c.

(1) There is created in the department of treasury a bottle deposit fund which is a revolving fund administered by the department of treasury. The money in the bottle deposit fund shall not revert to the general fund.

(2) The amount paid to the department of treasury by underredeemers shall be deposited by the department of treasury in the bottle deposit fund created in subsection (1) for annual disbursement by the department of treasury in the following manner:

(a) Seventy-five percent to the cleanup and redevelopment trust fund created in section 3e.

(b) Twenty-five percent to dealers to be apportioned to each dealer on the basis of the number of empty returnable containers handled by a dealer as determined by the department of treasury.

(3) Not later than June 1 of each year, the department of treasury shall publish and make available to the public information related to section 3b(1) and send a report of that information to the legislature.

(4) The department of treasury may promulgate rules to implement sections 3a to 3d pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201

to 24.328 of the Michigan Compiled Laws, if the department of treasury determines that rules are needed to properly implement and administer sections 3a to 3d.

History: Add. 1989, Act 148, Eff. July 27, 1989;-Am. 1996, Act 73, Eff. Feb. 26, 1996;-Am. 1996, Act 384, Imd. Eff. July 23, 1996.
Cited in other sections: Section 445.573c is cited in '299.609a.

445.573d Unclaimed deposits.

Sec. 3d.

Unclaimed deposits on returnable containers are considered to be the property of the person purchasing the returnable container and are not the property of the distributor or manufacturer who originated the deposit.

History: Add. 1989, Act 148, Eff. July 27, 1989.

445.573e Cleanup and redevelopment fund.

Sec. 3e

(1) The cleanup and redevelopment trust fund is created within the state treasury.
(2) The state treasurer may receive money or other assets from any source for deposit into the trust fund. The state treasurer shall direct the investment of the trust fund. The state treasurer shall credit to the trust fund interest and earnings from fund investments.
(3) Money in the trust fund at the close of the fiscal year shall remain in the trust fund and shall not lapse to the general fund.
(4) The state treasurer shall annually disburse the following amounts from the trust fund:
    (a) For each of the state fiscal years 1996-1997, 1997-1998, and 1998-1999, up to $15,000,000.00 each year of money in the trust fund to the cleanup and redevelopment fund created in section 20108 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20108 of the Michigan Compiled Laws.
    (b) In addition to the disbursements under subdivision (a), each state fiscal year, 80% of the revenues received by the trust fund from disbursements under section 3c to the cleanup and redevelopment fund and 10% to the community pollution prevention fund created in section 3f.
(5) All money in the trust fund that is not disbursed pursuant to subsection (4) shall remain in the trust fund until the trust fund reaches an accumulated principal of $200,000,000.00. After the trust fund reaches an accumulated principal of $200,000,000.00, interest and earnings of the trust fund only shall be expended, upon appropriation, for the purposes specified in section 20113(4) of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20113 of the Michigan Compiled Laws.
(6) As used in this section, “trust fund” means the cleanup and redevelopment trust fund created in subsection (1).

History: Add. 1996, Act 384, July 23, 1996.

445.573f Community pollution prevention fund.

Sec. 3f.

(1) The community pollution prevention fund is created within the state treasury.
(2) The state treasurer may receive money or other assets from any source for deposit into the community pollution prevention fund. The state treasurer shall direct the investment of the community pollution prevention fund. The state treasurer shall credit to the community pollution prevention fund interest and earnings from fund investments.
(3) Money in the community pollution prevention fund at the close of the fiscal year shall remain in the community pollution prevention fund and shall not lapse to the general fund.
(4) The department of environmental quality shall expend interest and earnings of the community pollution prevention fund only, upon appropriation, for grants for the purpose of preventing pollution, with an emphasis on the prevention of groundwater contamination and resulting risks to the public health, ecological risks, and public and private cleanup costs. The department of environmental

quality shall enter into contractual agreements with grant recipients, who shall include county governments, local health departments, municipalities, and regional planning agencies. Activities to be performed by grant recipients and program objectives and deliverables shall be specified in the contractual agreements. Grant recipients shall provide a financial match of not less than 25% nor more than 50%. Not more than $100,000.00 may be granted in any fiscal year to a single recipient. Eligible pollution prevention activities include all of the following:

(a) Drinking water wellhead protection, including the delineation of wellhead protection areas and implementation of wellhead protection plans pursuant to the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws.

(b) The review of pollution incident prevention plans prepared by, and the inspection of, facilities whose storage or handling of hazardous materials may pose a risk to the groundwater.

(c) The identification and plugging of abandoned wells other than oil and gas wells.

(d) Programs to educate the general public and businesses that use or handle hazardous materials on pollution prevention methods, technologies, and processes, with an emphasis on the direct reduction of toxic material releases or disposal at the source.

(5) The department of environmental quality shall annually prepare a report summarizing the grants made under this section, contractual commitments made and achieved, and a preliminary evaluation of the effectiveness of this section not later than September 30, 1997, and September 30 of each year thereafter, and shall provide a copy of this report to the chairs of the house and senate appropriations subcommittees for the department of environmental quality.

History: Add. 1996, Act 384, Imd. Eff. July 23, 1996.

445.574 Violation; penalty; separate offense.

Sec. 4.

Except as provided in sections 4a and 4b, a person, dealer, distributor, or manufacturer who violates this act is subject to a fine of not less than $100.00 or more than $1,000.00 and is liable for the costs of prosecution. Each day a violation occurs, a separate offense is committed.

History: 1976, Initiated Law, Eff. Dec. 3, 1978; - Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982;-Am. 1998, Act 473, Eff. Apr. 1, 1999.

445.574a Prohibited return to dealer, distributor, or manufacturer; violation; penalty; exceptions; restitution; action brought by attorney general or county prosecutor.

Sec. 4a.

(1) A person shall not return or attempt to return to a dealer for a refund 1 or more of the following:

(a) A beverage container that the person knows or should know was not purchased in this state as a filled returnable container.

(b) A beverage container that the person knows or should know did not have a deposit paid for it at the time of purchase.

(2) A person who violates subsection (1) is subject to 1 of the following:

(a) If the person returns 25 or more but not more than 100 nonreturnable containers, the person may be ordered to pay a civil fine of not more than $100.00.

(b) If the person returns more than 100 but fewer than 10,000 nonreturnable containers, or violates subdivision (a) for a second or subsequent time, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(c) If the person returns more than 100 but fewer than 10,000 nonreturnable containers for a second or subsequent time, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

(d) If the person returns 10,000 or more nonreturnable containers, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

(3) A dealer shall not knowingly accept from and pay a deposit to a person for a nonreturnable container or knowingly deliver a nonreturnable container to a distributor for a refund. A dealer that violates this subsection is subject to 1 of the following:
    (a) If the dealer knowingly accepts from and pays a deposit on 25 or more but not more than 100 nonreturnable containers to a person, or knowingly delivers 25 or more but not more than 100 nonreturnable containers to a distributor for a refund, the dealer may be ordered to pay a civil fine of not more than $100.00.
    (b) If the dealer knowingly accepts from and pays a deposit on more than 100 but fewer than 10,000 nonreturnable containers to a person, or knowingly delivers more than 100 but fewer than 10,000 nonreturnable containers to a distributor for a refund, the dealer is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.
    (c) If the dealer knowingly accepts from and pays a deposit on more than 100 but fewer than 10,000 nonreturnable containers to a person, or knowingly delivers more than 100 but fewer than 10,000 nonreturnable containers to a distributor for a refund, for a second or subsequent time, the dealer is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.
    (d) if the dealer knowingly accepts from and pays a deposit on 10,000 or more nonreturnable containers to a person, or knowingly delivers 10,000 or more nonreturnable containers to a distributor for a refund, the dealer is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

(4) A distributor shall not knowingly accept from and pay a deposit to a dealer for a nonreturnable container or knowingly deliver a nonreturnable container to a manufacturer for a refund. A distributor that violates this subsection is subject to 1 of the following:
    (a) If the distributor knowingly accepts from and pays a deposit on 25 or more but not more than 100 nonreturnable containers to a dealer, or knowingly delivers 25 or more but not more than 100 nonreturnable containers to a manufacturer for a refund, the distributor may be ordered to pay a civil fine of not more than $100.00.
    (b) If the distributor knowingly accepts from and pays a deposit on more than 100 but fewer than 10,000 nonreturnable containers to a dealer, or knowingly delivers more than 100 but fewer than 10,000 nonreturnable containers to a manufacturer for a refund, the distributor is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.
    (c) If the distributor knowingly accepts from and pays a deposit on more than 100 but fewer than 10,000 nonreturnable containers to a dealer, or knowingly delivers more than 100 but fewer than 10,000 nonreturnable containers to a manufacturer for a refund, for a second or subsequent time, the distributor is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.
    (d) If the distributor knowingly accepts from and pays a deposit on 10,000 or more nonreturnable containers to a dealer, or knowingly delivers 10,000 or more nonreturnable containers to a manufacturer for a refund, the distributor is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

(5) A dealer or distributor does not violate subsection (3) or (4) if all of the following conditions are met:
    (a) An employee of the dealer or distributor commits an act that violates subsection (3) or (4).
    (b) At the time the employee commits the act that violates subsection (3) or (4), the dealer or distributor had in force a written policy prohibiting its employees from knowingly redeeming nonreturnable containers.
    (c) The dealer or distributor did not or should not have known of the employee's act in violation of subsection (3) or (4).

(6) In addition to the penalty described in this section, the court shall order a person found guilty of a misdemeanor or felony under this section to pay restitution equal to the amount of loss caused by the violation.

(7) The attorney general or a county prosecutor may bring an action to recover a civil fine under this section. A civil fine imposed under this section is payable to this state and shall be credited to the general fund.

History: Added 1998, Act 473, Eff. Apr. 1, 1999;-Am. 2008, Act 384, Eff. March 31, 2009.

445.574b Posting notice on dealer's premises; failure to comply; penalty.

Sec. 4b.

(1) In that portion of the dealer's premises where returnable containers are redeemed, a dealer shall post a notice that says substantially the following: "A person who returns out-of-state nonreturnable containers for a refund is subject to penalties of up to 5 years in jail, a fine of $5,000.00, and restitution.".
(2) A dealer who fails to comply with this section is subject to a fine of not more than $50.00.

History: Added 1998, Act 473, Eff. Apr. 1, 1999-Am. 2008, Act 385, Eff. March 31, 2009.

445.575 Repeal of '445.191.

Sec. 5.

Act No. 142 of the Public Acts of 1971, being section 445.191 of the Compiled Laws of 1970, is repealed.

History: 1976, Initiated Law, Eff. Dec. 3, 1978

445.576 Effective date.

Sec. 6.

This act shall take effect two years after it becomes law.

History: 1976, Initiated Law, Eff. Dec. 3, 1978.

BEVERAGE CONTAINER REDEMPTION ANTIFRAUD ACT
Act 388 of 2008

AN ACT to provide state payments to reverse vending machine manufacturers for the cost of retrofitting certain reverse vending machines; to provide money to certain dealers for the purchase of certain new reverse vending machines; to create the beverage container redemption antifraud fund; and to provide for the powers and duties of certain state governmental officers and entities.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.631 Short title.

Sec. 1.

This act shall be known and may be cited as the "beverage container redemption antifraud act".

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.633 Definitions.

Sec. 3.

As used in this act:

(a) "Beverage container law" means 1976 IL 1, MCL 445.571 to 445.576.
(b) "Dealer" means that term as defined in section 1 of the beverage container law, MCL 445.571.
(c) "Department" means the department of treasury.
(d) "Designated glass container", "designated metal container", and "designated plastic container" mean those terms as defined in the reverse vending machine antifraud act.
(e) "Fund" means the beverage container redemption antifraud fund created in section 7.
(f) "Install vision technology" means to equip an existing, new, or replacement reverse vending machine with vision technology for designated metal, plastic, or glass containers, including all reasonable and necessary technology, equipment, hardware, software, and labor, and 1 year of service directly related to the vision technology by the reverse vending machine vendor.
(g) "Overredeemer" means that term as defined in section 3b of the beverage container law, MCL
1. 445.573b.
(h) "Retrofit" means to install vision technology for designated metal, plastic, or glass beverage containers in an existing, new, or replacement reverse vending machine.
(i) "Reverse vending machine" means that term as defined in the reverse vending machine antifraud act.
(j) "Reverse vending machine manufacturer" means that term as defined in the reverse vending machine antifraud act.
(k) "Vision technology" means that term as defined in the reverse vending machine antifraud act.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.635 Retrofit of reverse vending machines; payment to reverse vending machine manufacturers; application for payment; acceptance as full payment; proof of completion; conditions for requiring installation or retrofitting of reverse vending machines.

Sec. 5.

(1) The department shall pay reverse vending machine manufacturers to retrofit reverse vending machines to comply with the reverse vending machine antifraud act.
(2) A reverse vending machine manufacturer that has agreed to retrofit a dealer's reverse vending machines to comply with the reverse vending machine antifraud act shall submit a written application to the department for payment to retrofit the dealer's reverse vending machines. All of the following apply to the application for payment described in this subsection:
    (a) The department shall prescribe the form of the application.
    (b) A reverse vending machine manufacturer may only submit an application for retrofitting a dealer's reverse vending machines and receive payment under this act if the dealer is

required to retrofit those reverse vending machines under the reverse vending machine antifraud act.

(c) An application submitted to the department shall include all of the following:

(i) Contact information for the reverse vending machine manufacturer, the number of reverse vending machines to be retrofitted by the manufacturer, the serial numbers of those machines, where those machines are located, the name and contact information of the dealer that owns or leases those machines, a copy of the dealer's purchase order for the retrofitting of those machines, the street address and county where those machines will be in operation after they are retrofitted, and any other information required by the department.

(ii) The total cost of retrofitting each reverse vending machine described in the application to install vision technology.

(iii) The signature of a designated agent of the reverse vending machine manufacturer, certifying that all of the contents of the application are correct.

(iv) The signature of a designated agent of the dealer whose reverse vending machines are to be retrofitted by the reverse vending machine manufacturer, certifying that all of the contents of the application are correct.

(d) A reverse vending machine manufacturer shall submit a separate application for each location where a dealer operates reverse vending machines.

(3) A reverse vending machine manufacturer that receives payment under this act for retrofitting a reverse vending machine manufacturer shall accept that payment as full payment for the retrofitting of that machine.

(4) When a reverse vending machine manufacturer completes the retrofitting of the reverse vending machine at a dealer's location, the reverse vending machine manufacturer shall submit proof to the department, in a form and manner prescribed by the department and signed by a designated agent of the dealer, that the retrofitting is complete.

(5) The department shall not require that a dealer or reverse vending machine manufacturer retrofit a reverse vending machine to meet the dealer requirements imposed in section 7(1) or 9(1) of the reverse vending machine antifraud act unless the department first establishes under this act that the dealer must install or retrofit the reverse vending machines at a retail location in order to meet the requirements of section 7(1) or 9(1) of the reverse vending machine antifraud act and makes money available for that retrofit under this act.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.636 Establishment of new retail store in county bordering another state or in Lower Peninsula contiguous with county bordering another state; installation of vision technology; requirements.

Sec. 6.

(1) If a dealer establishes a new retail store in a county of this state that borders another state, or in a county in the Lower Peninsula that is contiguous with a county of this state that borders another state, and acquires new reverse vending machines for use in that store, the department shall pay the reverse vending machine manufacturer to install vision technology in those new reverse vending machines that meets the requirements of the reverse vending machine antifraud act.

(2) All of the following apply if a dealer purchases new reverse vending machines from a reverse vending machine manufacturer for use in a new retail store in a county described in subsection (1):

(a) The reverse vending machine manufacturer shall submit an application for payment in the form prescribed by the department. The reverse vending machine manufacturer shall include with the application a copy of the dealer's purchase order for the new reverse vending machines.

(b) A reverse vending machine manufacturer may not apply money received under this subsection to the purchase price of a new reverse vending machine that does not meet the requirements of the reverse vending machine antifraud act.

(c) The dealer shall operate the new reverse vending machine at the retail store for which it was acquired. However, if the dealer ceases retail sale of beverages in beverage containers at

that new store, the dealer may move that reverse vending machine to another location and operate the reverse vending machine at that different location.

(d) The amount of a payment to a reverse vending machine manufacturer under this section shall not exceed that part of the price of the new reverse vending machine attributable to the cost of installation of the machine's vision technology or $5,000.00, whichever is less. The reverse vending machine manufacturer must reduce the purchase price of the new reverse vending machine to the dealer by the amount of any payment to the reverse vending machine manufacturer under this subdivision.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.637 Beverage container redemption antifraud fund; creation; payments; allocations; report.

Sec. 7.

(1) The beverage container redemption antifraud fund is created in the state treasury. All of the following apply to the fund:
   (a) The state treasurer may receive money appropriated to the fund or money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.
   (b) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.
   (c) The department is the administrator of the fund for auditing purposes.
   (d) The department shall expend money from the fund, upon appropriation, only for the purposes of this act and the reverse vending machine antifraud act, including, but not limited to, administration of those acts. However, the department may not use more than $100,000.00 from the fund in any state fiscal year for administration of this act and the reverse vending machine antifraud act.

(2) At any time after it begins to receive reports described in section 13, but not later than 30 days after receiving all of the reports described in section 13, the department shall immediately begin to arrange with reverse vending machine manufacturers for the retrofitting of reverse vending machines under section 5 that are located in counties that border another state and in counties in the Lower Peninsula that are contiguous with a county of this state that borders another state. The department shall also arrange for payments from the fund on behalf of dealers eligible under section 6 for the acquisition of new reverse vending machines for use in those counties.

(3) In allocating money from the fund for purposes of subsection (2), the department shall do all of the following:
   (a) Subject to subdivision (b), give priority to retrofitting reverse vending machines under section 5 located in the counties described in subsection (2), or for the acquisition of new reverse vending machines under section 6 for use in those counties, that it determines have the greatest potential benefit for reducing the redemption of nonreturnable containers.
   (b) Allocate at least 50% of the money in the fund to retrofitting reverse vending machines located in counties that border another state under section 5 or for the acquisition of new reverse vending machines under section 6 for use in counties that border another state.

(4) Beginning 1 year after the effective date of this act, the department by September 1 of each year shall report to the legislature on the progress it has made in reducing the redemption of nonreturnable containers, including the total number of distributors who were overreedemers in the immediately preceding calendar year, before trading, as well as the average amount of overredemption.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.639 Payment amount; purchase or lease.

Sec. 9.

(1) The amount of payment a reverse vending machine manufacturer may receive under section 7 for retrofitting a single reverse vending machine under section 5 is the total cost of retrofitting that reverse vending machine or $5,000.00, whichever is less.

(2) A dealer that operates a reverse vending machine at a location in a county of this state that borders another state, or in a county in the Lower Peninsula that is contiguous with a county of this state that borders another state, may elect to purchase or lease a new reverse vending machine that meets the requirements of the reverse vending machine antifraud act to replace that existing reverse vending machine rather than have that existing reverse vending machine retrofitted under section 5. All of the following apply if a dealer purchases or leases a new reverse vending machine from a reverse vending machine manufacturer under this subsection:

(a) The reverse vending machine manufacturer shall submit an application for payment in the form prescribed by the department. The reverse vending machine manufacturer shall include with the application a copy of the dealer's purchase order for the new reverse vending machine.

(b) A reverse vending machine manufacturer may not apply money received under this subsection to the purchase price of a new reverse vending machine that does not meet the requirements of the reverse vending machine antifraud act.

(c) The dealer shall operate the new reverse vending machine at the same location as the reverse vending machine it replaces. However, if the dealer ceases retail sale of beverages in beverage containers at that location, the dealer may move that reverse vending machine to another location and operate the reverse vending machine at that different location.

(d) The amount of a payment to a reverse vending machine manufacturer under this section shall not exceed that part of the price of the new reverse vending machine attributable to the cost of installation of the machine's vision technology or $5,000.00, whichever is less. The reverse vending machine manufacturer must reduce the purchase price of the new reverse vending machine to the dealer by the amount of any payment to the reverse vending machine manufacturer under this subdivision.

(e) The reverse vending machine manufacturer may not apply for or receive payment under this act for retrofitting a reverse vending machine if the reverse vending machine manufacturer received money for a new reverse vending machine to replace that existing reverse vending machine under this subsection.

(f) For purposes of this act, the department shall consider the replacement of a reverse vending machine with a new reverse vending machine under this section as a retrofitting of a reverse vending machine.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.641 Distribution of money left in fund.

Sec. 11.

If the department determines that it has paid the reverse vending machine manufacturers for retrofitting all of the reverse vending machines located in the counties described in section 7(2), and for the acquisition of any new reverse vending machines under section 6 for use in those counties for which it has received applications for payment, and the total of those payments is less than the amount in the fund, the department shall distribute the money remaining in the fund to dealers for the purchase of new reverse vending machines. All of the following apply to a payment of money under this section:

(a) A dealer requesting money under this section shall submit an application for payment, in the form prescribed by the department.

(b) A dealer shall only use money received under this section to purchase a new reverse vending machine that meets the requirement of the reverse vending machine antifraud act and that the dealer will operate that reverse vending machine at a location in this state.

(c) The amount of a payment to a dealer under this section shall not exceed that part of the price of the new reverse vending machine attributable to the cost of installation of the machine's vision technology, as determined by the department.

(d) The department shall disburse money from the fund under this section in the order in which it receives applications for payment under this section.

History: 2008, Act 388, Imd. Eff. Dec. 29, 2008.

445.643 Report.

Sec. 13.

(1) No later than 60 days after the effective date of this act, each dealer that operates reverse vending machines that are located in any county of this state that borders another state, or any county in the Lower Peninsula that is contiguous with a county of this state that borders another state, shall submit a report to the department.

(2) The report described in subsection (1) shall contain all of the following information:

  (a) Contact information for the dealer.

  (b) The street address and county of each location in the counties described in subsection (1) where the dealer uses reverse vending machines.

  (c) The number of reverse vending machines used by the dealer at each location described in subdivision (b) and the type of beverage containers each of those reverse vending machines accepts.

  (d) The number of beverage containers sold and the number of beverage containers redeemed by the dealer under the beverage container law in the preceding calendar year at each of the locations described in subdivision (b).

(3) The department shall prescribe the form of the report described in subsection (1).

History: Added 2008, Act 388, Imd. Eff. Dec. 29, 2008.

REVERSE VENDING MACHINE ANTIFRAUD ACT
Act 387 of 2008

AN ACT to provide standards for reverse vending machines; to prohibit the use, replacement, leasing, transfer, and sales of certain designs of reverse vending machines; to prescribe penalties; and to provide for the powers and duties of certain state and local governmental officers and entities.

History: 2008, Act 387, Imd. Eff. Dec. 29, 2008.

445.651. Short title.

Sec. 1.

This act shall be known and may be cited as the "reverse vending machine antifraud act".

History: 2008, Act 387, Eff (pending)

Compiler's note: "Enacting section 1. This act takes effect on the date that deposits into the beverage container redemption antifraud fund created in the beverage container redemption antifraud act from money appropriated by the legislature equal or exceed $1,000,000.00."

445.653. Definitions.

As used in this act:

(a) "Beverage container" means that term as defined in section 1 of the beverage container law, MCL 445.571.
(b) "Beverage container law" means 1976 IL 1, MCL 445.571 to 445.576.
(c) "Brand" means any word, name, group of letters, symbol, or trademark, or any combination of them, adopted and used by a manufacturer to identify a specific flavor or type of beverage and to distinguish that flavor or type of beverage from another beverage produced or marketed by that manufacturer or another manufacturer.
(d) "Dealer" means that term as defined in section 1 of the beverage container law, MCL 445.571.
(e) "Department" means the department of treasury.
(f) "Designated glass container" means a 12-ounce glass beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.
(g) "Designated metal container" means a 12-ounce metal beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.
(h) "Designated plastic container" means a 20-ounce plastic beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.
(i) "Distributor" means that term as defined in section 1 of the beverage container law, MCL 445.571.
(j) "Glass beverage container" means a beverage container composed primarily of glass.
(k) "Install" or "installation" means to equip an existing, new, or replacement reverse vending machine with vision technology for designated metal, plastic, or glass containers, including all reasonable and necessary technology, equipment, hardware, software, and labor and including 1 year of service by the reverse vending machine vendor.
(l) "Law enforcement agency" means the attorney general or a law enforcement agency as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.
(m) "Lease" does not include to renew or extend an existing lease for an existing reverse vending machine at the same location.
(n) "Manufacturer" means that term as defined in section 1 of the beverage container law, MCL 445.571.
(o) "Metal beverage container" means a beverage container composed primarily of metal.

(p) "Nonreturnable container" means that term as defined in section 1 of the beverage container law, MCL 445.571.

(q) "Person" means an individual, partnership, corporation, association, limited liability company, governmental entity, or other legal entity. The term includes a dealer, distributor, or manufacturer.
(r) "Plastic beverage container" means a beverage container composed primarily of plastic.
(s) "Returnable container" means that term as defined in section 1 of the beverage container law, MCL 445.571.
(t) "Reverse vending machine" means a device designed to properly identify and process empty beverage containers and provide a means for a deposit refund on returnable containers.
(u) "Reverse vending machine manufacturer" means a person that engages in any of the following and the representatives of that person:
(i) Designing or manufacturing a reverse vending machine.
(ii) Selling or leasing a reverse vending machine to a dealer in this state.
(iii) Servicing or replacing a reverse vending machine of a dealer in this state.
(v) "Update" means to install vision technology for designated metal, plastic, or glass beverage containers in an existing, new, or replacement reverse vending machine.
(W) "Vision technology" means a camera or other scanning device that allows a reverse vending machine to determine if beverage containers are returnable containers based on symbols, marks, or other distinguishing characteristics on the beverage containers.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.655. Installation of vision technology.

Sec. 5.

Not later than 450 days after the effective date of this act, a reverse vending machine manufacturer shall begin installing vision technology into a sufficient sample of reverse vending machines that process glass beverage containers and plastic beverage containers and conducting testing of that vision technology in a commercial environment or other testing environment that is substantially similar to a commercial environment.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.657. Reverse vending machine used in county that borders another state or county in Lower Peninsula contiguous with county that borders another state; processing metal beverage containers; requirements; extension of date.

Sec. 7.

(1) Subject to subsection (2), beginning 360 days after the effective date of this act, a reverse vending machine manufacturer shall not lease, sell, or otherwise transfer a reverse vending machine that processes metal beverage containers for use in any county of this state that borders another state, or any county in the Lower Peninsula that is contiguous with a county of this state that borders another state, and a dealer shall not use a reverse vending machine that processes metal beverage containers in any of those counties, if the reverse vending machine does not meet the following standards:
(a) It identifies at least 85% of appropriately marked and legible designated metal containers that are or are not nonreturnable containers, and authorizes or provides a refund only for those containers identified as returnable containers or refuses to provide or authorize a refund for those containers identified as nonreturnable containers.
(b) It maintains accurate data concerning the number of beverage containers accepted by that reverse vending machine, categorized according to the distributor of those beverage containers.
(2) If a reverse vending machine manufacturer demonstrates to the department's satisfaction that material and technical issues prevent the reverse vending machine manufacturer from meeting the requirements of subsection (1) by the date described in that subsection, the department may grant an extension of that date of not more than 180 days.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.659. Reverse vending machine used in county that borders another state or county in Lower Peninsula contiguous with county that borders another state; processing glass or plastic beverage containers; requirements; extension of date.

Sec 9.

(1) Subject to subsection (2), beginning 720 days after the effective date of this act, a reverse vending machine manufacturer shall not lease, sell, or otherwise transfer a reverse vending machine that processes glass beverage containers or plastic beverage containers for use in any county of this state that borders another state, or any county in the Lower Peninsula that is contiguous with a county of this state that borders another state, and a dealer shall not use a reverse vending machine that processes glass beverage containers or plastic beverage containers in any of those counties, if the reverse vending machine does not meet the following standards:

(a) It identifies at least 85% of appropriately marked and legible designated glass containers and designated plastic containers that are or are not nonreturnable containers, and authorizes or provides a refund only for those containers identified as returnable containers or refuses to provide or authorize a refund for those containers identified as nonreturnable containers.

(b) It maintains accurate data concerning the number of beverage containers accepted by that reverse vending machine, categorized according to the distributor of those beverage containers.

(2) If a reverse vending machine manufacturer demonstrates to the department's satisfaction that material and technical issues prevent the reverse vending machine manufacturer from meeting the requirements of subsection (1) by the date described in that subsection, the department may grant an extension of that date of not more than 180 days. The department may grant a second extension of not more than an additional 180 days, but only if the department determines that the reverse vending machine manufacturer gave its best effort to meeting the requirements of subsection (1) before the end of the first extension.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.661. Change, alteration, or modification; prohibitions.

Sec. 11.

A person shall not change, alter, or modify a reverse vending machine used or intended for use in this state in a manner designed to prevent the reverse vending machine from meeting the standards described in section 7(1) or 9(1). A person shall not assist another person's efforts to change, alter, or modify a reverse vending machine used or intended for use in this state in a manner designed to prevent the reverse vending machine from meeting the standards described in section 7(1) or 9(1).

History: 2008, Act 387, Eff. Dec. 1, 2009

445.663. Fraudulent change, alteration, or modification; data; retention; availability for inspection.

Sec. 13.

