

**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.

*The People of the State of Michigan enact:*

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, powder, 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 that are fit for use for food purposes or 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 wine maker or a small wine maker licensed under this act to manufacture, rectify, or blend brandy only and no other spirit. The commission may approve a brandy manufacturer to sell brandy that 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 18,000 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;—Am. 2014, Act 353, Imd. Eff. Oct. 17, 2014.

#### **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 that 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 60,000 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 and to retailers as provided in section 203. In determining the 60,000-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 an individual 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 that contains 10% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that 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 manufacturing and labeling.

(7) "Mixed wine drink" means a drink or similar product marketed as a wine cooler that contains less than 7% alcohol by volume, consists of wine and plain, sparkling, or carbonated water, and contains 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 that 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 that 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 manufacturing and labeling.

(10) "Outstate seller of wine" means a person licensed by the commission to sell wine that 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, Imd. Eff. Nov. 17, 2010;—Am. 2014, Act 42, Imd. Eff. Mar. 25, 2014.

**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.

#### **436.1111 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, Imd. Eff. Nov. 17, 2010.

\*\*\*\*\* 436.1113 THIS SECTION IS REPEALED BY ACT 269 OF 2005 EFFECTIVE WHEN CONDITIONS APPLIED BY ENACTING SECTION 2(1) OF ACT 269 OF 2005 ARE MET: See compiler's note following section \*\*\*\*\*

#### **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, Imd. Eff. Nov. 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 note:** 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.added THIS ADDED SECTION IS EFFECTIVE WHEN CONDITIONS APPLIED BY ENACTING SECTION 2(2) OF ACT 269 OF 2005 ARE MET: See compiler's note following section \*\*\*\*\*

#### **436.1113a.added Additional definitions.**

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, Imd. Eff. Nov. 17, 2010.

**Compiler's note:** 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."

## CHAPTER 2

### **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; common carrier; verification that individual accepting delivery is 21 years of age or older; original purchase and importation into state of spirits for sale, use, storage, or distribution; requirements; exceptions; direct shipper license required; application; fee; violation; delivery of beer and wine to home or designated location of consumer; holder of specially designated merchant license; delivery or sale of beer, wine, or spirits by third**

**party facilitator; sale or delivery of beer by micro brewer to retailer; reports; retention of books, records, and documents; disclosure; definitions.**

Sec. 203. (1) Except as provided in this section and section 301, a person shall not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, 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 subsections (3), (12), (13), (14), (15), and (16), a retailer shall not deliver alcoholic liquor to a consumer in this state 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 this state'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 consumers in this state by passing through the 3-tier distribution system established under this act.

(3) For purposes of subsection (1), a retailer that holds a specially designated merchant license located in this state may use a common carrier to deliver wine to a consumer in this state. A retailer that uses a common carrier to deliver wine to a consumer under this subsection shall comply with all of the following:

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

(b) Comply with all laws of this state, including, but not limited to, the prohibition on sales to minors.

(c) 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 using an identification verification service. The person receiving and accepting the order on behalf of the retailer shall record the name, address, date of birth, and telephone number of the individual 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.

(d) On 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 retailer.

(e) 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 shall provide identification verifying his or her age and sign for the delivery.

(f) Place a label on the top panel of the shipping container containing 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.

(4) For purposes of subsection (1), a direct shipper may sell, deliver, or import wine to consumers in this state by means of any mail order, internet, telephone, computer, device, or other electronic means, or sell directly to a consumer on the winery premises. A direct shipper that sells, delivers, or imports wine to a consumer under this subsection shall 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. On the request of the department of treasury, a direct shipper shall furnish an affidavit to verify payment.

(c) Comply with all laws of this state, including, but not limited to, the prohibition on 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 using 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 individual 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) On 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 shall provide photo identification verifying his or her age and sign for the delivery.

(g) Place a label on the top panel of the shipping container containing 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. The direct shipper must have received a registration number of approval from the commission for any wine imported into this state. However, the registration number of approval from the commission is not required to be on the invoice or on the label of the wine that the direct shipper sells, delivers, or imports to a consumer in this state.

(h) Direct ship not more than 1,500 9-liter cases, or 13,500 liters in total, of wine in a calendar year to consumers in this state. 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.