(1) A person shall not fraudulently change, alter, or modify data described in section 7(1) or 9(1) or assist another person's efforts to fraudulently change, alter, or modify data described in section 7(1) or 9(1).

(2) Each dealer shall retain the data described in sections 7(1) and 9(1) for at least 2 years, shall make any of that data concerning brands distributed by a distributor that provides a refund to the dealer under section 2(6) of the beverage container law, MCL 445.572, available for inspection by that distributor, and shall provide copies of that data to that distributor on request.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.665. Inspection; investigation of complaint; notice of violation; installation or update to comply with requirements.

Sec. 15.

(1) Each dealer shall allow the department and any law enforcement agency to inspect the dealer's reverse vending machines and the data described in sections 7(1) and 9(1) for the purpose of enforcing this act.
(2) If the department receives a complaint of a violation of this act, the department shall investigate to determine if a violation of this act has occurred.
(3) If the department determines or discovers that a violation of this act has occurred, the department shall notify the appropriate law enforcement agency of the violation.
(4) The department shall not require that a dealer or reverse vending machine manufacturer install or update a reverse vending machine to meet the requirements of section 7(1) or 9(1) unless the department first establishes under the beverage container redemption antifraud act that the dealer must install or retrofit the reverse vending machines at a retail location in order to meet the requirements of section 7(1) or 9(1) and makes money available for that installation or update under the beverage container redemption antifraud act.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.667. Violations; penalties; restitution.

Sec. 17.

(1) A person who violates section 11 or 13(1) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.
(2) Except as provided in subsection (1), and subject to subsections (3) and (4), a person that violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both.
(3) A dealer or reverse vending machine manufacturer is not considered in violation of section 7(1) or 9(1) if the department has not made money available to the reverse vending machine manufacturer under the beverage container redemption antifraud act to update the dealer's reverse vending machines.
(4) A dealer is not considered in violation of the requirements imposed on a dealer in section 7(1) or 9(1) if the dealer is using the reverse vending machines of a reverse vending machine manufacturer and the reverse vending machines of that reverse vending machine manufacturer cannot be retrofitted due to the lack of technology to meet the standards described in subdivisions (a) and (b) of section 7(1) or 9(1).
(5) In addition to the penalty imposed under subsection (1) or (2), a court shall order a person convicted of a violation of this act to make restitution to this state and to any dealer or distributor for any loss caused by the violation.

History: 2008, Act 387, Eff. Dec. 1, 2009

445.669. Report.

Sec. 19.

Within 4 years after the effective date of this act, the department shall provide a written report to the governor, the speaker of the house of representatives, and the senate majority leader. The report shall include a status report concerning the implementation of this act and the beverage container redemption antifraud act, the department's analysis of the effectiveness of these acts in reducing the redemption of nonreturnable containers in this state, the department's recommendation concerning whether the requirements of sections 7(1) and 9(1) should be extended to apply to reverse vending machines located in areas of the state not included in those sections, and any other recommendations the department may have for changes to these acts or other legislative action to reduce the redemption of nonreturnable containers in this state.

History: 2008, Act 387, Eff. Dec. 1, 2009

THE MICHIGAN PENAL CODE (EXCERPTS)
Act 328 of 1931

AN ACT to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act.

History: 1931, Act 328, Eff. Sept. 18, 1931.

CHAPTER IV
ADULTERATING AND MISBRANDING

750.28 Cereal beverage with alcoholic content; furnishing to minors, penalty.

Sec. 28.

Any person who shall sell, give or furnish to a minor, except upon authority of and pursuant to a prescription of a duly licensed physician, any cereal beverage of any alcoholic content under the name of “near beer”, or “brew”, or “bru”, or any other name which is capable of conveying the impression to the purchaser that the beverage has an alcoholic content, shall be guilty of a misdemeanor.

History: Add. 1957, Act 283, Eff. Sept. 27, 1957.

Cited in other sections: Section 750.28 is cited in '722.53.

CHAPTER XX
CHILDREN

750.141 Presence of minor under 17 in places where liquor is sold, given away, or furnished; attendance of minors at dances.

Sec. 141.

A minor child under 17 years of age shall not be permitted to remain in a dance hall, saloon, barroom or any place where spirituous or intoxicating liquor, wine or beer, or any beverage, liquor or liquors containing spirituous or intoxicating liquor, beer or malt liquor is sold, given away or furnished for a beverage, unless the minor is accompanied by parent or guardian. A proprietor, keeper or manager of any such place who permits a minor child to remain in any such place, and a person who encourages or induces in any way the minor child to enter the place or to remain therein shall be deemed guilty of a misdemeanor. This section shall not prevent a township, village or city from establishing, by ordinance, regulations more stringent than the provisions of this act relative to the attendance of a minor at theaters, movie houses, bowling or billiard halls and dance halls. This section shall not prevent a township, village or city from establishing, by ordinance, regulations permitting the attendance of minor children at dances where no spirituous or intoxicating liquor, beer or malt liquor is sold, given away or consumed in the dance area.

History: 1931, Act 328, Eff. Sept. 18, 1931; - CL 1948, 750.141; - Am. 1959, Act 254, Eff. Mar. 19, 1960; - Am. 1966, Act 166, Imd. Eff. July 1, 1966; - Am. 1972, Act 32, Imd. Eff. Feb. 19, 1972.

Cited in other sections: Section 750.141 is cited in '722.53.

Former law: See section 3 of Chapter XXX of Part II of Act 319 of 1927, being CL 1929, '7631; section 2 of Act 260 of 1881, being How., '1999; CL 1897, '5554; CL 1915, '7223; CL 1929, '12799; Act 236 of 1905; and Act 55 of 1907.

750.159g “Racketeering” defined.

Sec. 159g.

As used in this chapter, “racketeering” means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain,

involving any of the following:

(a) A felony violation of section 8 of the tobacco products tax act, 1993 PA 327, MCL 205.428, concerning tobacco product taxes, or section 9 of former 1947 PA 265, concerning cigarette taxes.
(b) A violation of section 11151(3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11151, or section 48(3) of former 1979 PA 64, concerning felonious disposal of hazardous waste.
(c) A felony violation of part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, concerning controlled substances.
(d) A felony violation of section 60 of the social welfare act, 1939 PA 280, MCL 400.60, concerning welfare fraud.
(e) A violation of section 4, 5, or 7 of the medicaid false claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607, concerning medicaid fraud.
(f) A felony violation of section 18 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.218, concerning the business of gaming.
(g) A violation of section 508 of the uniform securities act (2002), 2008 PA 551, MCL 451.2508, concerning securities fraud.
(h) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675 and 722.677, concerning the display or dissemination of obscene matter to minors.
(i) A felony violation of section 72, 73, 74, 75, or 77, concerning arson.
(j) A violation of section 93, 94, 95, or 96, concerning bank bonds, bills, notes, and property.
(k) A violation of section 110 or 110a, concerning breaking and entering or home invasion.
(l) A violation of section 117, 118, 119, 120, 121, or 124, concerning bribery.
(m) A violation of section 120a, concerning jury tampering.
(n) A violation of section 145c, concerning child sexually abusive activity or material.
(o) A felony violation of section 157n, 157p, 157q, 157r, 157s, 157t, or 157u, concerning credit cards or financial transaction devices.
(p) A felony violation of section 174, 175, 176, 180, 181, or 182, concerning embezzlement.
(q) A felony violation of chapter XXXIII, concerning explosives and bombs.
(r) A violation of section 213, concerning extortion.
(s) A felony violation of section 218, concerning false pretenses.
(t) A felony violation of section 223(2), 224(1)(a), (b), or (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a, concerning firearms or dangerous weapons.
(u) A felony violation of chapter XLI, concerning forgery and counterfeiting.
(v) A violation of section 271, 272, 273, or 274, concerning securities fraud.
(w) A violation of section 300a, concerning food stamps or coupons or access devices.
(x) A violation of section 301, 302, 303, 304, 305, 305a, or 313, concerning gambling.
(y) A violation of section 316 or 317, concerning murder.
(z) A violation of section 330, 331, or 332, concerning horse racing.
(aa) A violation of section 349, 349a, or 350, concerning kidnapping.
(bb) A felony violation of chapter LII, concerning larceny.
(cc) A violation of section 411k, concerning money laundering.
(dd) A violation of section 422, 423, 424, or 425, concerning perjury or subornation of perjury.
(ee) A violation of section 452, 455, 457, 458, or 459, concerning prostitution.
(ff) A violation of section 529, 529a, 530, or 531, concerning robbery.
(gg) A felony violation of section 535 or 535a, concerning stolen, embezzled, or converted property.
(hh) A violation of chapter LXXXIII-A, concerning terrorism.
(ii) A violation of section 5 of 1984 PA 343, MCL 752.365, concerning obscenity.
(jj) An offense committed within this state or another state that constitutes racketeering activity as defined in 18 USC 1961(1).
(kk) An offense committed within this state or another state in violation of a law of the United States that is substantially similar to a violation listed in subdivisions (a) through (ii).
(ll) An offense committed in another state in violation of a statute of that state that is substantially similar to a violation listed in subdivisions (a) through (ii).

(mm) A felony violation of section 909(4) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1909, concerning the illegal sale, delivery, or importation of spirits.

History: Add. 1995, Act 187, Eff. Apr. 1, 1996 ;-- Am. 1997, Act 75, Imd. Eff. July 17, 1997 ;-- Am. 2002, Act 124, Eff. Apr. 22, 2002 ;-- Am. 2009, Act 82, Imd. Eff. Aug. 31, 2009 ;-- Am. 2010, Act 176, Imd. Eff. Sept. 30, 2010

CHAPTER XLIV
GAMBLING

750.303a Applicability of chapter; recreational card playing conducted at senior citizen housing facility.

Sec. 303a.

This chapter does not apply to recreational card playing conducted at a senior citizen housing facility not licensed by the liquor control commission by a senior citizens club or a group of residents of a senior citizen housing facility that consists of at least 15 members who are 60 years of age or older under all of the following circumstances:

(a) The card playing is conducted solely for the amusement and recreation of the members and guests of the club or group and is not conducted for fund-raising. The number of guests participating in the card playing shall not exceed the number of club or group members participating in the card playing.
(b) Only bona fide members and employees of the club or group participate in the conduct of the activity.
(c) The card playing is conducted after 9 a.m. and before midnight.
(d) The participating cardplayers bet not more than 25 cents per bet.
(e) The winnings from 1 hand of cards do not exceed $5.00.
(f) Except for winnings, revenue generated from the activity is used for reasonable expenses incurred in conducting the card playing, and no person is compensated for participating in the conduct of the card playing.

History: Added 1996, Act 539, Eff. Jan. 14, 1997.

750.310a Applicability of chapter; bowling game or bowling card game.

Sec. 310a.

(1) Subject to subsection (3), this chapter does not apply to a bowling game or a bowling card game conducted in a bowling center to which all of the following apply:
    (a) The total amount of the participation fee per person per game does not exceed $5.00.
    (b) The total prize payout per league per game does not exceed $1,000.00 and is comprised only of participation fees.
(2) This section applies only to a game that is sponsored solely by 1 league and whose participants are members of the same league.
(3) The bowling center in which the bowling game or bowling card game is conducted shall not receive a percentage of the participation fees or prize money from bowling games or bowling card games for which a stake or prize is awarded.
(4) As used in this section:
    (a) "Bowling center" means a bowling alley with a minimum of 5 lanes.
    (b) "Bowling card game" means a card game held in conjunction with a bowling game, the results of which depend on the outcome of the bowling game. Bowling card game does not include any of the following:
        (*i*) A mechanical or electronic simulation of a bowling card game.
        (*ii*) Roulette, beano, cards unless used in a bowling card game, dice, wheels of fortune, video poker, slot machines, or other similar games in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the player.
        (*iii*) A game that includes a mechanical or physical device that directly or indirectly impairs or thwarts the skill of the player.

(c) "Bowling game" means not more than 3 sets of 10 frames of bowling. Bowling game does not include any of the following:

(*i*) A mechanical or electronic simulation of a bowling game.

(*ii*) Roulette, beano, cards unless used in a bowling card game, dice, wheels of fortune, video poker, slot machines, or other similar games in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the player.

(*iii*) A game that includes a mechanical or physical device which directly or indirectly impairs or thwarts the skill of the player.

(d) "Participation fee" means a fee that is charged by the league to a participant in a game for which a stake or prize is awarded.

History: Added 1996, Act 539, Eff. Jan. 14, 1997;-Am. 1998, Act 338, Eff. Sept. 30, 1998.

750.310b Applicability of chapter; redemption game.

Sec. 310b.

(1) This chapter does not apply to a redemption game if all of the following conditions are met:

(a) The outcome of the game is determined through the application of an element of skill by the player.

(b) The award of the prize is based upon the player's achieving the object of the game or otherwise upon the player's score.

(c) Only noncash prizes, toys, novelties, or coupons or other representations of value redeemable for noncash prizes, toys, or novelties are awarded.

(d) The wholesale value of a prize, toy, or novelty awarded for the successful single play of a game is not more than $3.75.

(e) The redemption value of coupons or other representations of value awarded for the successful single play of a game does not exceed 15 times the amount charged for a single play of the game or $3.75, whichever is less. However, players may accumulate coupons or other representations of value for redemption for noncash prizes, toys, novelties of a greater value up to, but not exceeding, $250.00 wholesale value.

(2) As used in this section "redemption game" means a single player or multi-player mechanical, electronic, or manual amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, propelling, or stopping a ball or other object into, upon, or against a hole or other target. Redemption game does not include either of the following:

(a) Games such as roulette, beano, cards, dice, wheels of fortune, video poker, slot machines, or other games in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the player.

(b) A game that includes a mechanical or physical device which directly or indirectly impairs or thwarts the skill of the player.

History: Added 1996, Act 539, Eff. Jan. 14, 1997.

THE MICHIGAN VEHICLE CODE (EXCERPTS)

AN ACT to amend 1949 PA 300, entitled “An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date.”

257.319 Mandatory suspension of license; record of conviction for certain crimes; waiver; restricted license; prior convictions; violations arising out of same transaction.

Sec. 319.

(1) The secretary of state shall immediately suspend a person's license as provided in this section upon receiving a record of the person's conviction for a crime described in this section, whether the conviction is under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of another state substantially corresponding to a law of this state, or, beginning October 31, 2010, a law of the United States substantially corresponding to a law of this state.

(2) The secretary of state shall suspend the person's license for 1 year for any of the following crimes:
   - (a) Fraudulently altering or forging documents pertaining to motor vehicles in violation of section 257.
   - (b) A violation of section 413 of the Michigan penal code, 1931 PA 328, MCL 750.413.
   - (c) A violation of section 1 of former 1931 PA 214, MCL 752.191, or section 626c.
   - (d) A felony in which a motor vehicle was used. As used in this section, "felony in which a motor vehicle was used" means a felony during the commission of which the person convicted operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed:
     - (i) The vehicle was used as an instrument of the felony.
     - (ii) The vehicle was used to transport a victim of the felony.
     - (iii) The vehicle was used to flee the scene of the felony.
     - (iv) The vehicle was necessary for the commission of the felony.
   - (e) A violation of section 602a(2) or (3) of this act or section 479a(2) or (3) of the Michigan penal code, 1931 PA 328, MCL 750.479a.
   - (f) Beginning October 31, 2010, a violation of section 601d.

(3) The secretary of state shall suspend the person's license for 90 days for any of the following crimes:
   - (a) Failing to stop and disclose identity at the scene of an accident resulting in injury in violation of section 617a.
   - (b) A violation of section 601b(2), section 601c(1), section 653a(3), section 626 before October 31, 2010, or, beginning October 31, 2010, section 626(2).
   - (c) Malicious destruction resulting from the operation of a vehicle under section 382(1)(b), (c), or (d) of the Michigan penal code, 1931 PA 328, MCL 750.382.
   - (d) A violation of section 703(2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.

(4) The secretary of state shall suspend the person's license for 30 days for malicious destruction resulting from the operation of a vehicle under section 382(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.382.

(5) For perjury or making a false certification to the secretary of state under any law requiring the registration of a motor vehicle or regulating the operation of a vehicle on a highway, or for conduct prohibited under section 324(1) or a local ordinance substantially corresponding to section 324(1), the secretary shall suspend the person's license as follows:
    (a) If the person has no prior conviction for an offense described in this subsection within 7 years, for 90 days.
    (b) If the person has 1 or more prior convictions for an offense described in this subsection within 7 years, for 1 year.
(6) For a violation of section 414 of the Michigan penal code, 1931 PA 328, MCL 750.414, the secretary of state shall suspend the person's license as follows:
    (a) If the person has no prior conviction for that offense within 7 years, for 90 days.
    (b) If the person has 1 or more prior convictions for that offense within 7 years, for 1 year.
(7) For a violation of section 624a or 624b of this act or section 703(1) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, the secretary of state shall suspend the person's license as follows:
    (a) If the person has 1 prior conviction for an offense described in this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, for 90 days. The secretary of state may issue the person a restricted license after the first 30 days of suspension.
    (b) If the person has 2 or more prior convictions for an offense described in this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, for 1 year. The secretary of state may issue the person a restricted license after the first 60 days of suspension.
(8) The secretary of state shall suspend the person's license for a violation of section 625 or 625m as follows:
    (a) For 180 days for a violation of section 625(1) or (8) before October 31, 2010 or, beginning October 31, 2010, section 625(1)(a) or (b) or (8) if the person has no prior convictions within 7 years. The secretary of state may issue the person a restricted license during a specified portion of the suspension, except that the secretary of state shall not issue a restricted license during the first 30 days of suspension.
    (b) For 90 days for a violation of section 625(3) if the person has no prior convictions within 7 years. However, if the person is convicted of a violation of section 625(3), for operating a vehicle when, due to the consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle was visibly impaired, the secretary of state shall suspend the person's license under this subdivision for 180 days. The secretary of state may issue the person a restricted license during all or a specified portion of the suspension.
    (c) For 30 days for a violation of section 625(6) if the person has no prior convictions within 7 years. The secretary of state may issue the person a restricted license during all or a specified portion of the suspension.
    (d) For 90 days for a violation of section 625(6) if the person has 1 or more prior convictions for that offense within 7 years.
    (e) For 180 days for a violation of section 625(7) if the person has no prior convictions within 7 years. The secretary of state may issue the person a restricted license after the first 90 days of suspension.
    (f) For 90 days for a violation of section 625m if the person has no prior convictions within 7 years. The secretary of state may issue the person a restricted license during all or a specified portion of the suspension.
    (g) Beginning October 31, 2010, for 1 year for a violation of section 625(1)(c) if the person has no prior convictions within 7 years or not more than 2 convictions within 10 years. The secretary of state may issue the person a restricted license, except that the secretary of state shall not issue a restricted license during the first 45 days of suspension.
    (h) Beginning October 31, 2010, the department shall order a person convicted of violating section 625(1)(c) not to operate a motor vehicle under a restricted license issued under subdivision (g) unless the vehicle is equipped with an ignition interlock device approved, certified, and installed as required under sections 625k and 625l. The ignition interlock device may be removed after the interlock device provider provides the department with verification that the person has operated the vehicle with no instances of reaching or exceeding a blood

alcohol level of 0.025 grams per 210 liters of breath. This subdivision does not prohibit the removal of the ignition interlock device for any of the following:

(i) A start-up test failure that occurs within the first 2 months after installation of the device. As used in this subdivision, "start-up test failure" means that the ignition interlock device has prevented the motor vehicle from being started. Multiple unsuccessful attempts at 1 time to start the vehicle shall be treated as 1 start-up test failure only under this subparagraph.

(ii) A start-up test failure occurring more than 2 months after installation of the device, if not more than 15 minutes after detecting the start-up test failure the person delivers a breath sample that the ignition interlock device analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(iii) A retest prompted by the device, if not more than 5 minutes after detecting the start-up test failure the person delivers a breath sample that the ignition interlock device analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(i) Beginning October 31, 2010, if an individual violates the conditions of the restricted license issued under subdivision (g) or operates or attempts to operate a motor vehicle with a blood alcohol level of 0.025 grams per 210 liters of breath, the secretary of state shall impose an additional like period of suspension and restriction as prescribed under subdivision (g). This subdivision does not require an additional like period of suspension and restriction for any of the following:

(i) A start-up test failure within the first 2 months after installation of the ignition interlock device. As used in this subdivision, "start-up test failure" means that the ignition interlock device has prevented the motor vehicle from being started. Multiple unsuccessful attempts at 1 time to start the vehicle shall be treated as 1 start-up test failure only under this subparagraph.

(ii) A start-up test failure occurring more than 2 months after installation of the device, if not more than 15 minutes after detecting the start-up test failure the person delivers a breath sample that the ignition interlock device analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(iii) Any retest prompted by the device, if not more than 5 minutes after detecting the start-up test failure the person delivers a breath sample that the ignition interlock device analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(9) For a violation of section 367c of the Michigan penal code, 1931 PA 328, MCL 750.367c, the secretary of state shall suspend the person's license as follows:

(a) If the person has no prior conviction for an offense described in this subsection within 7 years, for 6 months.

(b) If the person has 1 or more convictions for an offense described in this subsection within 7 years, for 1 year.

(10) For a violation of section 315(4), the secretary of state may suspend the person's license for 6 months.

(11) For a violation or attempted violation of section 411a(2) of the Michigan penal code, 1931 PA 328, MCL 750.411a, involving a school, the secretary of state shall suspend the license of a person 14 years of age or over but less than 21 years of age until 3 years after the date of the conviction or juvenile disposition for the violation. The secretary of state may issue the person a restricted license after the first 365 days of suspension.

(12) For a second or subsequent violation of section 701(1) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701, by an individual who is not a retail licensee or a retail licensee's clerk, agent, or employee, the secretary of state shall suspend the person's license for 180 days. <<The secretary of state may issue a person a restricted license during all or a specified portion of the suspension.>>

(13) Except as provided in subsection (15), a suspension under this section shall be imposed notwithstanding a court order unless the court order complies with section 323.

(14) If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section.

(15) The secretary of state may waive a restriction, suspension, or revocation of a person's license imposed under this act if the person submits proof that a court in another state revoked, suspended, or restricted his or her license for a period equal to or greater than the period of a restriction, suspension, or revocation prescribed under this act for the violation and that the revocation, suspension, or restriction was served for the violation, or may grant a restricted license.

(16) The secretary of state shall not issue a restricted license to a person whose license is suspended under this section unless a restricted license is authorized under this section and the person is otherwise eligible for a license.

(17) The secretary of state shall not issue a restricted license to a person under subsection (8) that would permit the person to operate a commercial motor vehicle.

(18) Except as provided in subsection (16), a restricted license issued under this section shall permit the person to whom it is issued to take any driving skills test required by the secretary of state and to operate a vehicle under 1 or more of the following circumstances:

(a) In the course of the person's employment or occupation.

(b) To and from any combination of the following:

(i) The person's residence.

(ii) The person's work location.

(iii) An alcohol or drug education or treatment program as ordered by the court.

(iv) The court probation department.

(v) A court-ordered community service program.

(vi) An educational institution at which the person is enrolled as a student.

(vii) A place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.

(19) While driving with a restricted license, the person shall carry proof of his or her destination and the hours of any employment, class, or other reason for traveling and shall display that proof upon a peace officer's request.

(20) Subject to subsection (22), as used in subsection (8), "prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Except as provided in subsection (21), a violation or attempted violation of any of the following:

(i) Section 625, except a violation of section 625(2), or a violation of any prior enactment of section 625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(ii) Section 625m.

(iii) Former section 625b.

(b) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(c) Beginning October 31, 2010, a violation of section 601d or section 626(3) or (4).

(21) Except for purposes of the suspensions described in subsection (8)(c) and (d), only 1 violation or attempted violation of section 625(6), a local ordinance substantially corresponding to section 625(6), or a law of another state substantially corresponding to section 625(6) may be used as a prior conviction.

(22) If 2 or more convictions described in subsection (20) are convictions for violations arising out of the same transaction, only 1 conviction shall be used to determine whether the person has a prior conviction.

History: 1949, Act 300, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 270, Eff. Sept. 28, 1951 ;-- Am. 1967, Act 226, Eff. Nov. 2, 1967 ;-- Am. 1976, Act 285, Eff. Apr. 1, 1977 ;-- Am. 1980, Act 398, Eff. Mar. 31, 1981 ;-- Am. 1980, Act 518, Eff. Mar. 31, 1981 ;-- Am. 1981, Act 159, Eff. Mar. 31, 1982 ;-- Am. 1981, Act 222, Imd. Eff. Jan. 5, 1982 ;-- Am. 1982, Act 64, Eff. Mar. 30, 1983 ;-- Am. 1982, Act 310, Eff. Mar. 30, 1983 ;-- Am. 1986, Act 177, Imd. Eff. July 7, 1986 ;-- Am. 1988, Act 205, Eff. July 1, 1988 ;-- Am. 1988, Act 406, Eff. Mar. 30, 1989 ;-- Am. 1991, Act 93, Eff. Jan. 1, 1992 ;-- Am. 1993, Act 359, Eff. Sept. 1, 1994 ;-- Am. 1994, Act 211, Eff. Nov. 1, 1994 ;-- Am. 1994, Act 449, Eff. May 1, 1995 ;-- Am. 1996, Act 493, Eff. Apr. 1, 1997 ;-- Am. 1996, Act 587, Eff. June 1, 1997 ;-- Am. 1998, Act 347, Eff. Oct. 1, 1999 ;-- Am. 1999, Act 118, Eff. Apr. 1, 2000 ;-- Am. 1999, Act 267, Imd. Eff. Dec. 29, 1999 ;-- Am. 2000, Act 152, Imd. Eff. June 12, 2000 ;-- Am. 2000, Act 460, Eff. Mar. 28, 2001 ;-- Am. 2001, Act 103, Eff. Oct. 1, 2001 ;-- Am.

2001, Act 134, Eff. Feb. 1, 2002 ;-- Am. 2001, Act 159, Eff. Feb. 1, 2002 ;-- Am. 2002, Act 422, Eff. Oct. 1, 2002 ;-- Am. 2002, Act 534, Eff. Oct. 1, 2002 ;-- Am. 2003, Act 61, Eff. Sept. 30, 2003 ;-- Am. 2004, Act 362, Imd. Eff. Oct. 4, 2004 ;-- Am. 2008, Act 462, Eff. Oct. 31, 2010 ;-- Am. 2008, Act 463, Eff. Oct. 31, 2010 ;-- Am. 2010, Act 155, Eff. Jan. 1, 2011; Am. 2010, Act 267, Imd. Eff. Dec. 14, 2010.

Compiler's Notes: Section 2 of Act 310 of 1982 provides: "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or initiated before the effective date of this amendatory act, or initiated after the effective date of this amendatory act for an offense committed before that effective date."Section 2 of Act 205 of 1988 provides: "This amendatory act shall take effect July 1, 1988 and apply to violations which occur on or after that date."

257.624a Transportation or possession of alcoholic liquor in container open or uncapped or upon which seal broken; violation as misdemeanor; exception.

Sec. 624a.

(1) Except as provided in subsection (2), a person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this state.
(2) A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in this state, if the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupants of the vehicle.
(3) A person who violates this section is guilty of a misdemeanor. As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in section 703(1) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703. A court shall not accept a plea of guilty or nolo contendere for a violation of this section from a person charged solely with a violation of section 625(6).
(4) This section does not apply to a passenger in a chartered vehicle authorized to operate by the state transportation department.

History: Added 1991, Act 98, Eff. Aug. 8, 1991;-Am. 1994, Act 21, Eff. Nov. 1, 1994 ;-Am. 1996, Act 493, Eff. Apr. 1, 1997;-Am. 1998, Act 349, Eff. Oct. 1. 1999.

257.624b Transport or possession of alcoholic liquor by person less than 21 years of age.

Sec. 624b.

(1) A person less than 21 years of age shall not knowingly transport or possess alcoholic liquor in a motor vehicle as an operator or occupant unless the person is employed by a licensee under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, a common carrier designated by the liquor control commission under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, the liquor control commission, or an agent of the liquor control commission and is transporting or having the alcoholic liquor in a motor vehicle under the person's control during regular working hours and in the course of the person's employment. This section does not prevent a person less than 21 years of age from knowingly transporting alcoholic liquor in a motor vehicle if a person at least 21 years of age is present inside the motor vehicle. A person who violates this subsection is guilty of a misdemeanor. As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in section 703(1) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.
(2) Within 30 days after the conviction for a violation of subsection (1) by the operator of a motor vehicle, which conviction has become final, the arresting law enforcement officer or the officer's superior may make a complaint before the court from which the warrant was issued. The complaint shall be under oath and shall describe the motor vehicle in which alcoholic liquor was possessed or transported by the operator, who is less than 21 years of age, in committing the violation and requesting that the motor vehicle be impounded as provided in this section. Upon the

filing of the complaint, the court shall issue to the owner of the motor vehicle an order to show cause why the motor vehicle should not be impounded. The order to show cause shall fix a date and time for a hearing, which shall not be less than 10 days after the issuance of the order. The order shall be served by delivering a true copy to the owner not less than 3 full days before the date of hearing or, if the owner cannot be located, by sending a true copy by certified mail to the last known address of the owner. If the owner is a nonresident of the state, service may be made upon the secretary of state as provided in section 403.

(3) If the court determines upon the hearing of the order to show cause, from competent and relevant evidence, that at the time of the commission of the violation the motor vehicle was being driven by the person less than 21 years of age with the express or implied consent or knowledge of the owner in violation of subsection (1), and that the use of the motor vehicle is not needed by the owner in the direct pursuit of the owner's employment or the actual operation of the owner's business, the court may authorize the impounding of the vehicle for a period of not less than 15 days or more than 30 days. The court's order authorizing the impounding of the vehicle shall authorize a law enforcement officer to take possession without other process of the motor vehicle wherever located and to store the vehicle in a public or private garage at the expense and risk of the owner of the vehicle. The owner of the vehicle may appeal the order to the circuit court and the provisions governing the taking of appeals from judgments for damages apply to the appeal. This section does not prevent a bona fide lienholder from exercising rights under a lien.

(4) A person who knowingly transfers title to a motor vehicle for the purpose of avoiding this section is guilty of a misdemeanor.

(5) A law enforcement agency, upon determining that a person less than 18 years of age allegedly violated this section, shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated this section is less than 18 years of age and may be made in person, by telephone, or by first-class mail.

HISTORY: Added 1996, Act 493, Eff. Apr. 1, 1997;-Am. 1998, Act 349, Eff. Oct. 1, 1999; Am. 2003, Act 61, Eff. Sept 30, 2003.

ELLIOT-LARSON-CIVIL RIGHTS ACT (EXCERPTS)
Act 453 of 1976

AN ACT to amend sections 301 and 303 of Act No. 453 of the Public Acts of 1976, entitled as amended "An act to define civil rights; to prohibit discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, height, weight, or marital status; to preserve the confidentiality of records regarding arrest, detention, or other disposition in which a conviction does not result; to prescribe the powers and duties of the civil rights commission and the department of civil rights; to provide remedies and penalties; and to repeal certain acts and parts of acts," being sections 37.2301 and 37.2303 of the Michigan Compiled Laws; and to add sections 302a and 304.

37.2301 Definitions.

Sec. 301.

As used in this article:

(a) "Place of public accommodation" means a business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Place of public accommodation also includes the facilities of the following private clubs:

(i) A country club or golf club.
(ii) A boating or yachting club.
(iii) A sports or athletic club.
(iv) A dining club, except a dining club that in good faith limits its membership to the members of a particular religion for the purpose of furthering the teachings or principles of that religion and not for the purpose of excluding individuals of a particular gender, race, or color.

(b) "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state, a political subdivision, or an agency thereof or a tax exempt private agency established to provide service to the public, except that public service does not include a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment.

History: 1976, Act 453, Eff. Mar. 31, 1977 ;-- Am. 1992, Act 70, Imd. Eff. May 29, 1992 ;-- Am. 1999, Act 202, Eff. Mar. 10, 2000

Compiler's Notes: Enacting section 1 of Act 202 of 1999 provides:"Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision Neal v Department of Corrections, 232 Mich App 730 (1998). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act. "

37.2302 Public accommodations or services; prohibited practices.

Sec. 302.

Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

(b) Print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of religion, race, color, national origin, age, sex, or marital status, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of religion, race, color, national origin, age, sex, or marital status.

History: 1976, Act 453, Eff. Mar. 31, 1977

Constitutionality: The goal of the Civil Rights Act was to broaden the scope of equal protection rather than the standard of equal protection developed by the courts in the course of interpreting the equal protection provisions of United States and Michigan Constitutions. Civil Rights Department v Waterford, 425 Mich 173; 387 NW2d 821 (1986).

37.2302a Applicability to private club.

Sec. 302a.

(1) This section applies to a private club that is defined as a place of public accommodation pursuant to section 301(a).
(2) If a private club allows use of its facilities by 1 or more adults per membership, the use must be equally available to all adults entitled to use the facilities under the membership. All classes of membership shall be available without regard to race, color, gender, religion, marital status, or national origin. Memberships that permit use during restricted times may be allowed only if the restricted times apply to all adults using that membership.
(3) A private club that has food or beverage facilities or services shall allow equal access to those facilities and services for all adults in all membership categories at all times. This subsection shall not require service or access to facilities to persons that would violate any law or ordinance regarding sale, consumption, or regulation of alcoholic beverages.
(4) This section does not prohibit a private club from sponsoring or permitting sports schools or leagues for children less than 18 years of age that are limited by age or to members of 1 sex, if comparable and equally convenient access to the club's facilities is made available to both sexes and if these activities are not used as a subterfuge to evade the purposes of this article.

History: Added 1992, Act 70, Eff. May 28, 1992.

37.2303 Exemptions

Sec. 303.

This article shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation or is licensed by the state under Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 through 436.58 of the Michigan Compiled Laws. This section shall not apply to a private club that is otherwise defined as a place of public accommodation in this article.

History: Added 1976, Act 453, Eff. Jan. 13, 1977;-Am. 1992, Act 70, Eff. May 28, 1992.

37.2304 Violation.

Sec. 304.

Within 30 days after a determination by the commission that a place of public accommodation that holds a license issued by the liquor control commission under the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws, has violated this article, the commission shall certify that determination to and shall file a complaint alleging a violation of Act No. 8 of the Public Acts of the Extra Session of 1933 with the liquor control commission.

History: Added 1992, Act 70, Eff. May 28, 1992.

STATE OF MICHIGAN ADMINISTRATIVE CODE

SPECIAL LICENSES FOR SALE OF ALCOHOLIC LIQUOR AT RETAIL FOR CONSUMPTION ON PREMISES

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.571 Rescinded.

History: 1944 ACS 12; 1954 AC; 1979 AC;-Rescinded 1999 MR 3, Eff. March 20, 2000..

R 436.572 Definition.

Rule 2.

A special license authorizes a person to sell alcoholic liquor at retail for consumption on the premises only for a limited period of time.

History: 1944 ACS 12; 1954 AC; 1979 AC;- 1999 MR 3, Eff. March 20, 2000.

Commission Note: Special license to sell beer, wine or spirits is defined under MCL 436.1111(11) and referred to under MCL 436.1537 (1) (h)

R 436.573 Rescinded.

History: 1944 ACS 12; 1944 ACS 30; 1954 AC; 1979 AC;-Rescinded 1999 MR 3, Eff. March 20, 2000.

R 436.574 Application limited to nonprofit organizations; profits.

Rule 4.

Only a nonprofit organization may apply for a special license. All profits derived from the sale of alcoholic liquor must go to the organization itself and not to any individual.

History: 1944 ACS 12; 1954 AC; 1979 AC; 1999 MR 3, Eff. March 20, 2000.

R 436.575 Applications.

Rule 5.

An applicant shall ensure that its application for a special license is received in the offices of the Michigan liquor control commission, Lansing, Michigan, not less than 10 days before the date the license is desired. The president and secretary of the organization making application shall sign the application in the presence of 2 witnesses and the signatures shall be notarized. Further, an applicant shall submit, with the application, an affidavit showing the length of time the organization has been in existence.

History: 1944 ACS 12; 1944 ACS 30; 1954 AC; 1979 AC;- 1999 MR 3, Eff. March 20, 2000.

R 436.576 Resolution.

Rule 6.

A certified copy of the resolution of the membership or board of directors authorizing the application must accompany the application to the commission.

History: 1944 ACS 12; 1954 AC; 1979 AC.

R 436.577 Approval of sheriff or chief of police required.

Rule 7.

The written approval of the sheriff or chief of police under whose jurisdiction the premises proposed to be licensed are located must be obtained upon the application before having the bond executed.

History: 1944 ACS 12; 1954 AC; 1979 AC.

R 436.578 Rescinded.

History: 1944 ACS 12; 1954 AC; 1979 AC; Rescinded 1999MR 3, Eff. March 20, 2000.

R 436.579 Place and time of operation.

Rule 9.

The special license may be used only at the premises for which issued and only during the time stipulated on the license.

History: 1944 ACS 12; 1954 AC; 1979 AC.

R 436.580 Rescinded.

History: 1944 ACS 12; 1954 AC; 1979 AC; Rescinded 1999 MR 3, Eff. March 20, 2000.

R 436.581 Rescinded.

History: 1944 ACS 12; 1944 ACS 30; 1954 AC; 1979 AC; Rescinded 1999 MR 3, Eff. March 20, 2000.

R 436.582 Special licensee source of purchase options.

Rule 12.

(1) A special licensee may purchase spirits from a licensed specially designated distributor at the uniform sales price set by the commission.
(2) A special licensee may purchase beer and wine from any of the following entities:
   (a) A licensed specially designated merchant.
   (b) A licensed wholesaler.
   (c) A licensed Michigan wine maker or small wine maker.
(3) A special licensee may purchase mixed spirit drink from a specially designated distributor or from a licensed wholesaler.

History: 1999 MR 3, Eff. March 20, 2000.

GENERAL RULES

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1001 Definitions.

Rule 1.

(1) As used in these rules:

(a) "Act" means 1998 P.A. 58, MCL 436.1101 et seq.

(b) “Broker” means a person, other than an individual, who is licensed by the commission and who is employed or otherwise retained by any of the following entities to sell, promote or otherwise assist in the sale or promotion of alcoholic liquor:

(i) A manufacturer.

(ii) A vendor of spirits.

(iii) An outstate seller of beer.

(iv) An outstate seller of wine.

(v) An outstate seller of mixed spirit drink.

(vi) A manufacturer of mixed spirit drink.

(vii) A wholesaler.

(c) “Co-licensee” means 1 of 2 or more persons whose names appear on any single license issued by the commission, except for a person whose name appears on the license in a fiduciary capacity. All co-licensees on a single license are considered a partnership for purposes of the act and these rules.

(d) “Cooperative advertising" means a joint effort between licensees or vendors of spirits to advertise alcoholic liquor.

(e) “Department store” means a retail store that has all of the following:

(i) More than 15,000 square feet.

(ii) A minimum of 4 separate and distinct major departments that include at least 1 of the stores listed in R 436.1129(1)(a) to (g).

(iii) A minimum inventory of $250,000.00, at cost.

(f) "Drive-in" or "drive-through" means an establishment that allows the sale of alcoholic liquor to a retail customer through a service window or similar aperture without requiring the retail customer to exit his or her vehicle to make the purchase and includes an establishment that allows the retail customer to drive in or through any enclosed building or structure and make a purchase of alcoholic liquor without requiring the retail customer to exit his or her vehicle.

(g) “Drive-up or walk-up window” means a service window, door, or other aperture through which a customer may purchase merchandise without that customer entering the licensed premises.

(h) “Driver helper” means a person who is not less than 18 years of age and who accompanies and assists, and who may only accompany and assist, a licensed salesperson in delivering alcoholic liquor to a retail licensee.

(i) "Licensed premises" means any portion of a building, structure, room, or enclosure on real estate that is owned, leased, used, controlled, or operated by a licensee in the conduct of the business at the location for which the licensee is licensed by the commission, except when otherwise specified by commission rule or written commission order.

(j) "Licensee" means the person to whom a license is issued by the commission to manufacture, sell, import, warehouse, deliver, or promote, or otherwise assist in the sale of, alcoholic liquor.

(k) "Major thoroughfare" means a street or highway which is primarily for through traffic and which has not less than 4 lanes of traffic, excluding any lanes that are used primarily for turning purposes and any lanes in which parking is allowed at any time.

(l) "Neighborhood shopping center" means 1 commercial establishment, or a group of commercial establishments organized or operated as a unit, which is related in location, size, and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable retail space, and which provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space.

(m) "Off-premises licensee" means a person who is licensed by the commission to sell alcoholic liquor at retail for consumption off the licensed premises.

(n) "On-premises licensee" means a person who is licensed by the commission to sell alcoholic liquor at retail for consumption on the licensed premises.

(o) "Permit" means a contract between the commission and a licensee granting authority to the licensee to perform the functions defined in the act or commission rules for a specific permit.

(p) "Privately held corporation" means a corporation that does not trade its stock on a stock exchange or in over-the-counter transactions. A subsidiary of a corporation that trades its stock on a stock exchange or in over-the-counter transactions is not a privately held corporation.

(q) "Public room" means a room that is open for use by the general public for eating, drinking, or amusement. "Public room" does not mean any of the following:

(i) A restroom.
(ii) A kitchen.
(iii) A storage room.
(iv) An office.
(v) A boiler room.
(vi) A hallway.
(vii) A landing.
(viii) A stairway.
(ix) An elevator.
(x) A dance floor.
(xi) A stage.
(xii) An area similar to the areas specified in this subdivision.

(r) "Release" means a document in which written permission is granted by the commission to ship alcoholic liquor into this state.

(s) "Salesperson" means a person who is employed by any of the following entities and who is licensed by the commission to sell, deliver, or promote, or otherwise assist in the sale of, alcoholic liquor in this state:

(i) A vendor of spirits.
(ii) A broker.
(iii) A manufacturer of beer or wine.
(iv) An outstate seller of beer or wine.
(v) A wholesaler.

(t) "Sample of alcoholic liquor" means a container which bears the word "sample" and which is not more than 1 liter or 33.82 United States fluid ounces. If a product is not available in a container of 1 liter or less, then the next larger size may be substituted. However, a container shall not be more than 3 liters.

(u) “Sports/entertainment venue” means a facility which is licensed to sell alcoholic liquor for on-premises consumption, which has a seating capacity of 4,500 or more, which is primarily used for sporting events or other entertainment, and which is not located on the campus of a 2- or 4-year college or university.

(v) "Temporary bin display" means a freestanding device which is constructed of any material that is used for the exhibition of beer, wine, or spirits on the premises of a retail licensee who is licensed for off-premises sales only and which must be removed from the retail licensed premises not later than 120 days after installation.

(w) "Vendor of spirits" means a person who sells spirits to the commission.

(x) "Vendor representative" means a person who is licensed by the commission and who is authorized by a manufacturer of beer or wine, an outstate seller of beer or wine, or a vendor of spirits to represent the respective employer or principal in transactions with the commission.

(2) Terms defined in the act have the same meanings when used in these rules.

(3) Terms defined in the act and these rules have the same meanings when used in rules previously or hereafter promulgated by the commission.

History: 1979 AC; 1982 AACS; 1984 AACS; 1985 AACS; 1986 AACS; 1987 AACS; 1994 AACS; 1998-2000 AACS; 2003 AACS.

Commission Note: See MCL 436.28b regarding qualification requirements of Great Lakes marinas for SDD or SDM licenses.

R 436.1003 Building and health laws, rules, and ordinances.

Rule 3.

A licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcement officials who have jurisdiction over the licensee.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1005 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-Recsinded 2008, PA 11, Imd. Eff. Feb. 29, 2008.

R 436.1007 Records; maintenance.

Rule 7.

(1) A licensee shall maintain accurate records of alcoholic liquor purchases and sales.
(2) A licensee shall maintain records sufficient to determine ownership of the licensed business and to whom the profits or losses of the business accrue.
(3) The records required by this rule shall be maintained for a 4-year period of time.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1009 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-Rescinded 2008, PA 11, Imd. Eff. Feb. 29, 2008..

R 436.1011 Prohibited conduct of licensees, agents, or employees.

Rule 11.

(1) The clerk, servant, agent, or employee of a licensee shall not engage in an illegal occupation or illegal act on the licensed premises. A certified copy of a conviction is prima facie evidence of a violation.
(2) A licensee, an officer of a licensed corporation, a stockholder of a privately held corporation, or a member or manager of a limited liability company shall not, on or off its licensed premises, commit any of the following:
    (a) A felony.
    (b) A crime involving the excessive use of alcoholic liquor.
    (c) A crime involving gambling, prostitution, weapons, violence, tax evasion, fraudulent activity, or controlled substances.
    (d) A misdemeanor that impairs, or may impair, the ability of the person to operate the licensed business in a safe and competent manner.
    (e) Any of the offenses specified in this subrule which results in sentencing after a plea of nolo contendere and for which the licensee is subject to the penalties in section 903 of the act. A certified copy of a conviction is prima facie evidence of a violation.
(3) The provisions of subrules (1) and (2) of this rule apply to the person, the officer of a corporate entity, the stockholder of a privately held corporate entity, or the member or manager of a limited liability entity of the person named as a participant on the licensee's participation permit.
(4) A licensee, or the clerk, servant, agent, or employee of the licensee, shall not hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of making an investigation or inspection of the premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer or a commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules.
(5) A licensee, or the clerk, servant, agent, or employee of a licensee, shall not impersonate a commission employee, a commission investigator, or a law enforcement officer empowered to enforce the act or commission rules.
(6) A licensee, or the clerk, servant, agent, or employee of the licensee, shall not do any of the following:
    (a) Allow, on the licensed premises, the annoying or molesting of customers or employees by other customers or employees.
    (b) Knowingly allow the licensed premises to be used by any person for the purposes of accosting or soliciting another person to commit prostitution.
    (c) Allow, on the licensed premises, fights, brawls, or the improper use of firearms, knives, or other weapons.
    (d) Allow the sale, possession, or consumption on the licensed premises of any controlled substances that are prohibited by 1978 P.A. 368, MCL 333.1101 et seq.
    (e) Allow narcotics paraphernalia to be used, stored, exchanged, or sold on the licensed premises.
(7) A retail licensee shall not sell any alcoholic liquor off the licensed premises, except as follows:

(a) An on-premises licensee may provide out-of-doors service if done in accord with the provisions of R 436.1419.
(b) An off-premises licensee may deliver a preordered quantity of alcoholic liquor to a customer; however, the licensee shall not make a delivery to a customer on the campus of a 2- or 4-year college or university, unless the customer is licensed by the commission.
(c) An off-premises licensee may provide out-of-doors service if done in accord with the provisions of R 436.1521.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1979 ACS 16, Eff. Nov. 15, 1983; 1985 12, Eff. Jan. 1, 1986; 1994 MR 12, Eff. Dec. 16, 1995; 2000 MR 3, Eff. March 20, 2000'-MR 10, Eff. May 30, 2003.

R 436.1013 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-Rescinded 2008, Act 11, Imd. Eff. Feb. 29, 2008.

R 436.1015 Display of license and permit.

Rule 15.

(1) Licenses issued by the commission shall be signed by the licensee, shall be framed under a transparent material, and shall be prominently displayed in the licensed premises.
(2) Permits issued by the commission to a licensee shall be framed under a transparent material and shall be prominently displayed in the licensed premises adjacent to the liquor license.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1017 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981-Rescinded 2008, Act 11, Imd. Eff. Feb. 29, 2008.

R 436.1019 Contests.

Rule 19.

A licensee shall not participate in or sponsor any contest that requires the use or consumption of alcoholic liquor or features alcoholic liquor as a prize in connection with a contest.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1021 Sale to licensed truck driver salesman.

Rule 21.

A licensee shall not knowingly sell, give, or furnish alcoholic liquor to a licensed truck driver salesman who is employed by a licensee while the truck driver is on duty or in the course of employment.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1023 Transfer of location of licensed premises; alteration of premises; lease, sale, or transfer of premises.

Rule 23.

(1) A licensee shall not transfer the location of the licensed premises without the prior written approval of the commission.
(2) A licensee shall not, without the prior written approval of the commission, do any of the following:
   (a) Make an alteration in the size of the physical structure of the licensed premises.
   (b) Add or drop any space to or from the physical structure of the licensed premises.
   (c) If the licensee holds a class C or B hotel license, install any additional bars.
(3) A licensee shall not lease, sell, or transfer possession of a portion of the licensed premises without the prior written approval of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1025 Storing of alcoholic liquor.

Rule 25.

A licensee shall not allow alcoholic liquor to be kept or stored off the licensed premises, except upon prior written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1027 Confiscation and impoundment of alcoholic liquor.

Rule 27.

(1) A commission inspector or investigator or a law enforcement officer may seize suspected adulterated alcoholic liquor for analytical purposes.
(2) A commission inspector or investigator or a law enforcement officer may confiscate or impound alcoholic liquor which does not comply with the act or commission rules.
(3) A commission inspector or investigator may impound alcoholic liquor which is damaged by fire, water, chemicals, smoke, floods, explosion, freezing, sewage, or other causes affecting quality or merchantable value. Once impounded, damaged alcoholic liquor shall not be used, sold, moved, or destroyed without the prior written approval of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1029 Orders of commission.

Rule 29.
A licensee shall not fail, refuse, or neglect to obey any written order of the commission or an individual commissioner issued relative to the operation of his or her licensed establishment.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1031 Sales prohibited during periods of suspension; notice of suspension.

Rule 31.

(1) A licensee shall not sell, offer for sale, furnish, consume, or allow the consumption of, alcoholic liquor on the licensed premises during the period that the license is suspended by the commission or an individual commissioner.
(2) During the time of suspension of a license by the commission, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1033 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-Rescinded 2008, Act 11, Imd. Eff. Feb. 29, 2008.

R 436.1035 Aid or assistance by or to licensee prohibited; exception.

Rule 35.

A licensee or vendor of spirits shall not aid or assist any other licensee by gift or loan of money or property of any description or other valuable thing or by giving premiums or rebates; and it is unlawful for any licensee or vendor of spirits to accept the same, except as provided in R 436.1045, R 436.1317, and R 436.1321.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1037 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-MR 10, Eff. May 30, 2003.

R 436.1039 Living quarters in connection with licensed premises.

Rule 39.

(1) A licensee shall not have an inside connection between the licensed premises and an unlicensed portion of the same building or another building without the prior written approval of the commission.

(2) A licensee, except for a hotel or club licensee, shall not have living quarters connected with the licensed premises, unless a living quarters permit is granted by the commission.
(3) If a living quarters permit is granted by the commission to a licensee, alterations shall not be made in the connections between the living quarters and the licensed premises, unless written permission is granted by the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1041 Obtaining a license for use or benefit of another.

Rule 41.

(1) A licensee or an applicant for a license shall not obtain or attempt to obtain a license for the use or benefit of another person whose name does not appear on the license. In addition, a licensee shall not allow a person whose name does not appear on the license to use or benefit from the license.
(2) The provisions of subrule (1) of this rule do not apply to a participating agreement where the commission approves the participating agreement after a showing of good cause by the on-premise licensee or where a person not licensed by the commission receives 10% or less of the gross sales of the licensed business.
(3) The provisions of subrule (1) of this rule do not apply to persons approved by the commission and named on a participation permit issued to the licensee. Upon written request of the licensee, the commission may issue a participation permit to a licensee who meets all of the following qualifications:
   (a) The non-licensed person who receives use or benefit from the licensee's license or who receives gross or net profits from a licensed business shall meet the same qualifications as a licensee as prescribed by R 436.1101 et seq.
   (b) The licensee makes application and either cancels an existing participation permit or receives a new participation permit before adding or deleting any participating non-licensed person. For the purposes of this subrule, the addition or deletion of a participant includes any of the following:
      (i) Transfer or transfer of interest from 1 person to another.
      (ii) The transfer in the aggregate to another person during any single licensing year of more than 10% of the outstanding stock of a corporate participant.
      (iii) The transfer of more than 10% of the total interest in a participant which is a partnership.
      (iv) The transfer of more than 10% in the aggregate of the membership of a limited liability company.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-MR 10, Eff. May 30, 2003.

R 436.1043 Liquor analysis.

Rule 43.

(1) A brand of alcoholic liquor that is not presently merchandised in this state shall not be sold, offered for sale or introduced into this state without being analyzed by the commission, or its duly authorized agent, and without being approved for sale in this state by the commission.
(2) The commission, by written order, may waive the requirement that alcoholic liquor be analyzed.
(3) The commission may order random analysis of a brand of alcoholic liquor sold or offered for sale in this state.

History: 1979 ACS 4, Eff. Feb 3, 1981.

R 436.1045 Dispensing equipment, furniture, or fixtures.

Rule 45.

(1) A manufacturer, an outstate seller of beer or wine, or a wholesaler shall not sell, give, or otherwise furnish dispensing equipment, furniture, or fixtures to a retail licensee, except upon written order of the commission or as provided by R 436.1611(3).
(2) A retail licensee shall not purchase, receive, or otherwise accept dispensing equipment or components, furniture, or fixtures from a manufacturer, an outstate seller of beer or wine, or a

wholesaler, except upon written order of the commission or as provided by R 436.1611(3).

(3) A manufacturer, wholesaler, or retail licensee who sells alcoholic liquor to a special licensee may provide the special licensee with draft beer-dispensing equipment or cooling equipment for use by the special licensee during the effective period of the special license.

(4) A licensee shall not allow, on the licensed premises, any vending machine, whether or not operated by coin or currency, that dispenses a type of alcoholic liquor directly to a customer. This subrule does not apply to a dispensing machine, which is commonly known as an "in-room bar device", whether or not operated by coin or currency, and which is located in the bedrooms or suites of licensed hotels.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1992 MR 6, Eff. July 15, 1992; 2000 MR 3, Eff. March 20, 2000.

R 436.1047 Return of licenses and permits.

Rule 47.

A licensee who ceases active operation of the licensed business for a period of more than 30 days shall return all current licenses and permits to the commission.

History: 1979 ACS 4, Eff. Feb 3, 1981.

R 436.1049 Transfer of license or corporate stock while an alleged violation is pending final disposition.

Rule 49.

(1) If the licensee has been cited in a violation report, a transfer of a license shall not be completed before final disposition of the alleged violation.

(2) If the licensee has been cited in a violation report, a transfer of more than 10% in the aggregate of the stock of a licensed corporation or a transfer of 10% or more in the aggregate of the membership in a limited liability company shall not be completed before final disposition of the alleged violation.

(3) A licensee shall not transfer a license, transfer an interest in a license, or remove a license from escrow with the commission until that licensee has paid all outstanding fines, fees, or charges levied by the commission, except upon prior written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-MR 10, Eff. May 30, 2003.

R 436.1051 Notice of changes affecting control of privately held corporation.

Rule 51.

(1) A privately held licensed corporation shall immediately notify the commission in writing of changes made in its officers or directors or of amendments made to the articles of incorporation.

(2) A limited liability company shall immediately notify the commission, in writing, of changes made in its managers or assignees or of amendments made to the articles of organization, operating agreement, or by-laws.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-MR 10, Eff. May 30, 2003.

R 436.1053 Proof of loss or destruction of a license or permit.

Rule 53.

To prove the loss or destruction of a license or permit, a licensee shall make a written statement as to the loss or destruction and shall file it with the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1055 Sale of alcoholic liquor below cost prohibited; exception.

Rule 55.

A retail licensee shall not sell alcoholic liquor to a customer for less than the cost of the alcoholic liquor to the retail licensee, except upon prior written commission order.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1057 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-MR 10, Eff. May 30, 2003.

R 436.1059 Dishonored payment.

Rule 59.

A licensee, or the clerk, servant, agent, or employee of a licensee, shall not make payment to the commission or the state of Michigan by any means that will be dishonored by a financial institution for lack of sufficient funds or for any other reason.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1060 Server training, requirements.

Rule 60.

(1) As used in this rule, all terms and phrases shall have the same meaning as defined in Section 906(1) of the act.
(2) If the commission conditionally approves the issuance of a license for the purpose of meeting the server training requirements of that approval, then the time period allowed for meeting the server training requirements shall commence on the date the license is issued.
(3) An administrator of a server training program approved by the commission shall administer a comprehensive examination to participants of the program, including individuals seeking certification as instructors within the program. The examination shall thoroughly test the individual's knowledge and competency in the curriculum topics required by section 906(6) of the act. The minimum passing grade for the examination, for instructor certification, and for all other participants in the program shall be not less than 70%, but shall be not less than 85% for instructors if administered the same examination as other participants in the program. Examinations administered in other than a written form must be approved by the commission. Examination may be proctored by someone other than a certified instructor of the server training program if the proctor is an agent of the administrator of the server training program and is acceptable to the commission.
(4) If server training or instructor training is conducted by the administrator of a server training program approved by the commission by means other than classroom training, then the alternative training method must first be approved by the commission.
(5) Certification issued by the administrator of an approved server training program for instructors and other participants shall expire not more than 3 years from the date of issuance.
(6) A licensee, for purposes of meeting the requirements of section 906(10) of the act, shall have employed or have present on the licensed premises on each shift and during all hours alcoholic liquor is served supervisory personnel who maintain active, unexpired server training certification or current recognition by a server training program approved by the commission.

History: /added 2003, MR 10, Eff. May 30, 2003.

R 436.1061 Grounds for suspension or revocation of a permit or privilege.

Rule 61.

Any permit issued to a licensee by the commission or any privilege granted to a licensee by the commission may be revoked or suspended by the commission or a hearing commissioner, after due notice and proper hearing, if the licensee or the establishment no longer qualifies for the permit or the privilege or if the licensee is found to be in violation of the act or a commission rule which directly pertains to the permit issued or the privilege granted.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1062 Facsimile transmissions.

Rule 62.