(5) For a delivery of wine through the use of a common carrier under subsection (3), a person taking the order on behalf of the retailer shall comply with subsection (3)(b) to (f). For a sale, delivery, or importation of wine occurring by any means described in subsection (4), a person taking the order on behalf of the direct shipper shall comply with subsection (4)(c) to (g).

(6) A person that delivers the wine for a direct shipper under this section shall verify that the individual accepting delivery is 21 years of age or older and is the individual who placed the order or the designated recipient, is an individual 21 years of age or older 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 21 years of age or older, the delivery person shall return the wine to the direct shipper. A delivery person who returns wine to the direct shipper because the purchaser or designated recipient is not 21 years of age or older is not liable for any damages suffered by the purchaser or direct shipper.

(7) 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.

(8) This section does not apply to alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by an individual 21 years of age or older at the time of reentry into this state from without the territorial limits of the United States if the individual 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.

(9) An individual 21 years of age or older 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 individual's personal use, notwithstanding subsection (1).

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

(10) A direct shipper shall not sell, deliver, or import 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 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 of the United States Department of Treasury and a license to manufacture wine in its state of domicile.

(11) 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 must 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.

(12) A retailer that holds a specially designated merchant license, a brewpub, a micro brewer, or an out-of-state entity that is the substantial equivalent of a brewpub or micro brewer 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:

(a) The beer or wine, or both, is delivered by the retailer's, brewpub's, or micro brewer's employee.

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

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

(13) A retailer that holds a specially designated merchant license may use 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 if the delivery service is approved by the commission and agrees to verify that the individual accepting delivery of the beer and wine is at least 21 years of age.

(14) A retailer that holds a specially designated distributor license may deliver spirits to the home or other designated location of a consumer in this state if all of the following conditions are met:

(a) The spirits are delivered by the retailer's employee.

(b) The retailer or its employee who delivers the spirits verifies that the individual accepting delivery is at least 21 years of age.

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

(15) A retailer that holds a specially designated merchant license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of beer or wine to be delivered to the home or designated location of a consumer as provided in subsection (12) or this subsection, and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer that holds a specially designated merchant license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers beer or wine under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer or wine is at least 21 years of age.

(b) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and a third party facilitator service does not accept the same.

(d) The retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

(16) A retailer that holds a specially designated distributor license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of spirits to be delivered to the home or designated location of a consumer as provided in subsection (14) or this subsection, and a third party facilitator service may deliver spirits to a consumer on behalf of a retailer that holds a specially designated distributor license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers spirits under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the spirits is at least 21 years of age.

(b) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and a third

party facilitator service does not accept the same.

(d) The retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

(17) A third party facilitator service shall not deliver beer, wine, or spirits to a consumer under subsection (15) or (16), as applicable, and shall not facilitate the sale of beer, wine, or spirits under subsection (15) or (16), as applicable, unless it applies for and is granted a third party facilitator service license by the commission. The commission may charge a reasonable application fee, initial license fee, and annual license renewal fee. The commission shall establish a fee under this subsection by written order.

(18) If a third party facilitator service used by a retailer that holds a specially designated merchant or specially designated distributor license under subsection (15) or (16), as applicable, violates this section, the commission shall not treat the third party facilitator service's violation as a violation by the retailer.

(19) For purposes of subsection (1), a qualified micro brewer or an out-of-state entity that is the substantial equivalent of a qualified micro brewer may sell and deliver beer to a retailer in this state if all of the following conditions are met:

(a) The retailer is not located in a sales territory for which the qualified micro brewer has granted exclusive sales rights to a wholesaler under sections 401 and 403 for the sale of any brand or brands of beer produced by that micro brewer.

(b) The beer is sold and delivered by an employee of the qualified micro brewer, not an agent, and is transported and delivered using a vehicle owned by the qualified micro brewer.

(c) The qualified micro brewer is in compliance with applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act including, but not limited to, those requirements related to each of the following:

(i) Employees that sell and deliver beer to retailers.

(ii) Vehicles used to deliver beer to retailers.

(iii) Price schedules and temporary price reductions.

(20) A common carrier that carries or transports alcoholic liquor into this state to a person in this state shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

(a) The name and business address of the person that ships alcoholic liquor.

(b) The name and address of the recipient of alcoholic liquor.

(c) The weight of alcoholic liquor delivered to a consignee.

(d) The date of the delivery.