(1) The commission may accept documents and filings, including documents and filings requiring signature, by facsimile (fax) communication equipment, if the documents and filings are transmitted in accordance with this rule and in accordance with procedures for fax transmissions that the commission may establish.
(2) All documents and filings submitted under this rule shall be on 8 1/2 inch x 11 inch standard paper and shall be legible.
(3) A special license, as defined in Section 111(10) of the act, may be transmitted by facsimile to the special licensee for use and display during the effective dates of the license for good cause shown.
(4) The commission may transmit a license or permit, other than a special license, to a licensee by facsimile for good cause shown if the facsimile copy of the license bears an expiration date that allows its use and display for a maximum of 5 business days after the actual license or permit is mailed to the licensee.
(5) The commission shall not transmit a license or permit by facsimile to a licensee unless all required documents have been received in the commission's Lansing office and all applicable fees for the license or permit have been paid.
(6) Documents and filings received by the commission under this rule after 4 p.m. are considered filed on the next business day.
(7) A cover sheet shall accompany any facsimile transmission to the commission. The cover sheet shall include all of the following information:
    (a) The name and telephone number of the sender.
    (b) The title or description of the document or filing being transmitted.
    (c) Any application or file number pertaining to the document or filing being transmitted.
(8) Notwithstanding subrule (1) of this rule, the commission may refuse to accept the facsimile transmission of a document the commission determines requires an original signature.
(9) A facsimile transmission accepted by the commission under this rule and certified by an agent of the commission is considered an original for all purposes and is admissible in evidence in like manner as an original.

History: 2000 MR 3, Eff. March 20, 2000.

R 436.1063 Rescissions.

Rule 63.

R 436.1 to R 436.4, R 436.6 to R 436.18, R 436.19(1) to R 436.41, R 436.51 to R 436.64, R 436.66 to R 436.67(2), R 436.69 to R 436.81, R 436.91 to R 436.126, R 436.544, R 436.601, R 436.1101, R 436.1301, R 436.1701, and R 436.1851 of the Michigan Administrative Code, appearing on pages 4484 to 4506, 4509, 4511, 4520, 4529, and 4538 of the 1979 Michigan Administrative Code, and pages 153 to 155 of Quarterly Supplement No. 1 to the 1979 Michigan Administrative Code, are rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

LICENSING QUALIFICATIONS

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1101 Rescinded.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; rescinded 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1103 Application for license; forms; required information.

Rule 3.

(1) An application for a license shall be made to the commission in Lansing on forms approved by the commission.
(2) An applicant for a license shall provide to the commission, or representatives of the commission, all information necessary for investigation and processing of the application.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC

R 436.1105 Application for license; denial; grounds.

Rule 5.

(1) An applicant for a license shall provide evidence in the application of, or demonstrate at a hearing, all of the following:
  (a) Any of the following:
    (i) If an individual, that the applicant is the legal age for the consumption of alcoholic liquor in this state.
    (ii) If a partnership, that all partners are the legal age for the consumption of alcoholic liquor in this state.
    (iii) If a privately held corporation, that all stockholders are the legal age for the consumption of alcoholic liquor in this state, unless the stock of the stockholders is held in a fiduciary relationship.
    (iv) If a limited liability company, that all members are the legal age for the consumption of alcoholic liquor in this state.
  (b) The existence of adequate legitimate and verifiable financial resources for the establishment and operation of the proposed licensed business in proportion to the type and size of the proposed licensed business.
  (c) The existence of an adequate physical plant or plans for an adequate physical plant appropriate for the type and size of the proposed licensed business.
  (d) That the location of the proposed licensed business shall adequately service the public.
(2) The commission shall consider all of the following factors in determining whether an applicant may be issued a license or permit:
  (a) The applicant's management experience in the alcoholic liquor business.
  (b) The applicant's general management experience.
  (c) The applicant's general business reputation.
  (d) The opinions of the local residents, local legislative body, or local law enforcement agency with regard to the proposed business.
  (e) The applicant's moral character.
  (f) The order in which the competing initial application forms are submitted to the commission; however, this subdivision shall not apply to an application for a resort license authorized by section 531 of 1998 PA 58, MCL 436.1531.
  (g) Past convictions of the applicant for any of the following:
    (i) A felony.
    (ii) A crime involving the excessive use of alcoholic liquor.
    (iii) A crime involving any of the following:
      (a) Gambling.
      (b) Prostitution.
      (c) Weapons.
      (d) Violence.

(e) Tax evasion.
(g) Fraudulent activity.
(h) Controlled substances.

(iv) A misdemeanor of such a nature that it may impair the ability of the applicant to operate a licensed business in a safe and competent manner.

(v) Sentencing for any of the offenses specified in this subrule after a plea of nolo contendere.

(h) The applicant's excessive use of alcoholic liquor.

(i) The effects that the issuance of a license would have on the economic development of the area.

(j) The effects that the issuance of a license would have on the health, welfare, and safety of the general public.

(3) An application for a new license, an application for any transfer of interest in an existing license, or an application for a transfer of location of an existing license shall be denied if the commission is notified, in writing, that the application does not meet all appropriate state and local building, plumbing, zoning, fire, sanitation, and health laws and ordinances as certified to the commission by the appropriate law enforcement officials. The commission may accept a temporary or permanent certificate of occupancy for public accommodation issued by the appropriate officials as evidence of compliance with this subrule.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 1985 MR 8, Eff. Aug. 22, 1985; 1994 MR 12, Eff. Dec. 16, 1995; 2000 MR 3, Eff. March 20, 2000; 2004 MR 6, Eff. March 24, 2004.

R 436.1107 Renewal of license.

Rule 7.

(1) A license that is not in active operation shall be placed in escrow with the commission.

(2) A licensee shall have only 5 licensing years after the expiration date of the escrowed license to put the license into active operation. If the licensee fails to put the license into active operation within 5 years after its expiration, then all rights to the license shall terminate unless the commission has received written verification of either of the following:

(a) That the license or an interest in the license is the subject of litigation or estate or bankruptcy proceedings in a court of competent jurisdiction.

(b) That the license was placed into escrow as a result of damage to the licensed premises by fire, flood, tornado or other natural event that makes the licensed premises unsuitable for the operation of the business and unsafe for public accommodation.

(3) If the commission extends the length of time for which a licensee may renew the license during the pendency of litigation or estate or bankruptcy proceedings or as a result of damage to the licensed premises for the reasons as stated in subrule (2) of this rule, then the licensee shall pay the required license fee for each elapsed licensing year before placing the license in active operation.

(4) The commission may extend the length of time for which a licensee may renew the license upon written order of the commission after a showing of good cause.

(5) Except as provided in subrule (3) of this rule, a license held in escrow with the commission shall be renewed in the same manner as an active license, including payment of all required license fees, each year by April 30.

(6) A licensee who places a license in escrow with the commission shall be responsible for providing the commission with current contact information, in writing, for all correspondence, which includes the name, mailing address, and telephone number.

(7) The commission shall provide or attempt to provide each licensee whose license is in escrow with a copy of this rule.

(8) A license that is held in escrow with the commission on the effective date of this rule begins the 5-year period allowed by subrule (2) of this rule on March 24, 2004.

History: 1979 AC; 2004 AACS; 2010 MR 8, Eff. Apr. 21, 2010

R 436.1109 Application for license by corporation; requirements.

Rule 9.

(1) A corporation applying for a license shall file with the commission all of the following, as

applicable:

(a) If incorporated outside of this state, a copy of its current articles of incorporation, a current certificate of good standing from the state of incorporation, and a copy of the authorization to do business in this state issued by the Michigan department of labor and economic growth.

(b) If a Michigan corporation, a copy of the current articles of incorporation as approved by the Michigan department of labor and economic growth.

(c) A certified copy of the minutes of a meeting of its board of directors or a statement signed by an officer of the corporation naming the persons authorized by corporate resolution to sign the application and other documents required by the commission.

(d) A signed statement providing the identity of its current corporate officers and the members of the board of directors.

(e) A signed statement indicating whether or not the corporation is a privately held corporation. If the corporation is a privately held corporation, then it shall also file, with the commission, a signed statement that includes all of the following information:

(i) The number of shares of stock that it has issued.

(ii) To whom the stock was issued.

(iii) The amount of stock issued to each stockholder.

(iv) The date of the issuance of the stock.

(v) The individual certificate numbers of the stock issued.

(2) The commission shall not renew a license of a corporation unless the corporate charter is current.

(3) The commission shall suspend the license of a corporation whose corporate charter is not current.

(4) A corporate licensee applying for another license is required to meet the provisions of this rule only once if the licensee amends its filing to keep it current under this rule.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 2000 MR 3, Eff. March 20, 2000; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1110 Application for license by limited liability company; receipt of distributions by assignee of membership interest in company; approval for reorganization or realignment of company; transfer fee; notification of changes in managers, members, assignees, articles of organization, or operating agreement; investigation of company; company authorization to do business in state required.

Rule 10.

(1) A limited liability company applying for a license shall file all of the following items with the commission, as applicable:

(a) If a foreign limited liability company, a copy of the certificate of authority issued by the Michigan department of labor and economic growth.

(b) If a domestic limited liability company, a copy of the articles of organization filed with the Michigan department of labor and economic growth.

(c) A copy of the operating agreement or agreements or bylaws entered into by the members under 1993 PA 23, MCL 450.4101 et seq.

(d) A copy of any amendments to its articles of organization.

(e) A copy of the most recent annual statement, if any, filed with the Michigan department of labor and economic growth.

(f) A signed statement that includes the full names and addresses of its current members, managers, and assignees of membership interest.

(g) A statement signed by a manager of the limited liability company or by at least 1 member if management is reserved to the members naming the person authorized to sign the application and other documents required by the commission. If a foreign limited liability company, a person who has the authority to sign under the laws of the jurisdiction of its organization shall sign the statement and shall indicate the capacity in which the person signs the statement.

(2) An assignee of any membership interest in a licensed limited liability company shall not receive the distributions to which the assignor would be entitled, unless the assignee has received the prior written approval of the commission.

(3) Any reorganization or realignment of a limited liability company within a single licensing year that

results in a transfer of more than 10% of the total interest in the limited liability company is considered a transfer requiring prior approval of the commission under section 529 of 1998 P.A. 58, MCL 436.1529.

(4) A transfer, in the aggregate, of 50% or more of the total interest in a limited liability company during any licensing year shall, upon approval by the commission, require the payment of a transfer fee in accordance with section 529 of 1998 P.A. 58, MCL 436.1529.

(5) A licensed limited liability company shall immediately notify the commission, in writing, of any change in any of the following:
   (a) Managers.
   (b) Members.
   (c) Assignees of membership interest.
   (d) Articles of organization.
   (e) Operating agreement.

(6) The commission may investigate any transfer of interest in a limited liability company or any proposed member, manager, or assignee of membership interest in a limited liability company.

(7) A licensed limited liability company shall be authorized to do business under the laws of this state.

History: 1994 MR 12, Eff. Dec. 16, 1995; 2000 MR 3, Eff. March 20, 2000; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1111 Application for license by partnership; requirements.

Rule 11.

(1) Each general partner of a partnership shall sign the application, bond, and other papers filed in connection with securing a new license or transferring an existing license. This requirement may be waived by the commission upon a showing of good cause.

(2) A limited partnership applying for a license shall furnish a copy of the partnership agreement.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC.

R 436.1113 Wholesale license; minimum qualifications; corporate stock transfer.

Rule 13.

(1) Before the issuance of a wholesale license, an applicant shall meet all of the following minimum qualifications, as applicable:
   (a) The applicant shall hold the required basic permit issued under the federal alcohol administration act of 1935, 27 U.S.C., '201 et seq.
   (b) If an individual, the applicant shall be of good moral character; if a partnership, each partner shall be of good moral character; if a limited liability company, each member shall be of good moral character; or if a privately held corporation, all stockholders, officers, and members of the board of directors shall be of good moral character.
   (c) The applicant shall have facilities in which to store beer and wine on the licensed premises.
   (d) If an individual, submit his or her fingerprints; if a partnership, submit the fingerprints of each partner; if a limited liability company, submit the fingerprints of each member and manager who owns 10% or more of the total interest of the limited liability company; or if a privately held corporation, submit the fingerprints of stockholders who own 10% or more of the corporate stock and the fingerprints of all officers.

(2) If a person who has not been fingerprinted by the commission applies to transfer to himself or herself 10% or more of the corporate stock, in the aggregate, of a privately held licensed wholesale corporation or 10% or more of the total interest, in the aggregate, of a wholesale limited liability company, then the commission shall investigate and fingerprint the person before the commission approves the stock transfer.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 2000 MR 3, Eff. March 20, 2000.

R 436.1115 Retail license; minimum qualifications; corporate stock transfer.

Rule 15.

(1) Before the issuance of a retail license, an applicant shall meet both of the following minimum qualifications, if applicable:
   (a) If an applicant is an individual, the applicant shall be of good moral character; if an applicant is a partnership, each partner shall be of good moral character; if an applicant is a limited liability

company, each member shall be of good moral character; and if an applicant is a privately held corporation, all stockholders, officers, and members of the board of directors shall be of good moral character.

(b) If an applicant is an individual, he or she shall submit fingerprints; if an applicant is a partnership, other than a limited partnership, the applicant shall submit the fingerprints of each partner; if an applicant is a limited partnership, the applicant shall submit the fingerprints of each general partner; if an applicant is a limited liability company, the applicant shall submit the fingerprints of each member and manager who owns 10% or more of the total interest of the limited liability company; and if an applicant is a privately held corporation, the applicant shall submit the fingerprints of those stockholders who own 10% or more of the corporate stock.

(2) If a person who is a stockholder in an applicant corporation and who has not been fingerprinted by the commission applies to transfer to himself or herself 10% or more of the corporate stock, in the aggregate, of a privately held licensed retail corporation, then the commission shall fingerprint and investigate the person before the commission grants approval of the stock transfer.

(3) If a person who is a member of a limited liability company and who has not been fingerprinted by the commission applies to transfer to himself or herself 10% or more of the total interest in the retail licensed limited liability company, then the commission shall fingerprint and investigate the person before the commission grants approval of the transfer of interest.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 1979 ACS 3, Eff. June 19, 1980; 2000 MR 3, Eff. March 20, 2000.

R 436.1117 Retail license; participating agreement.

Rule 17.

(1) An applicant for a retail license or a retail licensee shall not enter into a participating agreement, except in either of the following situations:

(a) If the commission approves the participating agreement after a showing of good cause by the applicant.

(b) If the nonlicensee receives not more than 10% of the gross sales of the licensed business.

(2) The compensation included in a participating agreement shall not be computed on the gross or net profits of the licensed business.

(3) The participating agreement shall be in writing and available for review by the commission.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 2000 MR 3, Eff. March 20, 2000; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1119 Retail license; agreements.

Rule 19.

(1) An agreement to buy and sell a business licensed to sell alcoholic liquor at retail, wherein there is not a total cash transaction, and which includes both the personal property and the real estate, shall include a separate statement listing the personal property and the real estate and the terms and price of each.

(2) A retail licensee shall not include alcoholic liquor in a security agreement or in a financing statement filed pursuant to Act No. 174 of the Public Acts of 1962, as amended, being §440.1101 et seq. of the Michigan Compiled Laws, and known as the uniform commercial code.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 1984 MR 12, Eff. Jan. 12, 1985; 1987 MR 1, Eff. Jan. 31, 1987.

R 436.1121 On-premises license; requirements.

Rule 21.

(1) An applicant for an on-premises license, except for a special license, shall have a minimum down payment of 10% of the purchase price of the proposed licensed business, excluding the real estate and any alcoholic liquor. The commission may waive the down payment requirement upon a showing of good cause.

(2) All funds used in purchasing the proposed licensed business shall belong to the applicant individually and shall come from any of the following approved sources:

(a) Money accumulated by the applicant from legitimate and verifiable sources.

(b) Money derived from state or federally approved lending institutions.

(c) Gifts or loans, or both, derived from members of the applicant's immediate family, if the gifts or loans have come from other approved sources and the family member giving the gift or loan is of good moral character.
(d) Loans derived from the federal veterans administration.
(e) Any combination of the sources of funds specified in this subrule.
(f) Any other source approved by the commission after a showing of good cause by the applicant.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 2000 MR 3, Eff. March 20, 2000.

R 436.1123 Resort license; minimum qualifications.

Rule 23.

(1) An applicant for a resort license or a resort economic development license that allows the consumption of alcoholic liquor on the premises shall meet 1 of the following minimum qualifications.
(a) The proposed licensed establishment shall be in compliance with all of the following provisions:
(i) Be a full service restaurant that is open to the public and prepares food on the premises.
(ii) Have dining facilities to seat not less than 100 patrons unless exempted under section 531(3) of 1998 P.A. 58, MCL 436.1531(3).
(iii) Be open for food service not less than 5 hours per day, 5 days per week.
(iv) Not less than 50% of the gross receipts of the business are derived from the sale of food and beverages for consumption on the premises, not including the sale of alcoholic liquor.
(b) The proposed licensed establishment has sleeping facilities with a minimum of 25 bedrooms, meeting or conference rooms capable of accommodating not less than 200 patrons, or convention facilities capable of accommodating not less than 200 persons.
(c) The proposed licensed establishment is a sports/entertainment venue.
(d) The proposed licensed establishment is located on a golf course which is open to the public and which has not less than 18 holes that, in total, measure not less than 5000 yards.
(2) An applicant for a resort license or resort economic development license shall submit 2 pictures, measuring 5 inches by 7 inches, to the commission if the application is for a completed building. One picture shall show the interior of the proposed licensed establishment and 1 picture shall show the exterior of the proposed licensed establishment. If the application is made for a proposed licensed establishment which is still to be constructed, then the applicant shall submit 1 copy of the floor plan of the proposed licensed establishment.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 1985 MR 8, Eff. Aug. 22, 1985; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1125 Resort license; limitation.

Rule 25.

The commission shall not consider issuing a resort license which allows the consumption of alcoholic liquor on the premises where an on-premises license is available under the quota provisions of the act. The commission may waive this rule upon a showing of good cause.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 1985 MR 8, Eff. Aug. 22, 1985.

R 436.1127 Club license; requirements.

Rule 27.

(1) An applicant for a club license shall file with the commission all of the following:
(a) A certified copy of the resolution requesting a license adopted at a bona fide club meeting.
(b) A copy of the constitution, charter, and bylaws of the club.
(c) An affidavit certifying that there are no racial disqualifications for membership or guest privileges contained in the charter, constitution, franchise, bylaws, membership application, or related documents under which the club operates.
(2) An applicant for a club license shall have its minutes recorded in English and available for inspection.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC

R 436.1129 Specially designated merchant license; issuance and transfer; limitation; waiver; applicability.

Rule 29.

(1) For the issuance of a new, or the transfer of location of an existing, specially designated merchant license, all of the following are approved types of businesses:
   (a) A grocery store.
   (b) A convenience food store.
   (c) A food specialty store.
   (d) A meat market.
   (e) A delicatessen.
   (f) A drugstore.
   (g) A patent medicine store.
   (h) A tobacconist that is in compliance with subrule (3)(e) of this rule.
   (i) A department store that includes 1 or more of the stores listed in subdivisions (a) to (h) of this subrule.
   (j) A specially designated distributor.
   (k) A class C.
   (l) A class B hotel.
   (m) A club.
   (n) A tavern.
   (o) A class A hotel licensed establishment.

(2) The commission shall not issue a new, or transfer location of an existing, specially designated merchant license to an applicant operating an approved type of business who also holds, or a partner or stockholder of an applicant who holds, an interest, directly or indirectly, in a nonapproved type of business on, or contiguous to, the proposed licensed premises, unless 60% or more of the combined monthly gross sales of the approved and nonapproved businesses are of goods and services customarily marketed by the approved type of business. For the purposes of this subrule, combined monthly gross sales are sales exclusive of all taxes collected by a retailer on sales and are computed for an accounting period of not less than 180 consecutive days. The commission may approve an application under this rule subject to the condition that the applicant shall demonstrate compliance with this subrule at the end of the 180-day accounting period. The commission shall cancel the license if the licensee has failed to comply with the provisions of this subrule at the end of the 180-day accounting period.

(3) The commission shall not issue a specially designated merchant license to any of the following entities and shall not allow any of the following entities to change the nature of an existing business that has a specially designated merchant license:
   (a) An applicant who owns motor vehicle fuel pumps which are at the same location as, which are operated in conjunction with, or which are a part of, the proposed licensed business.
   (b) An applicant who holds any financial interest, directly or indirectly, in the establishment, maintenance, operation, or promotion of the sale of motor vehicle fuel at the proposed location of, in conjunction with, or as a part of, the proposed licensed business.
   (c) An applicant who holds any interest, directly or indirectly, by ownership in fee, leasehold, mortgage, or otherwise, in the establishment, maintenance, operation, or promotion of the sale of motor vehicle fuel at the proposed location of, in conjunction with, or as a part of, the proposed licensed business.
   (d) An applicant who holds any interest, directly or indirectly, through interlocking stock ownership in a corporation or through interlocking directors in a corporation engaged in the establishment, maintenance, operation, or promotion of the sale of motor vehicle fuel at the proposed location of, in conjunction with, or as a part of, the proposed licensed business.
   (e) An applicant at any location at which motor vehicle fuel is sold or offered for sale by any person, whether or not the applicant has any interest or derives any profit from the sale.

(4) In determining the qualifications of an applicant for or the holder of a specially designated merchant license to own or operate motor vehicle fuel pumps on or adjacent to the licensed premises under the provisions of section 541(1) of 1998 PA 58, MCL 436.1541(1), the following shall apply:

(a) The minimum inventory required shall exclude alcoholic liquor, motor vehicle fuel, and any merchandise acquired on a consignment basis and not less than 60% of this inventory shall consist of goods and services which, in themselves, would qualify the applicant or licensee for licensure under subrule (1) of this rule.
(b) In the case of a department store, as defined in R 436.1001(e), the inventory attributable to that department which qualifies the business for licensure shall consist of not less than 60% of goods and services which, in themselves, would qualify the business for licensure under subrule (1) of this rule.
(c) The distance between the motor vehicle fuel pumps and the site of payment and selection of alcoholic liquor shall be determined by measuring from the motor vehicle fuel pump nearest the licensed premises to that part of the licensed premises nearest the motor vehicle fuel pumps.

(5) In a city, incorporated village, or township that has a population of 3,000 or fewer people, the commission may, in its discretion, waive the provisions of subrules (1), (2), and (3) of this rule if the applicant for a license has and maintains a minimum inventory on the premises, excluding alcoholic liquor, of not less than $10,000.00, at cost, of the goods and services customarily marketed by approved types of businesses. The commission shall accept the means prescribed in R 436.1141(1) as a method for determining the population of a city, incorporated village, or township.
(6) In a township which is comprised of 72 square miles or more and which has a population of 7,500 or fewer people, the commission may, in its discretion, waive the provisions of subrule (3) of this rule if the applicant for a license has and maintains a minimum inventory on the premises, excluding alcoholic liquor, of not less than $10,000.00, at cost, of the goods and services customarily marketed by approved types of businesses.
(7) The commission shall not issue a specially designated merchant license to an applicant who operates a drive-in or drive-through establishment and shall not allow an applicant who operates a drive-in or drive-through establishment to change the nature of an existing business that has a specially designated merchant license.
(8) The commission shall not issue a specially designated merchant license to an applicant who operates a drive-up or walk-up window for the sale of alcoholic liquor at the proposed location and shall not allow a person who holds a specially designated merchant license to change the nature of the existing licensed business to include a drive-up or walk-up window which permits the sale of alcoholic liquor through the drive-up or walk-up window.
(9) This rule does not apply to the renewal of an existing specially designated merchant license that is in operation before the effective date of this rule and does not apply to a new specially designated merchant license or the transfer of location of a specially designated merchant license conditionally approved by the commission before the effective date of this rule.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1954 ACS 96, Eff. June 23, 1978; 1979 AC; 1985 MR 2, Eff. Mar. 1, 1985; 1985 MR 5, Eff. June 18, 1985; 1999 MR 3, Eff. March 20, 2000; 2004 MR 6, Eff. Mar. 24, 2004;-2006 MR23, Eff. Dec. 12, 2005.

R 436.1131 Rescinded.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; Rescinded 2000 MR 3, Eff. March 20, 2000.

R 436.1133 SDD license; prohibited issuance or transfer.

Rule 33.

An application for a new specially designated distributor license or for the transfer of location of an existing specially designated distributor license shall not be approved by the commission if there is an existing specially designated distributor license located within 2,640 feet of the proposed site. The method of measurement shall be as prescribed in section 503 of 1998 PA 58, MCL 436.1503. This rule may be waived by the commission for any of the following reasons:

(a) If the existing specially designated distributor has purchased less than $10,000.00 in spirits from the commission during the last full calendar year.
(b) If the existing specially designated distributor has a B-hotel or A-hotel license.
(c) If the proposed location and the existing specially designated distributor's licensed establishment are separated by a major thoroughfare of not less than 4 lanes of traffic.
(d) If the proposed licensed establishment is located in a neighborhood shopping center which does

not have an existing specially designated distributor's licensed establishment and if the proposed licensed establishment is located not less than 1,000 feet from any existing specially designated distributor's licensed establishment. The method of measurement shall be as prescribed in section 503 of 1998 PA 58, MCL 436.1503.

(e) If an existing specially designated distributor licensee is located within 2,640 feet of 1 or more existing specially designated distributor licensees and requests a transfer of location, which location is within 2,640 feet of the same existing specially designated distributor licensee or licensees, upon a showing of good cause by the licensee who is requesting the transfer of location.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1954 ACS 96, Eff. June 23, 1978; 1979 AC; 1979 ACS 3, Eff. June 19, 1980; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1135 Specially designated distributor license; limitations upon issuance or transfer; waiver; applicability.

Rule 35.

(1) For the issuance of a new, or the transfer of location of an existing, specially designated distributor license, all of the following are approved types of businesses:
   (a) A grocery store.
   (b) A convenience food store.
   (c) A food specialty store.
   (d) A meat market.
   (e) A delicatessen.
   (f) A drugstore.
   (g) A patent medicine store.
   (h) A tobacconist that is in compliance with subrule (3)(e) of this rule.
   (i) A department store that includes 1 or more of the stores listed in subdivisions (a) to (h) of this subrule.
   (j) A hotel.

(2) The commission shall not issue a new, or transfer location of an existing, specially designated distributor license to an applicant operating an approved type of business who also holds, or a partner or stockholder of the applicant who holds, an interest, directly or indirectly, in a nonapproved type of business on, or contiguous to, the proposed licensed premises, unless 60% or more of the combined monthly gross sales of the approved and nonapproved businesses are of goods and services customarily marketed by the approved type of business. For the purposes of this subrule, combined monthly gross sales are exclusive of all taxes collected by a retailer on sales and are computed for an accounting period of not less than 180 consecutive days. The commission may approve an application under this rule subject to the condition that the applicant shall demonstrate compliance with this subrule at the end of the 180-day accounting period. The commission shall cancel the license if the licensee has failed to comply with the provisions of this subrule at the end of the 180-day accounting period.

(3) The commission shall not issue a specially designated distributor license to any of the following entities and shall not allow any of the following entities to change the nature of an existing business that has a specially designated distributor license:
   (a) An applicant who owns motor vehicle fuel pumps which are at the same location as, which are operated in conjunction with, or which are a part of, the proposed licensed business.
   (b) An applicant who holds any financial interest, directly or indirectly, in the establishment, maintenance, operation, or promotion of the sale of motor vehicle fuel at the proposed location of, in conjunction with, or as a part of, the proposed licensed business.
   (c) An applicant who holds any interest, directly or indirectly, by ownership in fee, leasehold, mortgage, or otherwise, in the establishment, maintenance, operation, or promotion of the sale of motor vehicle fuel at the proposed location of, or in conjunction with, or as a part of, the proposed licensed business.
   (d) An applicant who holds any interest, directly or indirectly, through interlocking stock ownership in a corporation or through interlocking directors in a corporation engaged in the establishment, maintenance, operation, or promotion of the sale of motor vehicle fuel at the proposed location of, in conjunction with, or as a part of, the proposed licensed business.
   (e) An applicant at any location at which motor vehicle fuel is sold or offered for sale by any person, whether or not the applicant has any interest or derives any profit from the sale.

(4) In determining the qualifications of an applicant for or the holder of a specially designated distributor license to own or operate motor vehicle fuel pumps on or adjacent to the licensed premises under the provisions of section 541(1) of 1998 PA 58, MCL 436.1541(1), the following shall apply:
    (a) The minimum inventory required shall exclude alcoholic liquor, motor vehicle fuel, and any merchandise acquired on a consignment basis and not less than 60% of this inventory shall consist of goods and services which, in themselves, would qualify the applicant or licensee for licensure under subrule (1) of this rule.
    (b) In the case of a department store, as defined in R 436.1001(e), the inventory attributable to that department which qualifies the business for licensure shall consist of not less than 60% of goods and services which, in themselves, would qualify the business for licensure under subrule (1) of this rule.
    (c) The distance between the motor vehicle fuel pumps and the site of payment and selection of alcoholic liquor shall be determined by measuring from the motor vehicle fuel pump nearest the licensed premises to that part of the licensed premises nearest the motor vehicle fuel pumps.

(5) In a city, incorporated village, or township that has a population of 3,000 or fewer people, the commission may, in its discretion, waive the provisions of subrules (1), (2) and (3) of this rule if the applicant for a license has and maintains a minimum inventory on the premises, excluding alcoholic liquor, of not less than $12,500.00, at cost, of the goods and services customarily marketed by approved types of businesses. The commission shall accept the means prescribed in R 436.1141(1) as a method for determining the population of a city, incorporated village, or township.

(6) In a township which is comprised of 72 square miles or more and which has a population of 7,500 or fewer people, the commission may waive the provisions of subrule (3) of this rule if the applicant for a license has and maintains a minimum inventory on the premises, excluding alcoholic liquor, of not less than $12,500.00, at cost, of the goods and services customarily marketed by approved types of businesses. The commission shall accept the means prescribed in R 436.1141(1) as the method for determining the population of a township.

(7) Subrules (1), (2), (3), (4), (5), and (10) of this rule do not apply to the renewal of an existing specially designated distributor license in operation before the effective date of this rule and do not apply to a new specially designated distributor license or the transfer of location of a specially designated distributor license conditionally approved by the commission before the effective date of this rule.

(8) The commission shall not approve the transfer of location of a specially designated distributor license outside the governmental unit for which it was issued, except upon a showing of good cause by the applicant.

(9) Upon a showing of good cause by the applicant, the commission may waive the quota restrictions of R 436.1141 if all of the following conditions are met:
    (a) The applicant is in a city, incorporated village, or township that has a population of 3,000 or fewer people. The commission shall accept the means prescribed in R 436.1141(1) as a method for determining the population of a city, incorporated village, or township.
    (b) The only existing specially designated distributor license is held in conjunction with a class A or class B hotel license.
    (c) The commission may grant only 1 waiver of quota restrictions in a city, incorporated village, or township.

(10) The commission shall not issue a specially designated distributor license to an applicant who operates a drive-in or drive-through establishment and shall not allow the applicant to change the nature of an existing business that has a specially designated distributor license.

(11) The commission shall not issue a specially designated distributor license to an applicant who operates a drive-up or walk-up window for the sale of alcoholic liquor at the proposed location and shall not allow a person who holds a specially designated distributor license to change the nature of the existing licensed business to include a drive-up or walk-up window which permits the sale of alcoholic liquor through the drive-up or walk-up window.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1954 ACS 96, Eff. June 23, 1978; 1985 MR 2, Eff. 1, 1985; 1985 MR 5, Eff. June 18, 1985; 2000 MR 3, Eff. March 20, 2000.; 2004 MR 6, Eff. Mar. 24, 2004;-2006 MR 23, Eff. Dec. 12, 2005.

R 436.1137 SDD license; photographs.

Rule 37.

An applicant for a specially designated distributor license shall submit 2 pictures,

measuring 5 inches by 7 inches, to the commission if the application is for a completed building. One picture shall show the interior of the proposed licensed establishment and 1 picture shall show the exterior of the proposed licensed establishment.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC.

R 436.1139 SDD license; initial minimum purchase.

Rule 39.

An applicant for a new specially designated distributor license shall agree to purchase an initial minimum order of $5,000.00 of spirits divided among not less than 50 brands as a condition precedent to receiving a license.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC.

R 436.1141 SDD license; population requirement.

Rule 41.

(1) In cities, incorporated villages, or townships, only 1 specially designated distributor license shall be issued by the commission for every 3,000 population, or fraction thereof. The commission shall accept any 1 of the following means of determining the population of a city, incorporated village, or township:
   (a) Federal decennial census.
   (b) Special census taken pursuant to section 6 of Act No. 279 of the Public Acts of 1909, being §117.6 of the Michigan Compiled Laws.
   (c) Special census taken pursuant to section 7 of Act No. 245 of the Public Acts of 1975, being §141.907 of the Michigan Compiled Laws.
   (d) Latest population estimates and projections prepared by the United States department of commerce, social and economic statistics administration, bureau of the census.
(2) The quota requirement may be waived at the discretion of the commission if there is no specially designated distributor licensee within 2 miles, measured along the nearest traffic route, of the applicant.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC.

R 436.1142 SDD license; limitation on applications.

Rule 42.

(1) The commission shall not process an application for a new specially designated distributor license in any governmental unit in which the number of applications already under consideration by the commission equals or exceeds the number of new licenses available pursuant to the quota provisions of R 436.1141(1).
(2) The commission shall maintain a record for each governmental unit of each person who has made an application for a new specially designated distributor license, but whose application was not processed pursuant to the provisions of subrule (1) of this rule.
(3) When all applications for a new specially designated distributor license in any governmental unit have been disposed of by the commission and 1 or more new specially designated distributor licenses are still available, the commission shall provide written notification of the license availability to each person who has made an application for a new specially designated distributor license within that governmental unit, but whose application was not processed pursuant to the provisions of subrule (1) of this rule. Such notification shall be made by mail to the last known address of the person which appears in the commission's records. Within 30 days of the date of mailing of such a notification, a person shall notify the commission, in writing, and pay the required inspection fee if he or she is still interested in obtaining a new specially designated distributor license. A person who does not respond within the 30-day period shall not be given consideration for any available license. If at the end of the 30-day period the number of persons who have notified the commission of their desire to be considered for new specially designated distributor licenses within the governmental unit equals or exceeds the number of licenses available, pursuant to the provisions of subrule (1) of this rule any additional applications received shall not be processed.
(4) When an application for a new specially designated distributor license is received by the

commission for a location in a governmental unit in which new specially designated distributor licenses are not available because the quota established by the provisions of R 436.1141(1) has been filled, the commission shall notify the applicant that licenses are not available.

(5) The commission shall maintain a record for each governmental unit of each person who has made an application for a new specially designated distributor license, but whose application was not processed pursuant to the provisions of subrule (4) of this rule.

(6) When 1 or more specially designated distributor licenses becomes available in a governmental unit in which the quota established by the provisions of R 436.1141(1) had previously been filled, the commission shall provide written notification to each person who applied for a new specially designated distributor license within that governmental unit, but whose application was not processed pursuant to the quota provisions of R 436.1141(1). Within 30 days of the date of mailing of such a notification, a person shall notify the commission, in writing, and pay the required inspection fee if he or she is still interested in obtaining a new specially designated distributor license. A person who does not respond within the 30-day period shall not be given consideration for any available license. If at the end of the 30-day period the number of persons who have notified the commission of their desire to be considered for new specially designated distributor licenses within the governmental unit equals or exceeds the number of licenses available, pursuant to the provisions of subrule (1) of this rule, any additional applications received shall not be processed.

(7) For purposes of determining the order in which initial applications for new specially designated distributor licenses are submitted to the commission as required by the provisions of R 436.1105(2)(f), the commission shall use the date on which a person first applied for the license, even if the application was not processed at that time due to the provisions of subrule (1) or (4) of this rule.

History: 1990 MR 1, Eff. Jan. 19, 1990.

R 436.1143 SDD license; transfer of location.

Rule 43.

An applicant who requests a transfer of location of an existing specially designated distributor license into an area in which there are applications for new specially designated distributor licenses on file with the commission shall not be given priority if the proposed transfer of location is within 2,640 feet of the location of the establishments proposed by the new applicants. The method of measurement shall be as prescribed in section 503 of 1998 PA 58, MCL 436.1503.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1954 ACS 96, Eff. June 23, 1978; 1979 AC; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1145 Watercraft license; minimum qualifications.

Rule 45.

An applicant for a watercraft license shall meet all of the following minimum qualifications before being granted a license:

(a) The watercraft shall have a current certificate of inspection issued by either the state waterways commission or the United States coast guard under title 46 of the United States Code.

(b) The watercraft carries paying passengers on regularly scheduled routes between predetermined geographical points.

(c) The license shall only be used to service paying passengers on regularly scheduled routes between predetermined geographical points.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC.

R 436.1147 Aircraft license; minimum qualifications.

Rule 47.

An applicant for an aircraft license shall meet all of the following minimum qualifications before being granted a license:

(a) The aircraft shall be approved by the civil aeronautics board for carrying paying passengers on regularly scheduled routes or on charter routes, and shall be in excess of 12,500 pounds gross weight.

(b) The license shall only be used to service paying passengers on regularly scheduled routes or chartered routes between predetermined geographical points.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC.

R 436.1149 Class C or SDD license; hardship transfer.

Rule 49.

(1) The commission shall not consent to a hardship transfer of class C or specially designated distributor licenses under section 501(2) of 1998 PA 58, MCL 436.1501(2) if the hardship shown by the licensee existed when the license was issued, except upon a showing of good cause.
(2) A person who has been granted approval for a hardship transfer of class C or specially designated distributor licenses under section 501(2) of 1998 PA 58, MCL 436.1501(2) shall be prohibited from holding such classes of licenses for a period of 5 years thereafter, as either an individual, partner, or stockholder, except upon a showing of good cause.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; 2004 MR 6, Eff. Mar. 24, 2004.

R 436.1151 Rescinded.

History: 1954 ACS 94, Eff. Mar. 15, 1978; 1979 AC; rescinded 1985 MR 2, Eff. Mar. 1, 1985.

SPECIAL PERMITS FOR HOSPITALS AND INSTITUTIONS

(By authority conferred on the liquor control commission by section 16 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being §436.16 of the Michigan Compiled Laws)

R 436.1251 Special permits for hospitals and institutions.

Rule 1.

The commission may issue special permits to hospitals, charitable institutions, and military establishments within the state for the purchase of spirits for their own use from a designated state liquor store at a discount of 24% from the retail prices established by the commission.

History: 1954 ACS 83, Eff. June 6, 1979 AC; 1979 ACS 6, Eff. May 12, 1981.

ADVERTISING

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1301 Rescinded.

History: 1954 ACS 84, Eff. Oct 3, 1975; 1979 AC; rescinded 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1303 Beer.

Rule 3.

Beer shall not be advertised in this state unless the advertising is in accordance with these rules and the federal malt beverage regulations published in 27 C.F.R., part 7, subpart F, 1936, as amended, as of January 1, 1975, which are incorporated herein by reference. Copies of the federal regulations are on file and available to the public in the Lansing office of the commission at cost.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1305 Wine.

Rule 5.

Wine shall not be advertised in this state unless the advertising is in accordance with these rules and the federal wine regulations published in 27, C.F.R., part 4, subpart G, 1935, as amended, as of January 1, 1975, which are incorporated herein by reference. Copies of the federal regulations are on file and available to the public in the Lansing office of the commission at cost.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1307 Spirits.

Rule 7.

Distilled spirits shall not be advertised in this state unless the advertising is in accordance with these rules and the federal distilled spirits regulations published in 27 C.F.R., part 5, subpart H, 1969, as of January 1, 1975, which are incorporated herein by reference. Copies of the federal regulations are on file and available to the public in the Lansing office of the commission at cost.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1309 Advertising approval.

Rule 9.

The commission reserves the right to review and reject advertising not in accordance with these rules. Upon written order of the commission, a manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall furnish full information as to the advertising to enable the commission to review the advertising.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; 1989 MR 1, Eff. Jan. 20, 1989.

R 436.1311 Prohibited advertising.

Rule 11.

An advertisement or label affixed to a container, covering, carton, or case of containers of alcoholic liquor shall not depict or make reference in any manner to minors.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1313 Inside advertising signs and displays.

Rule 13.

(1) Except as provided for in this rule, a retail licensee shall ensure that an advertising sign for alcoholic liquor that is used inside the licensee's premises is an un-illuminated sign that does not have a total area of more than 3,500 square inches.
(2) The total area of any other sign that is attached to, or a necessary part of, a sign is included in the 3,500 square inches limitation.
(3) A sports/entertainment venue may utilize illuminated advertising signs and advertising signs that have a total area of more than 3,500 square inches in the arena area, concourse area, or private suite areas.
(4) Any of the following entities may provide and install illuminated advertising signs and advertising signs that have a total area of more than 3,500 square inches per sign inside the arena area, concourse area, or private suite areas of a sports/entertainment venue as defined by R 436.1001(u):
    (a) A brewer.
    (b) A micro brewer.
    (c) A wine maker.
    (d) A small wine maker.
    (e) An outstate seller of beer.
    (f) An outstate seller of wine.
    (g) An outstate seller of mixed spirit drink.
    (h) A manufacturer of spirits.
    (i) A manufacturer of mixed spirit drink.
    (j) A vendor of spirits.

History: 1954 ACS 84, Eff. Oct 3, 1975; 1979 AC; Amended Eff. Feb. 17, 1994; 2000 MR 3, Eff. March 20, 2000; MR 11 2003.

R 436.1315 Retail advertising space

Rule 15.

A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall not sell or in any manner furnish to a retail licensee, and a retail licensee shall not accept, either of the following:
(a) Advertising which has the name of the retail licensee on the advertising.
(b) Money or other valuable consideration for advertising space in or upon the premises of the retail licensee.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; 1989 MR 1, Eff. Jan. 20, 1989.

R 436.1317 Brand promotion

Rule 17.

(1) A salesperson or a vendor representative may do any of the following, on the licensed premises of a person who is licensed only to sell alcoholic liquor at retail for consumption off the licensed premises, with alcoholic liquor that is owned by the off-premises retail licensee:
    (a) Build a display of those brands that are represented or sold by the salesperson or vendor representative.
    (b) Mark the price on those brands that are represented or sold by the salesperson or vendor representative.
    (c) Rotate those brands that are represented or sold by the salesperson or vendor representative.
    (d) Place those brands that are represented or sold by the salesperson or vendor representative on shelves.
(2) A salesperson or vendor representative shall not remove from shelves, or rearrange or otherwise disturb, any brand of alcoholic liquor that is not represented or sold by the salesperson or vendor representative.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; Amended Eff. Nov. 13, 1992.

R 436.1319 Cooperative advertising

Rule 19.

(1) There shall not be cooperative advertising:
   (a) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a retail licensee.
   (b) Between a wholesaler and a retail licensee.
   (c) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a wholesale licensee.
(2) A manufacturer, an outstate seller of beer, or an outstate seller of wine may:
   (a) Pay the cost of painting the trucks of a wholesale licensee.
   (b) Supply brand logo decals and advertising mats to a wholesale licensee without cost.
   (c) Use the name of his wholesaler in his advertising.
(3) The name of a retail licensee shall not appear in the advertising of a manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1321 Contests and advertising articles.

Rule 21.

(1) There shall not be advertising of alcoholic liquor connected with offering a prize or award on the completion of a contest, except upon prior written approval of the commission.
(2) Spirits shall not be advertised on the premises of a retail licensee, except as provided in these rules or upon prior written approval of the commission.
(3) There shall not be advertising of alcoholic liquor on anything which has any value, use, or purpose other than the actual advertising value, except upon written order of the commission.
(4) Advertising material which does not contain the name of a retail licensee and does not have a secondary value, but explains the production, sale, or consumption of alcoholic liquor may be published and distributed in this state.
(5) Alcoholic liquor recipe literature which does not contain the name of a retail licensee may be published and distributed in this state.
(6) All gambling devices, including punch boards and games of any description used for advertising purposes, are prohibited.
(7) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler may sell novelty items bearing brand logo type, upon written order of the commission. These novelty items shall not be sold below their cost by the manufacturer, outstate seller of beer, outstate seller of wine, or wholesaler.
(8) A licensee licensed to sell alcoholic liquor for consumption on the premises shall not sell, give, or furnish to anyone, novelty items bearing brand logo type on the licensed premises, nor shall the licensee use novelty items on the licensed premises except upon written order of the commission.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1954 ACS 97, Eff. Oct. 12, 1978; 1979 AC.

R 436.1323 Team sponsorship

Rule 23.

(1) A licensee may own or sponsor and furnish equipment for an athletic team under his own license name. The name of the sponsor may appear on the team uniform.
(2) A licensee shall not aid or assist another licensee by sponsoring or equipping athletic teams and a licensee shall not accept such aid or assistance.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1325 Calendars and matchbooks.

Rule 25.

(1) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall not give anything of value to a customer.
(2) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler may give a

calendar and matchbooks to a customer if nothing of value is attached to, or given with, the calendar or matchbooks.

(3) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall not sell, give, or furnish a retail licensee with calendars or matchbooks to be given to the customers of the retail licensee, except upon written order of the commission.

(4) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler may advertise on calendars.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1327 Rescinded.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; rescinded MR 1, Eff. Jan. 20, 1989.

R 436.1329 Displays.

Rule 29.

(1) A manufacturer, a vendor of spirits, an outstate seller of beer, an outstate seller of wine, or a wholesaler may not sell or in any manner furnish or install, and a retail licensee may not accept, a permanent display in the licensed premises of a retail licensee.

(2) A manufacturer, a vendor of spirits, an outstate seller of beer, or an outstate seller of wine may furnish and install a temporary bin display that has a capacity of up to 15 cases of 24 12-ounce or 0.375-liter containers or the equivalent in other sizes of beer, wine, or spirits on the premises of a retail licensee who is licensed for off-premises sales only.

(3) A wholesaler may install, on the premises of a retail licensee who is licensed for off-premises sales only, a temporary bin display that has been provided without charge by a manufacturer, an outstate seller of beer, or an outstate seller of wine.

(4) A retail licensee shall ensure that every temporary bin display installed on its premises clearly indicates by a tag, a stamp, a label, or other method that is securely affixed to the temporary bin display, the date upon which the temporary bin display was installed.

(5) The advertising on a temporary bin display shall be excluded from the 3,500-square inch limit on inside retail advertising signs.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; 1986 MR 12, Eff. Jan. 15, 1987; Amended Eff. May 12, 1994.

R 436.1331 Dispenser signs.

Rule 31.

(1) Alcoholic liquor dispensing equipment shall have the brand of alcoholic liquor designated by a sign on the dispenser or on the tap.

(2) A licensee shall not draw from a dispenser or tap a brand of alcoholic liquor other than that brand designated by the dispenser sign or tap marker.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

R 436.1333 Rescinded.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; 1984 MR 3, Eff. Mar. 27, 1984; 1989 MR 1, Eff. Jan. 20, 1989; Rescinded 2000 MR 3, Eff. March 20, 2000.

R 436.1335 Political advertising.

Rule 35.

(1) A licensee shall not display advertising that advocates the election of a person or political party on the inside or outside of a licensed premises, except as follows:

   (a) An on-premises licensed establishment that is the site of a convention of delegates of a political party may have political advertising on the premises during the convention.

   (b) An on-premises licensed establishment or location for which a special license has been issued may have political advertising on the premises during the time of a fund-raising event for a candidate or established political party.

(2) Advertising related to ballot questions is not considered political advertising that is prohibited by this rule.

(3) Nominating, recall, initiative, and referendum petitions and petitions on other ballot questions are

allowed on the licensed premises.

(4) The term “political party” is defined in Section 11(4) of Act No. 388 of the Public Acts of 1976, as amended, being §169.211(4) of the Michigan Compiled Laws.

(5) The term “ballot question” is defined in Section 2(1) of Act No. 388 of the Public Acts of 1976, as amended, being §169.202(1) of the Michigan Compiled Laws.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; 2000 MR 3, Eff. March 20, 2000.

R 436.1337 Rescinded.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC; rescinded 1985 MR 4, Eff. May 10, 1985.

R 436.1339 Rescissions.

Rule 39.

Rules 15 to 23 and 25 to 28 of the rules entitled "Rules and Regulations Governing the Relationship Between Licensed Manufacturers, Wholesalers of Alcoholic Liquors, Their Sales Representatives and Retail Licensees," being R 436.535 to R 436.543 and R 436.545 to R 436.548 of the Michigan Administrative Code and appearing on pages 5384 to 5386 of the 1954 volume of the Code, are rescinded.

History: 1954 ACS 84, Eff. Oct. 3, 1975; 1979 AC.

ON-PREMISES LICENSES

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1401 Definitions.

Rule 1.

The terms defined in R 436.1001 have the same meaning when used in these rules.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1403 Hours and days of operation.

Rule 3.

(1) Except as provided in subrule (7) of this rule, an on-premise licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day nor between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight.

(2) Between the hours of 2:30 a.m. and 12 noon on any Sunday, or from 2:30 a.m. to 7 a.m. on any other day, an on-premise licensee shall not allow the licensed premises to be occupied by anyone except the on-premise licensee, the bona fide employees of the on-premise licensee who are working, or bona fide contractors and employees thereof who are working, except as provided in subrule (8) of this rule or unless such on-premise licensee first obtains a permit approved by the liquor control commission and by the chief of police, sheriff, or other chief law enforcing officer in the community which authorizes the on-premise licensee to remain open for a stated specific purpose for such other hours and during such periods of time as the commission may determine. The permit shall be displayed adjacent to the license. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule shall apply only to the following portions of the licensed premises:

    (a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

    (b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(3) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 7 a.m. on any day, except as provided in subrule (7) of this rule.

(4) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 9:30 p.m. on December 24 to 7 a.m. on December 26. This prohibition shall extend to 12 noon on December 26 if December 26 falls on Sunday.

(5) An on-premise licensee shall not allow the consumption of spirits on the licensed premises between the hours of 2:30 a.m. and 12 midnight on Sunday. This subrule does not apply to the consumption of spirits on the licensed premises between the hours of 12 noon and 12 midnight on Sunday if the on-premise licensee possesses a Sunday sales permit issued by the commission.

(6) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 12 noon on Sunday.

(7) An on-premise licensee shall not sell alcoholic liquor on January 1 after 4 a.m. or before the legal hour of sale as provided in subrule (1) of this rule, and alcoholic liquor shall not be consumed on the licensed premises on January 1 after 4:30 a.m. or before the legal hour for consumption as provided in subrules (3), (5), and (6) of this rule.

(8) From 4:30 a.m. on January 1 to the legal hour of sale as provided in subrule (1) of this rule, an on-premise licensee shall not allow the licensed premises to be occupied by anyone other than the on-premise licensee, the bona fide employees of the licensee who are working, or bona fide contractors and employees thereof who are working, unless the on-premise licensee has been granted a specific purpose permit authorized by subrule (2) of this rule. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule applies only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.
(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(9) The provisions of subrules (3), (4), (5), (6), and (7) of this rule do not apply to the consumption of alcoholic liquor in the bedrooms or suites of registered guests of licensed hotels or in the bedrooms or suites of bona fide members of licensed clubs.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1405 Capacity of licensed premises.

Rule 5.

(1) An on-premises licensee shall post, in a conspicuous place, a sign stating the total capacity of each public room of the licensed establishment, based upon the capacity established by the state or local authority having jurisdiction.
(2) If the capacity of the licensed establishment or any public room in the licensed establishment has not been determined by a state or local authority, then the total capacity of each room shall be determined as follows:
    (a) If tables or booths are provided, then there shall be not more than 1 customer for each 15 square feet of total area.
    (b) If tables or booths are not used, then there shall be not more than 1 customer for each 6 square feet of total area.
    (c) If there is a combination of tables or booths and an open area, then the provisions of both subdivisions (a) and (b) of this subrule shall be used.
    (d) If seating is provided at a bar, then there shall be not more than 1 seat for each 20 inches of bar length.
(3) An on-premises licensee shall not allow a public room of the licensed establishment to be occupied by more persons than are authorized by this rule.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1407 Temporary entertainment, dance, or dance-entertainment permits; approval.

Rule 7.

The commission may issue up to 12 daily temporary dance, entertainment, or dance-entertainment permits to a licensee each calendar year upon written request of the licensee and approval of the chief law enforcement officer who has jurisdiction.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1979 ACS 16, Eff. Nov. 15, 1983; 2000 MR 3, Eff. March 20, 2000.

R 436.1409 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; rescinded MR 12, Eff. July 3, 2009.

R 436.1411 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; rescinded MR 12, Eff. July 3, 2009.

R 436.1413 Clothing changes by entertainers.

Rule 13.

(1) If an on-premise licensee offers entertainment wherein performers are required to change costumes or attire, the licensee shall provide and make use of dressing facilities set aside for use by male and female performers.
(2) An on-premise licensee shall not allow the use of restrooms, public rooms, kitchens, or other similar areas for the changing of clothing by entertainers.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1415 Dance floor; requirements.

Rule 15.

An on-premise licensee who is the holder of a dance permit shall not allow dancing on the licensed premises, except on a dance floor that is not less than 100 square feet. The dance floor shall be well defined and clearly marked and shall be without tables, chairs, or other obstacles while customers are dancing.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1417 Employees serving food or liquor prohibited from eating, drinking, or mingling with customers; licensees, agents, and employees prohibited from soliciting customers; allowing customer to solicit liquor prohibited.

Rule 17.

(1) An on-premise licensee shall not allow a person who is engaged in the serving of food or alcoholic liquor to eat, drink, or mingle with the customers.
(2) An on-premise licensee, or the clerk, servant, agent, or employee of an on-premise licensee, shall not solicit a customer for the purchase of alcoholic liquor for himself or herself or for any other person.
(3) An on-premise licensee, or the clerk, servant, agent, or employee of an on-premise licensee, shall not allow a customer to solicit alcoholic liquor for himself or herself or for any other person.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1419 Outdoor service without approval prohibited; requirements for outdoor service if approval is granted.

Rule 19.

(1) An on-premises licensee shall not have outdoor service without the prior written approval of the commission.
(2) If approval for outdoor service is granted, then the on-premises licensee shall ensure that the outdoor service area is well-defined and clearly marked and the on-premises licensee shall not sell, or allow the consumption of, alcoholic liquor outdoors, except in the defined area.
(3) The commission may issue up to 12 daily temporary outdoor service permits to a licensee each calendar year upon written request of the licensee and approval of the chief law enforcement officer who has jurisdiction.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1421 Sample bottles or cans; sale prohibited; removal from premises.

Rule 21.

(1) An on-premise licensee shall not sell or give away the contents of a sample bottle or can.
(2) An on-premise licensee shall remove sample bottles or cans from the licensed premises within 24 hours of their receipt.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1423 Soliciting, accepting, or receiving rebates, refunds, or adjustments from a person other than the commission for broken or defective containers prohibited.

Rule 23.

An on-premise licensee who is licensed to sell spirits shall not solicit, accept, or receive rebates, refunds, or adjustments for any broken or defective spirit containers from a person other than the commission or an agent or employee of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1425 Rest room facilities.

Rule 25.

(1) An on-premises licensee shall provide separate rest rooms with flush toilets for each sex. An on-premises licensee shall ensure that each toilet is constructed to assure complete privacy. An on-premises licensee shall ensure that each rest room is easily accessible and does not have an entrance through a kitchen or living quarters.
(2) The local governing body shall determine the minimum number of rest room fixtures to be installed in a licensed establishment according to the local building codes as evidenced by a temporary or permanent certificate of occupancy for public accommodation.
(3) An on-premises licensee shall ensure that each rest room has all of the following:
    (a) Soap.
    (b) Toilet paper.
    (c) A covered clean receptacle for accumulated waste.
    (d) A sanitary method for drying hands.
(4) An on-premises licensee shall ensure that each of the rest rooms is kept in a clean and sanitary condition, including walls, floors, ceilings, and fixtures.
(5) An on-premises licensee shall ensure that rest rooms required by these rules are unlocked during business hours and are provided by the on-premises licensee without charge.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1990 MR 1, Eff. Jan. 19, 1990; 2000 MR 3, Eff. March 20, 2000.

R 436.1427 Washing of drinking containers and draft beer equipment.

Rule 27.

(1) An on-premise licensee shall wash, rinse, and sanitize all glasses, mugs, steins, and other reuseable drinking containers which are used to serve alcoholic liquor to customers.
(2) An on-premise licensee shall thoroughly cleanse, as often as may be necessary, all beer coils, lines, barrels, tubes, and any other draft beer equipment to keep them in a clean and sanitary condition. An on-premise licensee shall not draw beer through tubes with rubber inner linings.
(3) An on-premise licensee shall pipe all air intakes on pressure pumps used in drawing draft beer in such a manner that only clean air will be used.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1429 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1999 MR 3, Eff. March 20, 2000.

R 436.1431 Serving of brand names.

Rule 31.

When a person orders a brand name alcoholic liquor sold by an on-premise licensee, the on-premise licensee shall serve and sell only the brand name ordered by that person.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1433 Food operation.

Rule 33.

(1) An on-premise licensee shall not contract for the services of another person to operate the food portion of the licensed business without the prior written approval of the commission.
(2) If a contract for the services of another person in the operation of the food portion of the licensed business is approved by the commission, the on-premise licensee shall comply with all of the following:
    (a) Receive all profits from the sale of alcoholic liquor.
    (b) Retain control over all portions of the licensed premises.
    (c) Be responsible for the actions of the persons operating the food business.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1435 Contests; tournaments.

Rule 35.

(1) An on-premises licensee shall not allow contests in which the licensee or any other person gives away anything of value over $250.00 per day, except upon written order of the commission, and shall not accept or retain anything of value from a person in exchange for sponsoring or promoting a contest or tournament.
(2) An on-premises licensee shall not allow a contest or tournament of any kind in which the sale, use, or consumption of alcoholic liquor is a necessary part of the contest or tournament or in which alcoholic liquor is given as a prize to the participants of the contest or tournament.
(3) An on-premises licensee shall not allow a promotion on the licensed premises in which anything of value over $250.00 per day or any alcoholic liquor is given away without adequate and appropriate consideration, except as provided in this rule or upon written order of the commission. An on-premises licensee shall not accept or retain anything of value from a person in exchange for sponsoring a promotion, except upon written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1437 Specific purpose permit.

Rule 37.

(1) If all of the following criteria are met, the commission may issue, to an on-premises licensee, a specific purpose permit that allows the licensee to have the premises occupied by customers at times other than the legal hours for sale and consumption:
    (a) The licensee has a business that necessitates the establishment being occupied by customers at times other than the legal hours for consumption of alcoholic liquor.
    (b) The establishment is equipped with a full-service kitchen, provides rooms for the lodging of guests, or provides recreational facilities that are owned by the licensee on or adjacent to the licensed establishment. This subdivision may be waived by the commission upon a showing of good cause by the licensee.
    (c) The commission may issue up to 12 daily temporary specific purpose permits to a licensee each calendar year upon written request of the licensee and approval of the chief law enforcement officer who has jurisdiction.
(2) An on-premises licensee who is issued a specific purpose permit shall not allow customers on the licensed premises during the time period provided by the specific purpose permit, unless the activity, and only that activity, allowed by the specific purpose permit is occurring.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1438 Sale of unlimited quantity of alcoholic liquor at specific price.

Rule 38.

(1) An on-premises licensee shall not sell, offer to sell, or advertise the sale of, an unlimited quantity of alcoholic liquor at a specific price.
(2) No licensee shall sell, offer to sell, or advertise the sale of, 2 or more identical drinks containing alcoholic liquor to a person for that person's consumption for 1 price. When 2 or more identical drinks containing alcoholic liquor are served to a person at 1 time, the price charged for the second and each additional identical drink shall be the same as the price charged for the first drink.

History: 1979 ACS 16, Eff. Nov. 15, 1983; 1985 MR 1, Eff. Feb. 13, 1985.

OFF-PREMISE LICENSES

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1501 Definitions.

Rule 1.

The terms defined in R 436.1001 have the same meaning when used in these rules.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1503 Hours and days of operation.

Rule 3.

An off-premise licensee shall not sell, give away, deliver, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day or between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, deliver, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight.

History: 1979 ACS 4, Eff. Feb 3, 1981; 1979 ACS 7, Eff. Aug. 8, 1981.

R 436.1505 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-MR 10, Eff. May 30, 2003.

R 436.1507 Stock of liquor.

Rule 7.

An off-premise licensee who is licensed to sell spirits shall carry a representative stock of all types of alcoholic liquor sold by the commission, which may be set by written order of the commission, and shall maintain a dollar amount of inventory of spirits, which may be set by written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1509 Rescinded.

History: 1979 ACS 4, Eff. Feb 3, 1981; 1984 MR 10, Eff. Nov. 14, 1984; 1991 MR 10, Eff. Nov. 8, 1991; Rescinded 2000 MR 3, Eff. March 20. 2000.

R 436.1511 Open containers on licensed premises prohibited; exception; consumption of liquor on licensed premises prohibited; exception.

Rule 11.

(1) An off-premises licensee who is not licensed as an on-premises licensee shall not have any open containers of alcoholic liquor on the licensed premises, except for the following:
   (a) A defective or sample bottle or can.
   (b) A returnable container returned by a customer of the off-premises licensee for a refund of the deposit on the container.
   (c) A bottle or can containing alcoholic liquor to be used in the preparation of bakery or deli items by the employees of the off-premises licensee who also holds a Michigan department of agriculture food establishment license, if all of the following conditions are met:
      (i) The alcoholic liquor is used exclusively in the preparation of food products that are cooked or baked before consumption and, at the point of consumption, have an alcoholic content of less than 2 of 1%.
      (ii) The bottle or can is resealed and stored in a locked, separate storage compartment within the food preparation area when the contents are not being used in food preparation.
      (iii) The off-premises licensee maintains a clearly defined food preparation area on the licensed premises of not less than 500 square feet.

(iv) The off-premises licensee has obtained the approval of the commission for the use of alcoholic liquor in the preparation of food on the licensed premises.

(2) An off-premises licensee who is not licensed as an on-premises licensee shall not allow the consumption of alcoholic liquor on the licensed premises, except for the consumption of alcoholic liquor in sample bottles or cans. Only an off-premises licensee, or the clerk, servant, agent, or employee of the off-premises licensee, may consume the contents of a sample bottle or can on the licensed premises.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1513 Sample bottles or cans; removal.

Rule 13.

An off-premise licensee shall remove sample bottles or cans from the licensed premises within 24 hours of their receipt.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1515 Sale and delivery of alcoholic liquor.

Rule 15.

(1) An off-premise licensee who is licensed to sell beer and wine shall not take orders for the sale of beer or wine and have the delivery of the beer or wine made to the retail customer by a wholesaler, manufacturer of beer or wine, an outstate seller of beer or wine, or their licensed representatives or salesperson, without the prior written approval of the commission.

(2) An off-premise licensee who is licensed to sell spirits shall not knowingly allow the delivery of spirits to a retail customer by a licensed representative or salesperson, unless the licensed representative or salesperson is acting on behalf of the retail customer.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1517 Type of business; change; approval.

Rule 17.

An off-premise licensee shall not change the nature of business for which the license was issued by the commission without obtaining the prior written approval of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1519 Soliciting, accepting, or receiving rebates, refunds, or adjustments from a person other than the commission for broken or defective containers prohibited.

Rule 19.

An off-premise licensee who is licensed to sell spirits shall not solicit, accept, or receive rebates, refunds, or adjustments for any broken or defective spirit containers, or case of containers, from a person other than the commission or an agent or employee of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1521 Outdoor service prohibited; exception.

Rule 21.

An off-premise licensee shall not sell alcoholic liquor out-of-doors, except upon a written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1523 Allowing consumption on licensee's property adjacent to licensed premises prohibited.

Rule 23.

An off-premises licensee shall not knowingly allow a person to consume alcoholic liquor on property which is owned, leased, or possessed by the licensee and which is adjacent to the licensed premises.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1525 Sale by club licensee of liquor to nonmember prohibited.

Rule 25.

A club licensee who is also licensed with an off-premise license shall not sell alcoholic liquor to a nonmember.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1527 Delivery of liquor to person under 21 years of age prohibited; requirements for delivery of liquor to persons of legal age.

Rule 27.

(1) A licensee authorized to sell alcoholic liquor for consumption off the premises shall not make a delivery of alcoholic liquor to any person unless that person is 21 years of age.
(2) A licensee authorized to sell alcoholic liquor for consumption off the premises who takes an order for alcoholic liquor from a purchaser for delivery to an individual or business at an address other than that of the person making the purchase may deliver or have delivered that alcoholic liquor to the residential or business address indicated by the purchaser making the order provided the individual accepting delivery of the alcoholic liquor is 21 years of age or older and the person making the delivery of the alcoholic liquor verifies that the individual accepting the delivery is 21 years of age or older.
(3) A licensee making a sale and delivery of alcoholic liquor under the provisions of this rule and/or the person making the delivery of the alcoholic liquor shall maintain proof for inspection by the commission of the documents used to determine the age of the individual to whom the alcoholic liquor was delivered.

History: 1979 ACS 4, Eff. Feb. 3, 1981;-Am. Eff April 24, 2001.

R 436.1529 Sale of spirits at a uniform price.

Rule 29.

An off-premise licensee who is licensed to sell spirits shall not sell spirits at a price other than the selling price established by the commission, which shall include all taxes collected by the commission at the time of sale to the off-premise licensee and the state sales tax.

History: 1979 ACS 4, Eff. Feb. 3, 1981

R 436.1531 Return of alcoholic liquor product.

Rule 31.

An off-premises licensee may accept from a customer, for a cash refund or exchange, an alcoholic liquor product purchased by the customer from the off-premises licensee if the product is demonstrably spoiled or contaminated or the container damaged to the extent that the contents would likely be of an unsanitary nature or unfit for consumption and if the returned product is not resold and is removed from the licensed premises as soon as practicable, but not more than 14 days after its return.

History: 2000 MR 3, Eff, Marach 20, 2000.

R 436.1533 Off-premises server training; requirements.

Rule 33.

(1) As used in this rule, all terms and phrases shall have the same meaning as defined in Section 906(1) of the act.
(2) The commission shall off-premises server training program designed for off-premises licensees. The commission may adopt the existing standards and programmatic framework of private entities and may delegate nondiscretionary administrative functions to outside private entities.
(3) A person may apply to the commission for qualification as an administrator for the offering of an off-premises server training program and instructor certification classes. Upon approval by the commission of an off-premises server training program, the commission shall appoint the person sponsoring the server training program as an administrator of that program.
(4) The commission shall issue an instructor certification to an individual presenting evidence acceptable to the commission of having successfully completed instructor certification classes and shall issue an identification card indicating that certification by the commission.
(5) The commission shall approve a curriculum for a server training program presented by a certified instructor in a manner considered by the commission to be adequate that includes, but is not limited to, all of the following topics:
    (a) Identification of the visible signs associated with intoxication.
    (b) Implementation of intervention procedures and maintaining incident reports.
    (c) The understanding of acceptable forms of personal identification, techniques for determining the validity of identification, and procedures for dealing with fraudulent identification.
    (d) Assessment of the need to ask for identification based on appearance or company policy.
    (e) The identification of potential second-party sales and furnishing of alcoholic liquor to minors by persons 21 years of age or over.
    (f) The understanding of Michigan laws pertaining to minors attempting to purchase and second-party sales or furnishing of alcoholic liquor from adults to minors.
    (g) The understanding of possible legal, civil, and administrative consequences of violations of this act, the rules of the commission, and other pertinent state laws.
    (h) Knowledge of the legal hours of alcohol sales.
    (i) Any other pertinent laws as determined by the commission.
(6) If the commission conditionally approves the issuance of a license for the purpose of meeting the server training requirements of that approval, then the time period allowed for meeting the server training requirements shall commence on the date the license is issued.
(7) An administrator of a server training program approved by the commission shall administer a comprehensive examination to participants of the program, including individuals seeking certification as instructors within the program. The examination shall thoroughly test the individual's knowledge and competency in the curriculum topics required by subrule (5) of this rule. The minimum passing grade for the examination, for instructor certification, and for all other participants in the program shall be not less than 70%, but shall be not less than 85% for instructors if administered the same examination as other participants in the program. Examinations administered in other than a written form must be approved by the commission. Examinations may be proctored by someone other than a certified instructor of the server training program if the proctor is an agent of the administrator of the server training program and is acceptable to the commission. Other methods of administering an examination must be approved by the commission.
(8) If server training or instructor training is conducted by the administrator of a server training program approved by the commission by means other than classroom training, then the alternative training method must first be approved by the commission.
(9) Certification issued by the administrator of an approved server training program for instructors and other participants shall expire not more than 3 years from the date of issuance.
(10) An off-premises licensee, when ordered by the commission to meet a server training requirement, shall maintain on the licensed premises proof of active, unexpired server training certification or current recognition by a server training program approved by the commission for those persons included in the commission order.

History: 2010 MR 8, Eff. Apr. 27, 2010.

BEER

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1601 Definitions.

Rule 1.

The terms defined in R 436.1001 have the same meanings when used in these rules.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1603 Rescinded.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; rescinded 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1605 Equipment.

Rule 5.

A brewer shall possess the necessary equipment for a satisfactory operation, which shall be maintained in good working order and in a sanitary condition.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1607 Agricultural product compliance with law.

Rule 7.

Agricultural products processed by a brewer shall comply with state laws and rules of the Michigan department of agriculture.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1609 Outstate sellers of beer.

Rule 9.

(1) A person shall be the holder of the required basic permit or be a brewer or outstate seller of beer doing business under an approved brewer's notice issued under the federal alcohol administration act of 1935, 27 U.S.C. §201 et seq., and the regulations thereunder, being 27 C.F.R., part 1, subpart C, and part 25, subpart G, before being issued an outstate seller of beer license. The provisions of 27 C.F.R., part 1, subpart C, and part 25, subpart G, are adopted by reference in these rules. Copies of the adopted provisions may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402. The cost at the time of adoption of these rules is $23.00. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Commerce, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at cost.

(2) An outstate seller of beer license shall be issued to the following entities pursuant to these rules and the act:

   (a) A person located in the United States who imports and sells beer made in a foreign country in this state.

   (b) A manufacturer located outside this state, but in the United States, that manufactures and packages its own beer.

   (c) A person located in the United States who purchases beer from a manufacturer of beer located outside of this state, but in the United States, if the amount of beer imported into this state by that person is 5,000 barrels or less per calendar year. In addition, a person who is issued an outstate seller of beer license under the provisions of this subdivision shall be designated by the manufacturer of beer as its sole and exclusive sales agent in Michigan for a brand or brands of beer produced by that manufacturer and shall be responsible for the quality of beer shipped into and sold in this state.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 1, Eff. Jan. 20, 1989; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1611 Labels and advertising.

Rule 11.

(1) The sale of beer is prohibited in this state unless all of the following provisions are complied with:
   (a) The beer is packaged, marked, branded, and labeled in accordance with these rules.
   (b) The beer label truthfully describes the contents of the container in accordance with these rules and the federal alcohol administration act of 1935, 27 U.S.C., §201 et seq., and the regulations thereunder, being 27 C.F.R. part 7, subpart C. The provisions of 27 C.F.R. part 7, subpart C, are adopted by reference in these rules. Copies of the adopted provisions may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The cost at the time of adoption of these rules is $49.00. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Consumer and Industry Services, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $55.00 each.
   (c) The beer has received a registration number from the commission and has been approved for sale by the commission.
   (d) The commission may disapprove any beer label submitted for registration that is deemed to promote violence, racism, sexism, intemperance, or intoxication or to be detrimental to the health, safety, or welfare of the general public.
(2) A brewer, outstate seller of beer, or wholesaler responsible for labeling shall furnish proof, upon request, that valid certificates of approval for the label have been obtained from the United States bureau of alcohol, tobacco, and firearms and are unrevoked under the provisions of the federal labeling requirements.
(3) A retail licensee shall place a removable tap marker or sign on a draft beer dispenser. The cost of a tap marker or sign is subject to commission orders.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989;- 2000 MR 3, Eff. March 20, 2000.

R 436.1613 Gifts of beer and consumption on licensed premises.

Rule 13.

(1) A manufacturer may give away beer only for consumption on the licensed premises.
(2) A wholesaler shall not give away beer or allow consumption of beer on the licensed premises.
(3) A tap room maintained by a brewer who is not a microbrewer for dispensing or serving alcoholic beverages shall be closed to the public at 2 a.m. daily and shall not open before 7 a.m. the following day or before noon on Sunday.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC;- 2000 MR 3, Eff. March 20, 2000.

R 436.1615 Sales and transportation by manufacturers; warehouse licensees.

Rule 15.

(1) A brewer shall sell in Michigan only beer which is produced by it on its licensed premises.
(2) A brewer or outstate seller of beer shall not have beer produced or placed in containers by another brewer or outstate seller of beer for sale in this state without a prior written order of approval by the commission.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1617 Sales and shipments by outstate sellers of beer.

Rule 17.

A person shall not sell, ship, import, or deliver beer into this state unless the beer is sold, shipped, imported, or delivered in any of the following ways:
   (a) An outstate seller of beer sells, ships, imports, or delivers to its licensed premises, to the licensed premises of a licensed wholesaler of beer, or to the licensed premises of a licensed warehouseman.

(b) A licensed wholesaler of beer buys, imports, or accepts delivery of beer from an outstate seller of beer at the licensed premises of an outstate seller of beer or at the licensed premises of the licensed wholesaler of beer.
(c) A brewer imports or delivers beer produced at a manufacturing plant which is located outside this state and which is owned by the brewer or the parent or subsidiary corporation of the brewer.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1621 Excise tax on beer; reports.

Rule 21.

(1) Each brewer and each outstate seller of beer whose beer tax liability for the preceding calendar year has averaged less than $50,000.00 per month shall submit to the commission, on forms acceptable to the commission and postmarked not later than the fifteenth day of each month, a beer tax report of all beer sold, delivered, or imported into this state during the previous calendar month and shall also submit, with the beer tax report, the payment of the required beer excise tax due pursuant to section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being §436.40 of the Michigan Compiled Laws.
(2) Each brewer and each outstate seller of beer whose beer tax liability for the preceding calendar year has averaged $50,000.00 or more per month shall submit to the commission, on forms acceptable to the commission, 2 beer tax reports each month. One beer tax report shall be postmarked not later than the last day of each month and may be either an estimate or an actual report of all beer sold, delivered, or imported into this state during the first 15 days of that month. Payment of the required beer excise tax due pursuant to section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being §436.40 of the Michigan Compiled Laws, shall be included with the report. A second beer tax report shall be postmarked not later than the fifteenth day of each month and shall report all beer sold, delivered, or imported into this state during the preceding calendar month. Payment of the beer excise tax required by section 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, less the amount of beer excise tax previously paid for the month, shall be included with the report.
(3) The beer excise tax reports submitted pursuant to subrules (1) and (2) of this rule by a brewer or an outstate seller of beer located outside this state shall include all of the following information:
    (a) The total sales, deliveries, and importations of beer made into this state during the period covered by the report.
    (b) The total amount of the beer excise tax due.
    (c) The date upon which each shipment of beer was made.
    (d) The name and address of the licensed wholesaler of beer who received each shipment of beer.
    (e) The invoice number of each shipment of beer.
    (f) The quantity and container size of each shipment of beer.
(4) The beer excise tax reports submitted pursuant to subrules (1) and (2) of this rule by an outstate seller of beer located in this state shall include the total purchases, importations, and deliveries of beer received by the outstate seller of beer during the period covered by the report and the total amount of the beer excise tax due. The documents listed in either subdivision (a) or subdivision (b) of this subrule shall be submitted with the beer tax report:
    (a) A copy of each invoice, debit memo, or credit memo for each importation or delivery of beer received from a manufacturer of beer during the period covered by the report.
    (b) A copy of each document issued to the outstate seller of beer by the United States customs service for each withdrawal of beer from bond which occurred during the period covered by the report.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1623 Rescinded.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; rescinded 1985 MR 4, Eff. May 10, 1985.

R 436.1625 Price schedules and temporary price reductions.

Rule 25.

(1) A manufacturer or wholesaler shall file with the commission in Lansing a schedule of net cash prices to the retail licensee for all brands of case and keg beer for its market area.
(2) A manufacturer or wholesaler shall file with the commission in Lansing beer package price reductions for its market area. The price reduction shall be filed before its effective date and shall continue for at least 180 days after the effective date.
(3) The beer package price for any market area may be increased during the 180-day period for the following reasons:
    (a) To reflect any tax increase in the market area.
    (b) To reflect a general industry price increase in the market area.
(4) The beer package price for any market area may be decreased during the 180-day period to meet competition if:
    (a) The price reduction is not greater on a cents per case basis than the price reduction filed by the competition.
    (b) The price reduction continues for the balance of the 180 days filed by the competition.
(5) A manufacturer or wholesaler shall not sell beer at a quantity discount.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC.

R 436.1627 Rescinded.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1954 ACS 81, Eff. Nov. 20, 1974; 1954 ACS 91, Eff. June 7, 1977; rescinded 1954 ACS 97, Eff. Sept. 30, 1978; 1979 AC.

R 436.1629 Container deposit and refund.

Rule 29.

(1) (1) A manufacturer, an outstate seller of beer, or a wholesaler of beer shall collect a container deposit of a minimum of $30.00 for all refillable containers of beer with a capacity of over 5 gallons. The deposit collected by a wholesaler from a retail licensee for a refillable container of over 5 gallons shall be equal to the deposit collected by the manufacturer or outstate seller of beer from the wholesaler of beer.
(2) A cash refund which equals the container deposit collected pursuant to subrule (1) of this rule for all refillable containers of beer with a capacity of over 5 gallons shall be made to a licensee who has made the deposit and returned the containers for refund.

History: 1979 AC; 2007 AACS; 2010 MR 8, Eff. Apr. 27, 2010.

R 436.1631 Reports of brewers, outstate sellers of beer, and wholesalers.

Rule 31.

(1) Each sale or delivery of beer made by a brewer or outstate seller of beer to a licensed wholesaler of beer shall be accurately recorded on a sales invoice, a debit memo, or a credit memo. A brewer or an outstate seller of beer shall furnish each licensed wholesaler of beer with 2 copies of each invoice at the time of each sale or delivery of beer.
(2) When a billing error is discovered, a brewer or an outstate seller of beer shall immediately furnish the licensed wholesaler of beer who was incorrectly billed with 2 copies of either a debit memo or a credit memo to correct the billing error.
(3) Each sales invoice shall have printed thereon the name, address, and location of the brewer or outstate seller of beer issuing the invoice and shall also contain all of the following information:
    (a) The name and address of the licensed wholesaler of beer to whom the sale was made.
    (b) The date of sale and an identifying invoice number.
    (c) The quantity, brand name or brand code, container type, container size, unit price, and total cost of the beer sold.
    (d) The address to which the beer was delivered, if different than the address of the licensed wholesaler to whom the beer was sold.
(4) Each debit memo and each credit memo shall have printed thereon the name and address of the brewer or outstate seller of beer issuing the debit memo or credit memo and shall also contain all of the following information:

(a) The name and address of the licensed wholesaler of beer.
(b) The date on which the original sale occurred and the identifying number of the invoice being corrected.
(c) The corrected quantity, brand, container type, container size, unit price, the net amount debited or credited, and the number of the invoice to which the debit or credit will be applied, if known.
(d) The reason for the debit or credit.

(5) Each licensed wholesaler of beer shall retain, on the licensed premises, 1 copy of each invoice, debit memo, and credit memo received from a brewer or an outstate seller of beer and shall forward to the Lansing office of the commission, postmarked not later than the fifteenth day of each month, 1 copy of each invoice, debit memo, or credit memo received during the previous month.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1632 Invoices and bills of lading.

Rule 32.

When transporting beer, a vehicle operator for a brewer, an outstate seller of beer, a licensed wholesaler of beer, or a common carrier shall have invoices or bills of lading in his or her possession for inspection by commission inspectors or auditors and law enforcement officers. This rule shall not apply to a vehicle operator for a licensed wholesaler of beer while he or she is delivering to retail licensees.

History: 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1633 Damage refunds.

Rule 33.

A refund or other adjustment on beer containers shall not be made to a retail licensee by a manufacturer or wholesaler unless:

(a) A keg of beer shows evidence of leakage.
(b) A keg of beer is flat or not salable at the time of tapping.
(c) Other reasonable grounds approved by a written order of the commission.

History: 1954 ACS 72, Eff. Aug. 2, 1979; 1954 ACS 81, Eff. Nov. 20, 1974; 1979 AC.

R 436.1635 Sale or delivery; restrictions; exception.

Rule 35.

A brewer or wholesaler shall not offer for sale or deliver beer to a retail licensee between 12 midnight on Saturday and 12 midnight on Sunday, except to a holder of a special license issued by the commission.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1641 Brewers' and wholesalers' reports and records.

Rule 41.

(1) A monthly report of operations of a brewer shall be made on forms approved by the commission and filed in the Lansing office of the commission. The records shall be maintained in order for 4 years, after which deletions may be made, but a 4-year record shall always be maintained.
(2) A wholesaler shall maintain records of its transactions, including the distribution of beer. The records shall be maintained for 4 years, after which deletions may be made, but a 4-year record shall always be maintained.
(3) A brewer or wholesaler shall maintain complete records of expenses and compensation of salesmen and representatives for 4 years.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1643 Rescinded.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC; rescinded 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1645 Inspection and enforcement.

Rule 45.

(1) Upon order of the commission a commission representative or employee of the Michigan department of agriculture may inspect premises of an out-of-state manufacturer of beer which is sold or to be sold in this state.
(2) The books, records and premises of all licensees shall be available to the commission representative at all reasonable times. The licensee shall give any assistance and provide the facilities required for the inspection and analysis.
(3) The commission may demand a sample of any beer, shipped into this state and offered for sale or sold, for analytical and inspection purposes.
(4) The commission reserves the right to confiscate beer or other alcoholic beverages unless the beverage complies with these rules and the act. The beer confiscated shall be subject to disposition by order of the commission.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC.

R 436.1651 Prohibited acts.

Rule 51.

(1) A licensee shall not fail, neglect, or refuse to make a report required by these rules. A licensee shall not refuse to permit commission representatives to examine any of the following:
    (a) The licensee's books.
    (b) Federal tax stamps.
    (c) Records.
    (d) Invoices.
    (e) Other papers pertaining to the licensee's books, federal tax stamps, records, or invoices.
    (f) Any stock of beer in the licensee's possession or custody. A licensee shall not make an incomplete, false, or fraudulent report or do anything to avoid a full disclosure of the amount of beer subject to tax.
(2) A licensee shall not falsely label a container in which beer is placed for sale, use or give a false or fictitious name, use or give a false or fictitious address in an application or form required by these rules, or otherwise commit a fraud in an application, record, or report.
(3) A licensee shall not engage in tied-in sales of beer, wine, beer and wine, or any alcoholic liquor with any non-alcoholic product sold by the licensee.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1979 AC;- 2000 MR 3, Eff. March 20, 2000.

R 436.1659 Rescissions.

Rule 59.

(1) Rules entitled "Rules and Regulations Applying to the Manufacture and Sale of Beer and/or Malt Beverages as Applied to Licensed Manufacturers and Distributors," being R 436.150 to R 436.250 of the Michigan Administrative Code, and appearing on pages 5320 to 5333 of the 1954 volume of the Code, page 129 of the 1955 Annual Supplement to the Code, and page 1525 of the 1960 Annual Supplement to the Code, are rescinded.
(2) Rules 36, 37, and 39 of the rules entitled "Rules and Regulations Governing the Relationship between Licensed Manufacturers, Wholesalers of Alcoholic Liquor, their Sales Representatives and Retail Licensees," being R 436.556, R 436.557, and R 436.559 of the Michigan Administrative Code, and appearing on pages 5387 and 5388 of the 1954 volume of the Code, are rescinded.
(3) R 436.1627 of the Michigan Administrative Code, appearing on page 95 of Quarterly Supplement No. 91 to the Code, is rescinded.

History: 1954 ACS 72, Eff. Aug. 2, 1972; 1954 ACS 97, Eff. Sept. 30, 1978; 1979 AC.

WINES

(By authority conferred on the liquor control commission by sections 215(1) and 301 of Act No. 58 of the Public Acts of 1998, as amended, being §§436.1215(1) and 436.1301 of the Michigan Compiled Laws)

R 436.1701 Rescinded.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; rescinded 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1702 Building and health laws and ordinances.

Rule 2.

A manufacturer of wine shall conform to all state and local building and health laws and ordinances.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC.

R 436.1703 Equipment.

Rule 3.

A manufacturer of wine shall possess the necessary equipment for a satisfactory operation which shall be maintained in a good working order and in a sanitary condition. The commission may by written order establish specific equipment requirements.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC

R 436.1705 Outstate sellers of wine.

Rule 5.

(1) A person shall be a holder of the required basic permit issued under the federal alcoholic administration act, 27 U.S.C. §201 et seq., before being issued an outstate seller of wine license.
(2) An outstate seller of wine license may be issued to any of the following entities pursuant to these rules and the act:
    (a) A person who is located in the United States, who imports foreign wine, and who sells this foreign wine in this state.
    (b) A person who is located outside of this state, but in the United States, and who ships and sells bulk wine to licensed Michigan manufacturers for blending, rectifying, or nonbeverage purposes or bottled wine directly to a minister, priest, or rabbi for sacramental purposes.
    (c) A person who is located outside of this state, but in the United States, and who bottles wine manufactured by another person. This person shall have a certificate or affidavit of identity from the manufacturer. This licensed person shall be responsible for the quality of wine shipped into and sold in this state.
    (d) A manufacturer which is located outside of this state, but in the United States, and which produces and bottles its own wine.
    (e) A person who is located in the United States and who is designated by the manufacturer of wine as its sole and exclusive sales agent in the United States. A person who is issued an outstate seller of wine license under the provisions of this subdivision shall be responsible for the quality of wine shipped into and sold in this state.
    (f) A person who is located in the United States and who purchases wine from a manufacturer of wine or brand owner located outside of this state, but in the United States, if the total amount of wine imported into this state that is manufactured by that outstate manufacturer of wine or brand owner is 150,000 liters or less per calendar year. The outstate seller shall be responsible for the quality of wine shipped into and sold in this state. A person who obtains an outstate seller of wine license pursuant to this subdivision, or who imports wine pursuant to this subdivision, and who holds a wholesale license shall pay cash at the time of purchase for importation.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC; 1979 ACS 11, Eff. June 30, 1982; 1990 MR 12, Eff. Jan. 4, 1991.

R 436.1706 Rescinded.

History: 1954 ACS 64, Eff. Sept. 1, 1970; rescinded 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1707 Federal standards of identity for wine.

Rule 7.

The standards of identity for the several classes and types of bottled wine shall be the federal standards of identity, published in title 27, part 4, subpart C, C.F.R., 1935, as amended, as of June 1, 1975, which are incorporated herein by reference. The commission may by written order establish other standards of identity. Copies of the federal regulations are on file and available to the public in the Lansing office of the commission at cost.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 85, Eff. Nov. 6, 1975; 1979 AC.

R 436.1708 Manufacturing wine pursuant to federal wine regulations.

Rule 8.

(1) A manufacturer shall manufacture wine under the federal wine regulations published in 27 C.F.R. part 24, §§24.1 to 24.323, of 1935, as amended, which are adopted in these rules by reference. Copies of the adopted provisions may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The cost at the time of adoption of these rules is $49.00. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Consumer and Industry Services, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at a cost of $55.00 each.
(2) Substandard, imitation base, or nonstandard wine may be sold in this state by written order of the commission.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 85, Eff. Nov. 6, 1975; 1979 AC;- 2000 MR 3, Eff. March 20, 2000.

R 436.1711 Inspections.

Rule 11.

Upon order of the commission any commission representative or employee of the Michigan department of agriculture may inspect any premises of an out-of-state producer, manufacturer or bottler of wine which is sold or to be sold in this state.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC.

R 436.1712 Fruit and agricultural products; compliance with law.

Rule 12.

Fruit and agricultural products processed by a licensee shall comply with state laws and rules of the Michigan department of agriculture.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC.

R 436.1714 Rescinded.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC;-Rescinded 2000 MR 3, Eff. March 20, 2000.

R 436.1716 Bottling.

Rule 16.

(1) Wine may be bottled or sold or both in Michigan in containers of any size permitted by the federal alcohol administration act and approved by written order of the commission.
(2) For tax purposes a variance in content will be permitted within a fraction of a fluid ounce in bottles of champagne, carbonated or sparkling wines in order that a 26 ounce container may be registered as a 1/5 of a gallon or 25.6 ounce container, or a 13 ounce container may be registered as a 1/10 of a gallon or 12.8 ounce container.
(3) Imported wine may be delivered into this state and sold in containers of any size permitted by the

federal alcohol administration act and approved by written order of the commission.

(4) A Michigan manufacturer shall not bottle bulk domestic or imported wine for sale in any state without a written order of approval from the commission.

(5) A Michigan manufacturer shall not manufacture or bottle wine for any other manufacturer without a written order of approval from the commission.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC.

R 436.1717 Restraining orders; record.

Rule 17.

(1) If wine has not been manufactured in accordance with R 436.1708, then the commission may issue a written order restraining a wine manufacturer from selling, offering for sale, using for blending purposes, or otherwise using the wine, whether it is in the finished state or in the course of manufacture. The order shall remain in force until rescinded or otherwise disposed of by the commission.

(2) A manufacturer shall keep a complete record, on forms prescribed by the commission, of all wines manufactured.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC; 1979 ACS 1, Eff. Jan. 1, 1980;- 2000 MR 3, Eff. March 20, 2000.

R 436.1719 Requirements for sale of bottled wine.

Rule 19.

(1) Bottled wine shall not be offered for sale, kept for sale, sold, delivered, or otherwise introduced into this state unless all of the following provisions have been complied with:

(a) The wine is bottled, packaged, marked, branded, and labeled under these rules.

(b) The wine label truthfully describes the contents of the container in accordance with these rules and the federal wine regulations published in 27 C.F.R. part 4, subpart D, §§4.1 to 4.80, of 1935, as amended, which are adopted in these rules by reference. Copies of the adopted provisions may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The cost at the time of adoption of these rules is $49.00. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Consumer and Industry Services, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at a cost of $55.00 each.

(c) The wine has received a registration number of approval from the commission.

(2) The commission reserves the right to disapprove any wine label submitted for registration that is deemed to promote violence, racism, sexism, intemperance or intoxication or to be detrimental to the health, safety, or welfare of the general public.

(3) Bottled wine shall not be shipped, delivered, or otherwise introduced into this state unless it is accompanied by an invoice, manifest, or other shipping document listing the quantity of bottled wine, by brand name and corresponding registration number of approval, that is being shipped, delivered, or introduced into this state.

(4) A manufacturer, rectifier, or outstate seller of wine who is responsible for labeling shall furnish proof, upon request, that valid certificates of approval for the label have been obtained from, and are unrevoked under, the federal labeling requirements as published in 27 C.F.R. part 4, subpart D, §§4.1 to 4.80, of 1935, as amended.

(5) A shipment of bottled wine from a manufacturer or an outstate seller of wine shall be made only to a licensed wholesaler at the address of the licensed premises, except upon written order of the commission.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 85, Eff. Nov. 6, 1975; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC;- 2000 MR 3, Eff. March 20, 2000..

R 436.1720 Invoice for bottled wine.

Rule 20.

(1) Each sale or delivery of wine made by an outstate seller of wine to a licensed wholesaler of wine shall be accurately recorded on a sales invoice, a debit memo, or a credit memo. An outstate seller of wine

shall furnish each licensed wholesaler of wine with 2 copies of each invoice at the time of each sale or delivery of wine.

(2) Each sales invoice shall have printed thereon the name, address, and location of the outstate seller of wine issuing the invoice and shall also contain all of the following information:
   (a) The name and address of the licensed wholesaler of wine to whom the sale was made.
   (b) The date of sale and an identifying invoice number.
   (c) The quantity, brand, container type, container size, unit price, and total cost of the wine sold.
   (d) An identifying designation for all wine over 16% alcohol by volume.
   (e) The address to which the wine was delivered, if different than the address of the licensed wholesaler to whom the wine was sold.

(3) When a billing error is discovered, an outstate seller of wine shall immediately furnish the licensed wholesaler of wine who was incorrectly billed with 2 copies of either a debit memo or a credit memo to correct the billing error.

(4) Each debit memo and each credit memo shall have printed thereon the name and address of the outstate seller of wine issuing the debit memo or credit memo and shall also contain all of the

(5) following information:
   (a) The name and address of the licensed wholesaler of wine.
   (b) The date on which the original sale occurred and the identifying number of the invoice being corrected.
   (c) The corrected quantity, brand, container type, container size, unit price, the net amount debited or credited, and the number of the invoice to which the debit or credit will be applied, if known.
   (d) The reason for the debit or credit.

(6) Each licensed wholesaler of wine shall retain on the licensed premises 1 copy of each invoice, debit memo, and credit memo received from an outstate seller of wine and shall forward to the Lansing office of the commission, postmarked not later than the fifteenth day of each month, 1 copy of each invoice, debit memo, or credit memo received during the previous calendar month. Each licensed wholesaler of wine shall include, with the invoices, a summary report of the invoices being submitted. The summary report shall include all of the following information:
   (a) The name and address of the licensed wholesaler of wine.
   (b) The calendar month to which the invoices apply.
   (c) The total number of invoices being submitted.

History: 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1721 Requirements for sale of bulk wine.

Rule 21.

(1) A manufacturer or outstate seller of wine may sell bulk wine of any alcoholic content for blending purposes and nonbeverage purposes without an additional license.

(2) Bulk wine shall not be offered for sale, kept for sale, sold, delivered or otherwise introduced into this state unless it is approved for sale by the commission and accompanied by a release form, a supply of which shall be furnished by the commission upon request. The release shall be signed by an outstate seller of wine or an authorized agent of the outstate seller of wine.

(3) When bulk wine is received by a consignee on a release issued by the commission, the consignee shall immediately submit to the commission a copy of the invoice listing the shipment. Upon request the consignee shall readily make available to a commission inspector a copy of the release, the bill of lading, and a copy of the vendor's invoice.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC.

R 436.1722 Transportation of wine.

Rule 22.

(1) When bottled wine is transported in interstate or intrastate commerce, a copy of the invoice or bill of lading shall accompany the wine and shall be available for inspection by commission representatives and law enforcement agencies.

(2) A truck driver of a manufacturer or outstate seller of bottled wine shall have invoices and bills of lading available for inspection by commission representatives and law enforcement agencies.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; 1979 ACS 1, Eff. Jan. 1, 1980.

R 436.1723 Rescinded.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; rescinded 1985 MR 4, Eff. May 10, 1985.

R 436.1723a Barrel deposit and refund.

Rule 23a.

(1) A manufacturer, an outstate seller of wine, or a wholesaler of wine shall collect a barrel deposit of $10.00 for a barrel, 1/2 barrel, and 1/4 barrel of wine or mixed wine drink.
(2) A cash refund of $10.00 for a barrel,1/ 2 barrel, and 1/4 barrel of wine or mixed wine drink shall be made to a licensee who has made the deposit and returned the barrels for refund.

History: 1989 MR 1, Eff. Jan. 20, 1989.

R 436.1724 Sacramental wine.

Rule 24.

(1) A manufacturer, outstate seller of wine, or wholesaler may sell wine to a church for use only in sacramental or religious rites.
(2) A manufacturer, outstate seller of wine, or wholesaler who sells wine for sacramental or religious rites shall file a quarterly report with the commission on a form approved by the commission listing the amount of such sales. The report shall be submitted to the commission by January 15, April 15, July 15, and October 15 of each year.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC.

R 436.1725 Reports of manufacturers, wholesalers, and outstate sellers.

Rule 25.

(1) Each wine maker and each small wine maker shall submit, to the commission, on forms acceptable to the commission and postmarked not later than the fifteenth day of each month, a report of operations for the preceding calendar month. Payment of the wine excise tax required by the provisions of section 16a of Act No. 8 of the Public Acts of 1933, as amended, being §436.16a of the Michigan Compiled Laws, shall accompany the report and the report shall include the following information:
    (a) The total sales, deliveries, and importations of wine made into this state during the period covered by the report and the total amount of the wine excise tax due.
    (b) The total sales and deliveries of wine made outside this state. A copy of each invoice for each sale or delivery of wine made outside this state shall accompany the report.
(2) Each outstate seller of wine shall submit, to the commission, on forms acceptable to the commission and postmarked not later than the fifteenth day of each month, a wine tax report of all wine sold, delivered, or imported into this state during the preceding calendar month. Payment of the required wine excise tax due pursuant to the provisions of section 16a of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being §436.16a of the Michigan Compiled Laws, shall accompany the report.
(3) The wine excise tax report submitted pursuant to subrule (2) of this rule by an outstate seller of wine located outside of this state shall include all of the following information:
    (a) The total sales, deliveries, and importations of wine made into this state during the period covered by the report.
    (b) The total amount of the wine excise tax due.
    (c) The date upon which each shipment of wine was made.
    (d) The name and address of the licensed wholesaler of wine who received each shipment of wine.
    (e) The invoice number of each shipment of wine.
    (f) The quantity and container size of each shipment of wine.

(4) The wine excise tax report submitted pursuant to subrule (2) of this rule by an outstate seller of wine located in this state shall include the total purchases, importations, and deliveries of wine received by the outstate seller of wine during the period covered by the report and the total amount of the wine excise tax due. One of the following documents shall be submitted with the wine tax report:
    (a) A copy of each invoice, debit memo, or credit memo for each importation or delivery of wine received from a foreign supplier or manufacturer of wine located outside of this state during the preceding calendar month.
    (b) A copy of each document issued to the outstate seller of wine by the United States customs service for each withdrawal of wine from bond which occurred during the preceding calendar month.

History: 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; 1989 MR 9, Eff. Oct. 4, 1989.

R 436.1726 Price schedule; quantity discounts prohibited.

Rule 26.

(1) A manufacturer or wholesaler shall file with the commission in Lansing, before January 1, April 1, July 1, and October 1 of each year, a schedule of the net cash prices to retail licensees for all wine by kind, type, size, and brand.
(2) The prices filed shall not be changed during a quarterly period, unless approved by a written order of the commission. Approval for a price change shall not be granted for periods of less than 14 consecutive calendar days in duration.
(3) A manufacturer or wholesaler shall not charge a retail licensee any fee in addition to the net cash prices filed in subrule (1) except for a split case fee. If a manufacturer or wholesaler charges a split case fee to a retail licensee, such a fee shall be at the same per unit rate, shall be nondiscriminatory, and shall not be based on a sliding scale.
(4) A manufacturer or wholesaler shall not sell wine at a quantity discount.

History: 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; 1979 ACS 14, Eff. Apr. 7, 1983.

R 436.1727 Records.

Rule 27.

(1) The production and sales records of the manufacturer shall be maintained in order and available for inspection for the 4 most recent years.
(2) A wholesaler of wine shall maintain records of its purchases and sales of alcoholic liquor. The records shall be maintained and available for inspection for the 4 most recent years.
(3) A manufacturer or wholesaler of wine shall maintain complete records of the expenses of their licensed salesmen and representatives and complete records of the total compensation paid to their licensed salesmen and representatives. These records shall be maintained and available for inspection for the 4 most recent years.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC.

R 436.1728 Inspection; analysis; enforcement.

Rule 28.

(1) The books, records and premises of all licensees shall be available to the commission representative at all times. The licensees shall give any assistance and provide the facilities required for the inspection and analysis.
(2) The commission may demand a sample of any wine shipped into this state and offered for sale or sold for analytical and inspection purposes.
(3) The commission reserves the right to confiscate wine or other alcoholic beverage unless the beverage complies with these rules and the act. The wine confiscated shall be subject to disposition by order of the commission.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC.

R 436.1731 Rescinded.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1979 AC;- Rescinded 2000 MR 3, Eff. March 20, 2000.

R 436.1735 Prohibited acts; penalties.

Rule 35.

(1) A licensee shall not fail, neglect, or refuse to submit a report required by these rules or submit a false or incomplete report required by these rules.
(2) A licensee shall not refuse to permit a commission representative to examine the wine books, records, invoices, or other papers kept by the licensee in regard to the licensed business.
(3) A licensee shall not falsely label a container in which wine is placed for sale, use or give a false or fictitious address in an application or form required by these rules, or otherwise make a material misrepresentation in an application, record, or report.
(4) A licensee shall not engage in tied-in sales of beer, wine, or beer and wine.
(5) Bottled wine or wine containers shall not be returned to a wholesaler or manufacturer, except as provided by written order of the commission.
(6) A wine room maintained by a manufacturer, as defined in Section 109(1) of Act No. 58 of the Public Acts of 1998, being §436.1109(1) of the Michigan Compiled Laws, for dispensing or serving alcoholic beverages shall be closed to the public at 2 a.m. daily and shall not open before 7 a.m. the following day or before noon on Sunday.

History: 1954 ACS 64, Eff. Sept. 1, 1970; 1954 ACS 89, Eff. Oct. 2, 1976; 1979 AC; 1985 MR 4, Eff. May 10, 1985;- 2000 MR 3, Eff. March 20, 2000.

R 436.1749 Rescissions.

Rule 49.

The following rules are rescinded:

(a) Rule 19 of the rules entitled "Retail Licensees Selling Alcoholic Beverages for Consumption on the Premises," being R 436.19 of the Michigan Administrative Code, and appearing on page 5306 of the 1954 volume of the Code.
(b) Rule 15 of the rules entitled "Retail Licensees Selling Beer and Wine for Consumption off the Premises," being R 436.65 of the Michigan Administrative Code, and appearing on page 5310 of the 1954 volume of the Code.
(c) Rules entitled "Manufacture, Importation, Transportation, Standards of Identity and Quality, Labeling, Possession and Sale of Wines," being R 436.251 to R 436.422 of the Michigan Administrative Code, and appearing on pages 5333 to 5370 of the 1954 volume of the Code.

History: 1954 ACS 64, Eff. Sept. 1, 1970, 1979 AC.

SPIRITS

(By authority conferred on the liquor control commission by sections 215(1) and 301 of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) and 436.1301 of the Michigan Compiled Laws)

R 436.1801 Definitions.

Rule 1.

The terms defined in the Michigan liquor control act and the commission rules have the same meaning when used in these rules.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1802 Authorized distribution agents; generally.

Rule 2.

(1) As used in this rule,"authorized distribution agent" means a person who has entered into a contractual relationship with 1 or more manufacturers or suppliers of spirits or with another authorized distribution agent for warehousing or distribution, or both, of spirits and who has been certified, in writing, by the commission, to act as the commission's agent for the warehousing and distribution of spirits to retail licensees of the commission.
(2) A person shall apply for certification as an authorized distribution agent to the commission in Lansing on forms, and in the manner, approved by the commission.
(3) An applicant for certification as an authorized distribution agent shall provide both of the following to the commission:
    (a) A technical plan for the importation, transportation, warehousing, and delivery of spirits in this state.
    (b) Any information or documentation required by the commission relating to the honesty and integrity of any applicant or any principal in the corporation, company, association, limited liability company, or partnership applying for certification as an authorized distribution agent.
(4) An authorized distribution agent or prospective authorized distribution agent shall maintain, and make available to the commission or its representative upon being given notice, any contract or written agreement or proposed contract or written agreement that the authorized distribution agent or prospective authorized distribution agent may have with a manufacturer, supplier of spirits, or other authorized distribution agent for the importation, warehousing, delivery, or sale of spirits in this state.
(5) An authorized distribution agent shall maintain an adequate physical plant and proper equipment to perform the functions for which the authorized distribution agent is certified.
(6) The commission may inspect, during normal business hours, any facility or equipment used in conjunction with the business of an authorized distribution agent or applicant for certification as an authorized distribution agent.
(7) An authorized distribution agent or prospective authorized distribution agent shall make available, for inspection by the commission and its representatives, all financial and accounting records pertinent to the operation of the authorized distribution agent or prospective authorized distribution agent.
(8) An authorized distribution agent shall maintain, at its expense, insurance approved by the commission to protect against claims resulting from business operations or activities, including insurance on alcoholic beverages in storage or transit.
(9) An authorized distribution agent shall obtain and maintain a blanket bond payable to the state of Michigan in an amount equal to the risk of loss to the state as determined by the commission.
(10) An authorized distribution agent shall not have a direct or indirect interest in a retail alcoholic beverage license issued by the state of Michigan as enumerated in section 537 of Act No. 58 of the Public Acts of 1998, as amended, being §436.1537 of the Michigan Compiled Laws.
(11) An authorized distribution agent may not subcontract any of the business functions or activities specified in the agent's contract or agreement with the manufacturer or supplier of spirits without the prior written consent of the commission and certification of the subcontractor as an authorized distribution agent of the commission.

(12) The commission may rescind the certification of an authorized distribution agent who fails to comply with any and all federal, state, or local codes, laws, ordinances, rules, or regulations applicable to the agent's operations or fails to comply with Act No. 58 of the Public Acts of 1998, as amended, being §436.1101 et seq. of the Michigan Compiled Laws, commission rules, certification requirements, or commission order, including an order that establishes further business operating procedures for authorized distribution agents.
(13) Certification of an authorized distribution agent shall terminate automatically and without any act of the commission if the contract or agreement between the authorized distribution agent and the manufacturer or supplier of spirits or another authorized distribution agent expires or is terminated. Certification shall also terminate automatically upon modification of the system of warehousing and distribution of spirits by the legislature or the commission that eliminates the need for the authorized distribution agent certification.
(14) The commission may, by order, establish further business operating procedures for authorized distribution agents relative to the wholesaling and distribution of spirits.

HISTORY: 1996 MR 8, Eff. Sept. 11, 1996;- 2000 MR 3, Eff. March 20, 2000.

R 436.1803 Building and health laws and ordinances.

Rule 3.

A manufacturer of spirits shall comply with all state and local building and health laws and ordinances.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1805 Equipment.

Rule 5.

A manufacturer of spirits shall possess the necessary equipment for a satisfactory operation which shall be maintained in good working order and in a sanitary condition. The commission may establish specific equipment requirements by written order.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1807 Agricultural product compliance with law.

Rule 7.

Agriculture products processed by a manufacturer of spirits shall comply with state laws and rules of the department of agriculture.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1809 Sellers of alcohol.

Rule 9.

(1) A seller of alcohol license is required for the sale of alcohol in this state.
(2) A seller of alcohol license shall be issued, pursuant to the act and commission rules, to the following:
    (a) A person who is the holder of the required basic permit issued under the federal alcohol administration act.
    (b) A person who has paid the annual license fee and furnished the surety bond set by written order of the commission.
(3) A seller of alcohol licensee may sell an unlimited quantity of alcohol to the following:
    (a) A licensed distiller, rectifier or manufacturer of wine, for fortifying and blending purposes.
    (b) A licensed industrial manufacturer for use in manufacturing products for nonbeverage purposes.
(4) A seller of alcohol licensee may sell a limited quantity of alcohol to persons holding a federal tax free alcohol permit, such quantity to be set by written order of the commission.
(5) A shipment into this state from a seller of alcohol licensee shall have a release from the commission.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1811 Industrial manufacturers.

Rule 11.

(1) An industrial manufacturer license is required to secure alcohol and bulk alcoholic liquors for exclusive use in manufacturing products for non-beverage purposes.
(2) An industrial manufacturer licensee shall be issued, pursuant to the act and commission rules, to the following:
    (a) A person who is the holder of the required basic permit issued under the federal alcohol administration act.
    (b) A person who has paid the annual license fee and furnished the surety bond set by written order of the commission.
(3) An industrial manufacturer license shall buy alcohol only from the commission or from a licensee of the commission.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1813 Limited alcohol buyers.

Rule 13.

(1) A limited alcohol buyer license is required to secure alcohol for medicinal, mechanical, chemical or scientific purposes.
(2) A limited alcohol buyer license shall be issued, pursuant to the act and commission rules, to a person who has paid the annual fee set by written order of the commission.
(3) A limited alcohol buyer licensee shall buy alcohol only from the commission or from a licensee of the commission.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1815 Transportation.

Rule 15.

Railroads, steamship lines, express companies, and common carriers of other transporting companies are prohibited from accepting or delivering spirits to any person in this state except in accordance with the following:

(a) A copy of a release approved by a representative of the commission shall accompany the bill of lading for shipments of spirits made to a person or licensee in this state.
(b) A release is not required when bottled spirits are shipped with a bill of lading addressed to or in care of the commission.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1817 Warehouse receipts.

Rule 17.

A person shall not sell, offer for sale or in any manner assign or transfer in this state warehouse receipts for spirits, wherever the spirits are located, except as follows:

(a) An isolated transaction in which a warehouse receipt for spirits is sold, offered for sale or delivered by a bona fide owner or pledgee thereof, such sale or offer for sale or delivery not being made in the course of repeated or successive transactions of a like character by the owner or pledgee, and the owner or pledgee not being a dealer or issuer or salesman of such warehouse receipts.
(b) A sale of warehouse receipts for spirits by a manufacturer.
(c) A sale made to a bank, trust company, insurance company, or broker or dealer in warehouse receipts for spirits.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1819 Prohibited acts by licensees.

Rule 19.

(1) A licensee shall not fail, neglect or refuse to make a report required by these rules or refuse to permit commission representatives to examine his books, federal tax stamps, records, invoices or other papers pertaining thereto, or any stock of spirits in his possession or custody, or make an incomplete, false or fraudulent report or do anything to avoid a full disclosure of the amount of spirits subject to tax.

(2) A licensee shall not falsely label a container in which spirits are placed for sale, or use or give a false or fictitious name, or use or give a false or fictitious address in an application or form required by these rules, or otherwise commit a fraud in an application, record or report.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1821 Damaged goods.

Rule 21.

No rebates, refunds or adjustments on broken containers, damaged goods, or for other reasons, shall be made by a licensee to any other licensee except by written order of the commission.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1823 Rescissions.

Rule 23.

The following rules are rescinded:

(a) The rules entitled "Rules and Regulations Governing Vendors and Agents Engaged in the Promotion of the Sale of Distilled Spirits in the State of Michigan," being R 436.131 to R 436.141 of the Michigan Administrative Code, and appearing on page 5319 of the 1954 volume of the Code.

(b) Rules entitled "Regulations for the Sale and Control of Alcohol, Spirits, Cologne Spirits, Whiskies, Brandies, High Wines, Low Wines for Beverage, Nonbeverage, Industrial, Medicinal, Chemical, Scientific and Tax Free Purposes," being R 436.431 to R 436.439 and R 436.450 of the Michigan Administrative Code, and appearing on pages 5371 to 5375 of the 1954 volume of the Code.

(c) Rule 6 of the rules entitled "Wines," being R 436.1706 of the Michigan Administrative Code and appearing on page 5788 of the 1970-71 Annual Supplements to the Code.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1825 Adoption by reference of federal standards of identity for spirits.

Rule 25.

The federal standards of identity, published at 27 C.F.R. part 5, subpart C, §§5.21 to 5.23, of 1935, as amended, are adopted by reference in these rules as the standards of identity for the classes and types of bottled spirits. The standards may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, at a cost at the time of adoption of these rules of $49.00, or may be obtained from the Liquor Control Commission, Department of Consumer and Industry Services, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $55.00 each. The commission may establish other standards by written order.

History: 2000 MR 3, Eff. March 20, 2000.

R 436.1827 Adoption by reference of federal distilled spirit regulations.

Rule 27.

A manufacturer of spirits shall manufacture spirits under the federal distilled spirit regulations published at 27 C.F.R. part 19, §§19.1 to 19.792, of 1935, as amended, which are adopted in these rules by reference. Copies of the adopted provisions may be obtained from the Superintendent of Documents, United States

Government Printing Office, Washington, DC 20402, at a cost as of the time of adoption of these rules of $49.00. Copies of these provisions may also be obtained from the Liquor Control Commission, Department of Consumer and Industry Services, Secondary Complex, 7150 Harris Drive, P.O. Box 30005, Lansing, Michigan 48909, at a cost as of the time of adoption of these rules of $55.00 each.

History: 2000 MR 3, Eff. March 20, 2000.

R 436.1829 Labels and advertising.

Rule 29.

(1) The sale of spirits is prohibited in this state unless all of the following provisions are complied with:
  (a) The spirit is packaged, marked, branded, and labeled in accordance with these rules.
  (b) The spirit label truthfully describes the contents of the container in accordance with these rules and the federal distilled spirit regulations published at 27 C.F.R. part 5, subpart C, of 1935, as amended, which are adopted by reference in R 436.1825.
  (c) A vendor of spirits shall furnish proof upon request that a valid certificate of approval for the label has been obtained and is unrevoked under the federal labeling requirements at 27 C.F.R. part 5, subpart C, of 1935, as amended, which are adopted by reference in R 436.1825.
  (d) The commission has issued a registration number of approval for the spirits.

(2) The commission reserves the right to disapprove any spirit label submitted for registration which is deemed to promote violence, racism, sexism, intemperance, or intoxication or to be detrimental to the health, safety, or welfare of the general public.

History: 2000 MR 3, Eff. March 20, 2000.

VENDOR REPRESENTATIVE AND SALESMAN

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1851 Rescinded.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC; rescinded 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1853 Licenses.

Rule 53.

(1) A vendor of spirits, manufacturer of beer, manufacturer of wine, outstate seller of beer, outstate seller of wine, or wholesaler shall not employ a person to sell, deliver, promote, or otherwise assist in the sale of, alcoholic liquor in this state unless the person is licensed by the commission as a vendor representative or salesperson and issued an identification card.
(2) The commission shall set the license fee for a vendor representative or salesperson by written order. A license is renewable on May 1, 1975, and every 3 years thereafter.
(3) The commission shall set the license fee for a broker by written order. A license fee for a broker shall be the same as for a salesperson license.
(4) A person shall not sell alcoholic liquor to the commission unless represented by a licensed vendor representative.
(5) A vendor representative shall obtain a separate license for each vendor of spirits represented.
(6) A person shall be not less than 18 years of age before being issued a license.
(7) This rule does not require a driver helper to be licensed as a salesperson if the driver helper is accompanied by a licensed salesperson and is assisting the licensed salesperson only in the delivery of alcoholic beverage product.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC; 1979 ACS 11, Eff. June 30, 1982;- 2000 MR 3, Eff. March 20, 2000.

R 436.1855 Identification cards.

Rule 55.

(1) A vendor representative or salesman shall show his commission identification card upon request of a commission representative or law enforcement officer.
(2) A vendor representative or salesman shall show his commission identification card upon request before offering for sale or selling alcoholic liquor to a retail licensee.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1857 Common carriers.

Rule 57.

A person employed by a common carrier is not required to be licensed under these rules.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1859 Prohibited acts.

Rule 59.

(1) A vendor representative, salesperson, or driver helper shall not do any of the following::
    (a) Grant, allow, pay, or rebate cash or any other thing of value to a licensee or an agent, clerk, or employee of a licensee, except upon written order of the commission.
    (b) Purchase or deliver spirits to retail licensees, except for a salesperson or driver helper who delivers spirits in the normal course of his or her duties for an authorized distribution agent.
    (c) Deliver beer or wine to retail licensees in vehicles not approved by the commission.
    (d) Be employed by a retail licensee on a paid or any other basis.
    (e) Furnish entertainment or a gratuity of any kind to commission employees. The word "entertainment" does not include normal business meals.

(2) A licensee employed to deliver alcoholic liquor shall not consume alcoholic liquor while on duty or in the course of employment.
(3) A vendor representative or salesperson shall not advise a licensee on commission rules or the liquor control code, being Act No. 58 of the Public Acts of 1998, as amended, being §436.1101 et seq. of the Michigan Compiled Laws.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC;- 2000 MR 3, Eff. March 20, 2000.

R 436.1861 Promotions.

Rule 61.

(1) A brewer, a vendor of spirits, a wine maker, an outstate seller of beer, an outstate seller of wine, or a licensed wholesaler of beer or wine shall not do either of the following:
    (a) Participate in or conduct any event, contest, activity, or undertaking on the campus of any 2- or 4-year college or university located in this state which is designed to promote the sale or consumption of any alcoholic liquor.
    (b) Participate in or conduct any event, contest, activity, or undertaking off the campus of any 2- or 4-year college or university located in this state if the event, contest, activity, or undertaking is organized or sponsored by any student group which has a majority of members who are under the legal age for consumption of alcoholic liquor.
(2) Notwithstanding the provisions of subrule (1) of this rule, a brewer, a vendor of spirits, a wine maker, an outstate seller of beer, an outstate seller of wine, or a licensed wholesaler of beer or wine may do any of the following:
    (a) Advertise in any newspaper or periodical published or circulated on the campus of a 2- or 4-year college or university located in this state if such advertising is done in accordance with the provisions of R 436.1301 to R 436.1339.
    (b) Make a philanthropic gift to the governing body of a 2- or 4-year college or university located in this state if such gift does not include alcoholic liquor and is not contingent upon the promotion or advertising of any brand of alcoholic liquor.
    (c) Participate in a course offered by any 2- or 4-year college or university located in this state if the course is offered in an academic building of the 2- or 4-year college or university and is under the supervision of a faculty member.
    (d) Participate in, sponsor, contribute to, or promote any organization or program having as its purpose the dissemination of information concerning alcohol awareness or responsible consumption of alcoholic liquor or which is involved in either research or treatment related to the use or abuse of alcoholic liquor if such participation has the prior approval of both the commission and the governing body, or its designee, of the 2- or 4-year college or university located in this state at which the participation is to take place.
    (e) Provide financial assistance to a group or organization conducting an event, contest, activity, or undertaking held entirely or in part on the campus of any 2- or 4-year college or university located in this state if such financial assistance has the prior approval of both the commission and the governing body, or its designee, of the college or university on whose campus the event, contest, activity, or undertaking is to take place. A group or organization which receives financial assistance may acknowledge the source of the financial assistance.
(3) A brewer, a vendor of spirits, a wine maker, an outstate seller of beer, an outstate seller of wine, or a licensed wholesaler of beer or wine shall not hire, or cause to be hired, any person whose duty or responsibility it is to promote, market, or encourage the use, sale, or consumption of alcoholic liquor on the campus of, or by the students of, any 2- or 4-year college or university located in this state. However, a brewer, a vendor of spirits, a wine maker, an outstate seller of beer, or an outstate seller of wine may hire a person, who shall be licensed by the commission, for the purpose of representing that brewer, vendor of spirits, wine maker, outstate seller of beer, or outstate seller of wine in its dealings with any group or organization affiliated with and recognized by a 2- or 4-year college or university or with the governing body, or its designee, to make the arrangements necessary to accomplish those activities permitted by subrule (2) of this rule.
(4) This rule shall not prohibit a licensed wholesaler of beer or wine from making a sale or delivery of beer or wine to a licensee located on the campus of a 2- or 4-year college or university.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC; 1985 MR 12, Eff. Jan. 1, 1986.

R 436.1863 Samples.

Rule 63.

(1) A sample of alcoholic liquor shall have affixed on a separate label or on the commercial label the word "Sample" at least 2 inch high.
(2) Only 1 open sample bottle or can of alcoholic liquor may be given to a retail licensee for his personal sampling.
(3) A vendor of spirits, manufacturer of beer, manufacturer of wine, outstate seller of wine, outstate seller of beer, vendor representative, salesman or other licensees shall not assist in the violation of the liquor control act or commission rules.

History: 1954 ACS 83, Eff. May 2, 1975; 1979 AC.

R 436.1865 Expenses and expense records.

Rule 65.

(1) A vendor representative and salesperson of a vendor of spirits, manufacturer of beer, manufacturer of wine, outstate seller of beer, outstate seller of wine or wholesaler shall maintain an accurate record of expenditures for each call on a retail licensee. These records shall be maintained for 4 years and be available for commission inspection.
(2) (2) A vendor representative or salesperson of spirits or wine, for promotional purposes, may purchase 1 drink for each customer of an on-premises retail licensee only. The drink purchased shall be of the brand represented by the vendor representative or salesperson.
(3) A vendor representative or salesperson of a manufacturer of beer, a wholesaler of beer or an outstate seller of beer, for promotional purposes, may purchase 1 drink for each customer of an on-premises retail licensee subject to a total spending limit of $50.00 per day. The drinks purchased shall be of the brand represented by the vendor representative or salesperson.
(4) A vendor representative or salesperson of a manufacturer of beer, a wholesaler of beer or an outstate seller of beer shall not purchase drinks, as described in subrule (3) of this rule, more than twice per month at the same on-premises retail licensed location.
(5) A licensee employed to deliver alcoholic liquor shall not purchase drinks of alcoholic liquors for a retail licensee while on duty or in the course of employment.

History: 1979 AC; 2010 MR 8, Eff. Apr. 22, 2010.

R 436.1869 Rescissions.

Rule 69.

The rules of the commission entitled "Rules and Regulations Governing the Relationship between Licensed Manufacturers, Wholesalers of Alcoholic Liquors, their Sales Representatives and Retail Licensees," being R 436.521 to R 436.534, R 436.549 to R 436.555, R 436.558, R 436.560 and R 436.570 of the Michigan Administrative Code and appearing on pages 5383 to 5384 and 5386 to 5388 of the 1954 volume of the Code are rescinded.

History: 1954 ACS 83; Eff. May 2, 1975; 1979 AC.

HEARING AND APPEAL PRACTICE

(By authority conferred on the liquor control commission by section 215(1) of 1998 PA 58, MCL 436.1215(1), section 230 of 1965 PA 380, MCL 16.330, and section 33 of 1969 PA 306, MCL 24.233)

R 436.1901 Definitions.

Rule 1.

(1) As used in these rules:
   (a) "Act" means 1998 PA 58, MCL 436.1101 et seq.
   (b) Duly authorized agent" means a person designated by the chairperson pursuant to sections 903(3) and (4) of the act to hear violation cases.
(2) The terms defined in the act and in the general rules of the commission have the same meaning when used in these rules.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1903 Hearings; transcripts.

Rule 3.

(1) All hearings shall be open to the public.
(2) A copy of the transcript of the testimony taken at a hearing before the commission shall be available upon written request to the commission and payment of the commission's prescribed fees which shall be set by written order of the commission.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC.

R 436.1905 Violations; violation report; complaint; notice of hearing.

Rule 5.

(1) Alleged violations of the act or commission rules shall be stated on a violation report form and shall be submitted to the executive services division of the commission.
(2) A complaint specifying the particular section of the act or commission rules allegedly violated by the licensee may be prepared for the licensing and enforcement division at the direction of an assistant attorney general.
(3) Each complaint shall be assigned a number which shall be placed on all papers filed in the proceedings.
(4) The complaint shall be served by the executive services division on the licensee in person or by mail to the licensed address not less than 20 days before the scheduled hearing date. The licensed address shall be the address of the licensed establishment unless the licensee has submitted, in writing, to the commission, a different address for the receipt of mail. The complaint shall advise the licensee of the licensee's right to request a copy of the violation report.
(5) Notice of hearing on a complaint which indicates the date scheduled for the hearing shall be served by executive services division on the licensee at the address of the licensee as specified in subrule (4) of this rule not less than 10 days before the date of hearing.
(6) The hearing notice shall advise the licensee of the licensee's right to be represented by an attorney at the hearing.
(7) The complaint and notice of hearing on the complaint shall be substantially in accordance with forms prescribed by the commission.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1907 Waiver of hearing; acknowledgment of violation.

Rule 7.

(1) A licensee who is cited in a complaint for an alleged violation of the act or commission rules may waive the right to a hearing on the complaint and acknowledge the violation or violations specified in the complaint.
(2) The waiver and acknowledgment constitute an authorization to the hearing commissioner or duly authorized agent to enter, without a hearing, an order which the hearing commissioner or duly authorized agent deems appropriate.

(3) The waiver of the right to hearing and acknowledgment of the violation shall be on the reverse side of the complaint form and as prescribed by the commission. The waiver and acknowledgment form shall provide that the licensee may explain, on a separate sheet of paper, any mitigating circumstances which the licensee believes should be considered in disposing of the violation.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1909 Violation hearing.

Rule 9.

(1) A hearing commissioner or duly authorized agent designated by the chairperson shall conduct the violation hearing on the complaint. Findings of fact, conclusions of law, and an order shall be mailed to the licensee and the licensee's attorney of record within 45 days after the completion of the hearing, except upon written order of the commission extending the time period.
(2) In violation hearings where the licensee is not represented by an attorney-at-law, the hearing commissioner or duly authorized agent designated by the chairperson shall open the hearing by advising the licensee of both of the following rights:
    (a) The right to present evidence.
    (b) The right to cross-examine commission witnesses.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 1988 MR 1, Eff. Jan. 27, 1988.

R 436.1910 Violation rehearing.

Rule 10.

(1) After a violation hearing, a licensee who alleges new evidence may request a rehearing before the hearing commissioner or duly authorized agent who issued the original order. A request for a rehearing shall be submitted in writing to the commission in Lansing within 20 days after the date of the mailing of the original order.
(2) If a request for a rehearing in a violation matter is granted by the hearing commissioner or duly authorized agent, then the licensee or the licensee's attorney of record shall be notified of the rehearing not less than 10 days before the date of the rehearing.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1911 Costs.

Rule 11.

If the hearing commissioner renders a decision that a violation occurred, then the hearing commissioner or duly authorized agent may assess actual costs of the proceeding against the licensee.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1913 Personal appearance of licensee.

Rule 13.

(1) At least 1 of the following entities shall personally appear at a violation hearing, as applicable:
    (a) The individual licensee.
    (b) A co-licensee.
    (c) A partner of a partnership licensee.
    (d) An officer of a corporate licensee.
    (e) A member or manager of a limited liability company.
(2) Subrule (1) of this rule may be waived by the hearing commissioner or duly authorized agent if a formal appearance has been filed by an attorney-at-law in good standing in this state.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 1994 MR 12, Eff. Dec. 16. 1995; 2004 MR 6, Eff. March 24, 2004.

R 436.1915 Failure to personally appear at violation hearings.

Rule 15.

(1) If a proper appearance by a licensee is not made at a scheduled violation hearing in accordance with R 436.1913 then the presiding hearing commissioner or duly authorized agent may do any of the following:
    (a) Grant an adjournment without testimony being taken.
    (b) Order testimony taken and then adjourn the proceedings until rescheduled.
    (c) Order the immediate suspension of the license until a proper appearance is made at a rescheduled hearing.
    (d) Issue a decision of default.
    (e) Proceed with the hearing and render a decision.
(2) If an adjournment is granted after testimony is taken and the licensee, at a rescheduled hearing, desires to cross-examine the commission witnesses who have already testified, then the commission witnesses shall be produced by, and at the expense of, the licensee under the provisions of the commission rules.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1917 Violation appeal hearings; appeal board.

Rule 17.

(1) A licensee aggrieved by an order of a hearing commissioner or duly authorized agent as a result of a complaint may request a violation appeal hearing which may be granted at the discretion of the appeal board.
(2) The violation appeal board consists of the 3 administrative commissioners who shall conduct violation appeal hearings.
(3) A request for a violation appeal hearing shall identify the date of the violation hearing, the order which was issued as a result of the violation hearing, and the licensee's reasons for requesting an appeal.
(4) The request for a violation appeal hearing shall consist of 4 copies which shall be sent, by certified mail, to the Lansing office of the commission accompanied by a check or money order for $25.00 within 20 days from the date of the mailing of the order from which the appeal is taken.
(5) An appeal based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the grounds for claiming error.
(6) A request for a violation appeal hearing, which is sent to the commission after 20 days from the date of the mailing of the order from which the appeal is taken, may be granted by the commission if the delay is not due to the culpable negligence of the licensee appellant.
(7) An answer to a request for an appeal from a violation may be prepared by an assistant attorney general before the date of the appeal hearing.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1919 Appeal notice.

Rule 19.

If a request for a violation appeal hearing is granted, the appeal board shall notify the licensee, or the licensee's attorney of record, of the appeal hearing not less than 10 days prior to the date of the appeal hearing.

History: 1954 ACS 90; Eff. Jan. 25, 1977; 1979 AC.

R 436.1921 Violation appeal hearings; burden of proceeding.

Rule 21.

(1) Violation appeal hearings which are granted by the appeal board shall be limited to the official record of the original hearing.
(2) In violation appeal hearings, the licensee has the burden of proceeding with reasons and arguments for revision or reversal of the order of the hearing commissioner or duly authorized agent.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1923 Violation appeal hearing decision.

Rule 23.

(1) The decision of the appeal board on a violation appeal hearing shall be mailed to the licensee and the licensee's attorney of record within 30 days after the hearing, except upon written order of the commission extending the time period.
(2) The decision of the appeal board shall be in writing and shall do 1 of the following:
    (a) Affirm the order of the hearing commissioner or duly authorized agent.
    (b) Modify the order of the hearing commissioner or duly authorized agent.
    (c) Rescind the order of the hearing commissioner or duly authorized agent.
    (d) Remand the case back to the hearing commissioner or duly authorized agent who issued the original order.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1925 Hearings on matters other than violations.

Rule 25.

(1) The commission, on its own motion, may order a hearing on a matter within its jurisdiction.
(2) Applications for a license issued under the act or commission rules shall be reviewed by the administrative commissioners. If a license application is denied, then the aggrieved license applicant may request an appeal hearing, and the commission shall grant the hearing. The request shall be made to the Lansing office of the commission within 20 days from the date of the mailing of the decision of denial.
(3) The chairperson may designate 1 or more commissioners to hear matters other than a violation of the act or commission rules.
(4) In a hearing on matters other than a violation of the act or commission rules, the commission may determine which party has the burden of proceeding.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1927 Filing of papers.

Rule 27.

(1) All documents and papers pertaining to a hearing or appeal hearing shall be filed at the Lansing office of the commission.
(2) The presiding commissioner may allow papers to be filed at a hearing or appeal hearing.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC.

R 436.1929 Subpoena.

Rule 29.

(1) On written application, the commission or the authorized agent of the commission shall issue a subpoena requiring the attendance of witnesses at the time and place of hearing or appeal hearing. Subpoena and witness fees shall be set by written order of the commission.
(2) The application for subpoena shall indicate the name and address of the witness. The person requesting the issuance of the subpoena is responsible for the service of the subpoena.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC.

R 436.1931 Postponements; continuances.

Rule 31.

(1) Requests for postponements shall be made in writing not less than 2 working days before the violation hearing or appeal hearing date unless waived by a commissioner or duly authorized agent. The written request may be granted by a commissioner or a duly authorized agent of the commission.
(2) Requests for continuance for cause may be granted by the presiding commissioner or duly authorized agent at the hearing or appeal hearing.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC; 2004 MR 6, Eff. March 24, 2004.

R 436.1933 Attorney at law.

Rule 33.

In addition to the appearance required by R 436.1913, a licensee or an aggrieved license applicant may be represented at a hearing by a licensed attorney at law in good standing in this state. The attorney shall file a written appearance with the commission before or at the time of the hearing.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC.

R 436.1935 Rescissions.

Rule 35.

The following rules are rescinded:

(a) Rules entitled "Rules of Procedure on Appeal to the Appeal Board," being R 436.701 to R 436.711 of the Michigan Administrative Code and appearing on pages 1526 and 1527 of the 1960 Annual Supplement to the Code.

(b) Rules entitled "Rules of Practice and Hearing Procedure Upon Violations," being R 436.751 to R 436.767 of the Michigan Administrative Code and appearing on pages 1527 to 1531 of the 1960 Annual Supplement to the Code.

History: 1954 ACS 90, Eff. Jan. 25, 1977; 1979 AC.

CHURCH OR SCHOOL HEARINGS

(By authority conferred on the liquor control commission by sections 7 and 17a of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, and section 33 of Act No. 306 of the Public Acts of 1969, being §§436.7, 436.17a, and 24.233 of the Michigan Compiled Laws)

R 436.1951 "Act" defined.

Rule 1.

As used in these rules, "act" means 1998 P.A. 58, MCL 436.1101 et seq.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC; MR 10, Eff. May 30, 2003; MR11 2003.

R 436.1953 Notice of application and proposed location.

Rule 3.

If the commission determines through investigation that the proposed location of an applicant is within 500 feet of a church or school, as defined in section 107(5) or 111(8) of the act, the clergyman of the church or superintendent of the school shall be notified of the application and the proposed location if the applicant desires 1 of the following:

(a) A new license to sell alcoholic liquor for consumption on the premises or the transfer of location of an existing license to sell alcoholic liquor for consumption on the premises.
(b) A new specially designated distributor license or the transfer of location of an existing specially designated distributor license.
(c) A new specially designated merchant license in conjunction with a license to sell alcoholic liquor for consumption on the premises or the transfer of location of an existing specially designated merchant license in conjunction with a license to sell alcoholic liquor for consumption on the premises.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC;-MR 19, Eff. May 30, 2003; MR 11 2003.

R 436.1955 Filing of objection; copy to applicant; scheduling hearing.

Rule 5.

(1) If the church or school objects to the issuance or transfer of location of the license, then the governing body of the church or school, by resolution, shall file the specific written objections with the Lansing office of the commission within 15 days of receipt of notification, unless granted additional time by the commission.
(2) Upon receipt of the objections, the commission shall send a copy of the objections to the applicant.
(3) The commission shall schedule a hearing pursuant to section 503 of the act within a reasonable period of time after receipt of the objections, unless the governing body of the church or school notifies the commission in writing that the objections have been resolved by the applicant and are being withdrawn.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC;-MR 10, Eff. May 30, 2003.

R 436.1957 Notice of hearing; basis for conduct of hearing.

Rule 7.

(1) The governing body of the church or school and the applicant shall receive notice of the hearing not less than 7 days before it is held.
(2) The hearing shall be conducted on the basis of the objections filed by the church or school.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC.

R 436.1959 Burden of proceeding, closing arguments.

Rule 9.

(1) The commission may, in its discretion, determine which party will have the burden of proceeding. The representative of the church or school may make the final argument.

(2) The representative of the church or school shall be prepared to show that the church or school which is objecting meets the definition of section 107(5) or 111(8) of the act.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC;-MR 10 , Eff. May 30, 2003.

R 436.1961 Hearing; procedures; findings of fact and conclusions of law.

Rule 11.

(1) The hearing shall be conducted pursuant to the procedures established for a contested case in Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws.
(2) The commission shall make findings of fact and conclusions of law.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC.

R 436.1963 Granting of the waiver.

Rule 13.

The commission shall waive the provisions of section 503 of the act where the applicant shows by competent, material and substantial evidence that a waiver of section 503 would not adversely affect the operation of the church or school.

History: 1954 ACS 87, Eff. Apr. 16, 1976; 1979 AC;-MR 10, Eff. May 30, 2003.

DECLARATORY RULINGS

(By authority conferred on the liquor control commission by section 7 of Act No. 8 of the Public Acts of the Extra Session of 1933 and section 63 of Act No. 306 of the Public Acts of 1969, being §§436.7 and 24.263 of the Michigan Compiled Laws)

R 436.1971 Request for declaratory ruling; form; contents.

Rule 1.

(1) An interested person, hereinafter called a petitioner, who requests a declaratory ruling as to the applicability to an actual state of facts of a statute, rule, or order administered, promulgated, or issued by the commission shall do so in writing to the Lansing office of the commission.
(2) The written request shall contain the relevant and material facts, along with a reference to the statute, rule, or order applicable.

History: 1954 ACS 91, Eff. May 13, 1977; 1979 AC.

R 436.1973 Declaratory ruling; notice of issuance; request for information or arguments; hearing.

Rule 3.

(1) Upon receipt of a request for a declaratory ruling, the commission shall have 30 days within which to notify the petitioner if a declaratory ruling shall be issued.
(2) If the commission grants the request for a declaratory ruling, the commission:
    (a) May request more information from the petitioner.
    (b) May request information from other interested parties.
    (c) May request information from experts outside the commission.
    (d) May request oral or written arguments from interested parties.
    (e) May hold a hearing upon proper notice to all interested parties.
    (f) Shall issue its declaratory ruling within 90 days after the receipt of the initial request.

History: 1954 ACS 91, Eff. May 13, 1977; 1979 AC.

R 436.1975 Denial of request for declaratory ruling; reasons.

Rule 5.

If a request for a declaratory ruling is denied, the commission shall issue a concise written statement of its principal reasons for denial within 30 days of the denial.

History: 1954 ACS 91, Eff. May 13, 1977; 1979 AC.

FINANCIAL RESPONSIBILITY

(By authority conferred on the liquor control commission by sections 215(1) and 803 of 1998 P.A. 58, MCL 436.1215(1) and 436.1803)

R 436.2001 "Securities" defined.

Rule 1.

As used in these rules, "securities" means any of the following:

(a) Stocks or bonds registered by the securities and exchange commission or the office of financial and insurance services of the Michigan department of consumer and industry services which are offered for public sale in the state of Michigan and the values of which are regularly reported in a nationally recognized financial publication.
(b) Obligations of the United States, including bonds, notes, and bills.
(c) Obligations which are guaranteed fully as to principal and interest by the United States, except those requiring partial payment of principal.
(d) General obligations of the state of Michigan.
(e) Unlimited tax general obligation bonds of political subdivisions of the state which are payable directly from the levying of general ad valorem taxes without limitation as to rate or amount.
(f) An irrevocable trust which contains a guaranteed minimum corpus of $50,000.00, which has as trustee a financial institution registered in this state, and which provides for the state of Michigan as first beneficiary and claimant of a distribution of up to $50,000.00 from the trust to satisfy judgments arising from liability under section 801 of 1998 P.A. 58, MCL 436.1801.
(g) An irrevocable letter of credit or a certificate of deposit issued by a bank, savings bank, savings and loan association, or credit union which is licensed to do business in this state and which is pledged to the state of Michigan as first claimant for distribution of up to $50,000.00 to satisfy judgments arising from liability under section 801 of 1998 P.A. 58, MCL 436,1801.

History: 1988 MR 11, Eff. Dec. 1, 1988;--MR 10, Eff. May 30, 2003.

R 436.2003 "Unencumbered securities" defined.

Rule 3.

As used in these rules, "unencumbered securities" means securities that are free and clear of all liens and obligations, including their use as collateral, and upon filing with the commission are without claims or liabilities to third parties.

History: 1988 MR 11, Eff. Dec. 1, 1988.

R 436.2005 Forms.

Rule 5.

Retail licensees shall submit proof of financial responsibility on forms provided or approved by the commission.

History: 1988 MR 11, Eff. Dec. 1, 1988.

R 436.2007 Unencumbered securities; maintenance of value.

Rule 7.

(1) Each retail licensee who provides to the commission cash or unencumbered securities as proof of financial responsibility shall maintain the value of the cash or unencumbered securities at not less than $50,000.00 during the entire period in which the license is in effect. Securities shall not be encumbered during any period in which they serve as proof of financial responsibility to the commission.
(2) The value of unencumbered securities shall be determined by the current market price as reported at the time of filing and thereafter in a nationally recognized financial publication or other reliable source as determined by the commission.

(3) If the market value of unencumbered securities provided to the commission as proof of financial responsibility falls below $50,000.00, the licensee shall immediately provide additional unencumbered securities or cash to the commission so as to restore, to not less than $50,000.00, the value of unencumbered securities and cash held by the commission. Failure to provide additional unencumbered securities or cash immediately shall result in the license being suspended until such time as additional unencumbered securities or cash has been provided to the commission.

History: 1988 MR 11, Eff. Dec. 1, 1988.

R 436.2009 Interest and dividends on cash and securities.

Rule 9.

Each retail licensee who deposits cash shall be entitled to payment of interest at the rate of 1% below the average interest rate earned by the state treasurer on short-term investments for each complete month that the cash is held by the commission. Interest payments shall be made quarterly. Any dividends or interest paid upon unencumbered securities and received by the commission shall be immediately transmitted to the licensee or licensee's agent.

History: 1988 MR 11, Eff. Dec. 1, 1988.

R 436.2011 Cash or unencumbered securities; payment of judgments.

Rule 11.

Cash or unencumbered securities which have been provided to the commission as proof of financial responsibility shall not be paid or released by the commission to any claimant to satisfy a judgment pursuant to section 801 of 1998 P.A. 58, MCL 436.1801, unless the commission receives a court order requiring the payment or release.

History: 1988 MR 11, Eff. Dec. 1, 1988;-MR 10, Eff. May 30, 2003.

R 436.2013 Cash or unencumbered securities; release.

Rule 13.

When the commission releases all or any portion of cash or unencumbered securities to a claimant, the retail licensee shall immediately provide additional cash or unencumbered securities to the commission so as to restore, to not less than $50,000.00, the total value of cash and unencumbered securities. If a licensee fails to provide additional cash or unencumbered securities, the license shall be suspended pursuant to the provisions of Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws, until such time as additional cash or unencumbered securities have been provided to the commission.

History: 1988 MR 11, Eff. Dec. 1, 1988.

R 436.2015 Cash or unencumbered securities; request for return.

Rule 15.

(1) Cash or unencumbered securities provided to the commission as proof of financial responsibility shall not be returned to the retail licensee unless either of the following conditions applies:
    (a) Two years have transpired since the date the license was transferred, revoked, cancelled, suspended, or placed in escrow with the commission.
    (b) Two years have transpired since the date the licensee provided another acceptable form of proof of financial responsibility.
(2) Notwithstanding subrule (1) of this rule, the commission shall not return cash or unencumbered securities provided by a retail licensee as proof of financial responsibility during the pendancy of any civil suit against the licensee alleging liability pursuant to section 801 of 1998 P.A. 58, MCL 436.1801, if the alleged liability occurred after April 1, 1988, but during the period in which the licensee had provided the cash or unencumbered securities as proof of financial responsibility.
(3) The commission shall not return, to any retail licensee, cash or unencumbered securities provided as proof of financial responsibility unless the retail licensee first certifies to the commission, in writing, that a civil suit is not pending against the licensee alleging liability pursuant to section 801 of 1998

P.A. 58, MCL 436.1801, during the period in which the licensee had provided the cash or unencumbered securities as proof of financial responsibility.

History: 1988 MR 11, Eff. Dec. 1, 1988;-MR 10, Eff. May 30, 2003.

R 436.2017 Failure to provide proof of financial responsibility.

Rule 17.

If at any time a retail licensee fails to maintain proof of financial responsibility as required by section 803 of 1998 P.A. 58, MCL 436.1803, the license shall be immediately suspended pursuant to the provisions of 1969 P.A. 306, MCL 24.201 et seq., until such time as the licensee provides to the commission proof of financial responsibility as required by section 803 of 1998 P.A. 58, MCL 436.1803.

History: 1988 MR 11, Eff. Dec. 1, 1988;-MR 10, Eff. May 30, 2003.

R 436.2019 Constant value bond; requirements.

Rule 19.

(1) A retail licensee who provides a constant value bond as proof of financial responsibility shall not cancel such bond, except upon 30 days' prior written notice to the commission. Unless new proof of financial responsibility is obtained by the retail licensee and delivered to the commission before the expiration of the 30-day period, the license of that licensee shall be suspended until such time as another acceptable proof of financial responsibility is provided to the commission.
(2) A surety company which has issued a constant value bond of not less than $50,000.00 as proof of financial responsibility shall notify the commission, in writing, not less than 30 days before termination or cancellation of the bond.

History: 1988 MR 11, Eff. Dec. 1, 1988.

R 436.2021 Failure to provide proof of financial responsibility; hearings; revocation.

Rule 21.

A retail license shall not be revoked or suspended without due process for failure to provide proof of financial responsibility, including an expedited hearing pursuant to the provisions to Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws. A retail license shall not be revoked or suspended because of the licensee's failure to provide proof of financial responsibility, if the proof had been subsequently provided before the commission's final revocation or suspension order.

History: 1988 MR 11, Eff. Dec. 1, 1988.

SIZE CLASSIFICATION RULES

(By authority conferred on the liquor control commission by section 3 of the Initiated Law of 1976, being §445.573 of the Michigan Compiled Laws)

R 445.1 Definitions.

Rule 1.

(1) As used in these rules "act" means the Initiated Law of 1976, being §445.571 et seq. of the Michigan Compiled Laws.
(2) The terms defined in the act have the same meaning when used in these rules, unless otherwise indicated.

History: 1954 ACS 97, Eff. Dec. 8, 1978; 1979 AC.

R 445.3 Size classifications.

Rule 3.

(1) The commission may certify beverage containers for beverages other than beer, ale, or other malt drink of whatever alcoholic content.
(2) The commission may certify beverage containers in 1 of the following size classifications: 7 oz.; 12 oz.; 16 oz.; 32 oz.; 64 oz.; 128 oz.; 2 liters.
(3) Additional size classifications may be certified if the beverage container is in compliance with section 2(7) and section 3(2), (3), and (4) of the act.

History: 1954 ACS 97, Eff. Dec. 8, 1978; 1979 AC.

CONVERSION CHART - EFFECTIVE APRIL 14, 1998

MI LIQUOR CONTROL ACT OF 1933 // MI LIQUOR CODE OF 1998
P.A. 8 OF 1933 // P.A. 58 OF 1998

NOTE: For the purpose of citing P.A. 58 of 1998, all sections of the new code will have 4 digits. This is accomplished by adding A1" before the section number in the enrolled bill for the first 9 chapters. Example: Section 101 in the enrolled bill becomes Section 1101; Section 901 becomes Section 1901, etc. Beginning with Chapter 10, the number A2" replaces the number A1" as the first digit in the series. Example: Section 1001 becomes Section 2001; Section 1207 becomes 2207, etc.

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