(21) A common carrier described in subsection (20) shall maintain the books, records, and documents supporting a report submitted under subsection (20) for 3 years unless the commission notifies the common carrier in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the common carrier shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the common carrier shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the carrier resides or does business.

(22) A third party facilitator service that delivers beer, wine, or spirits to a consumer under subsection (15) or (16), as applicable, shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

(a) The name and business address of the person that ships beer, wine, or spirits.

(b) The name and address of the recipient of beer, wine, or spirits.

(c) The weight of beer, wine, or spirits delivered to a consignee.

(d) The date of the delivery.

(23) A third party facilitator service shall maintain the books, records, and documents supporting a report submitted under subsection (22) for 3 years unless the commission notifies the third party facilitator service in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the third party facilitator service shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the third party facilitator service shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the third party facilitator service resides or does business.

(24) A report submitted under subsection (20) or (22) is subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(25) As used in this section:

(a) "Common carrier" means a company that transports goods, on reasonable request, on regular routes and at set rates.

(b) "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.

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

(d) "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.

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

(f) "Consumer" means an individual who purchases beer, wine, or spirits for personal consumption and not for resale.

(g) "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.

(h) "Diligent inquiry" means a diligent good faith effort to determine the age of an individual, that 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 individual.

(i) "Direct shipper" means a person who sells, delivers, or imports 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.

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

(k) "Mobile application" means a specialized software program downloaded onto a wireless communication device.

(l) "Qualified micro brewer" means a micro brewer that produces in total less than 1,000 barrels of beer per year. In determining the 1,000-barrel threshold, all brands and labels of a micro brewer, whether brewed in this state or outside this state, must be combined.

(m) "Third party facilitator service" means a person licensed by the commission to do any of the following:

(i) Facilitate the sale of beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(ii) Facilitate the sale of spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

(iii) Deliver beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(iv) Deliver spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

**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;—Am. 2014, Act 50, Imd. Eff. Mar. 25, 2014;—Am. 2016, Act 520, Eff. Mar. 29, 2017.

**Compiler's note:** 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 Warehousing and delivery of spirits; authorized distribution agent.**

Sec. 205. (1) The commission shall, as provided in section 203(1), by order appoint authorized distribution agents to warehouse and deliver spirits in this state to ensure that all retail licensees are 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 all of 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 to warehouse and deliver a brand or brands of spirits of that supplier of spirits.

(c) The person has an adequate warehousing facility located in this state to store spirits from which all delivery of spirits to retail licensees must 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 a week that accompanies a state holiday, the commission may order a modified delivery schedule if a retailer will not wait longer than 9 days between deliveries because of the 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 commission shall set minimum requirements that must 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 in each calendar year. An authorized distribution agent shall make a special emergency order available to the retail licensee within 18 hours of the placing of the order. An authorized distribution agent shall make a special emergency order placed on Saturday or Sunday 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, an 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 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) An 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 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, on notice, any contract or written agreement it has with a supplier of spirits or other authorized distribution agent for the warehousing and delivering of spirits in this state.

(9) For a violation of this act, a rule promulgated under this act, or the terms of an order appointing an authorized distribution agent, an authorized distribution agent is 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 and an on-premises licensee may purchase, collectively from specially designated distributors,

up to 9 liters of spirits during any 1 month. 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. An on-premises licensee shall maintain and make available to the commission upon request records verifying the purchases described in this subsection.

(11) 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 \$8.25 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 warehousing and delivering spirits to retailers. The payment described in this subsection may not be included in the cost of purchasing spirits by the commission and is not 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 delivering. As used in this subsection, "case" means a container holding twelve 750 ml bottles of spirits or other containers containing spirits that 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, Imd. Eff. Nov. 17, 2010;—Am. 2015, Act 246, Eff. Mar. 21, 2016.

#### **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.

**Administrative rules:** 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 under a license issued under this section, it shall not be sold at less than the minimum retail selling price fixed by the commission and under 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, 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, 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;—Am. 2011, Act 166, Eff. Oct. 1, 2012.

#### **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; payment; incorporation of farm mutual cooperative wineries; licensing; fee; certification of stockholders or members; payment of tax by wholesaler; rules.**

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 to prevent any abuses that 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) Beginning on and after February 1, 2015, if the wine is manufactured in this state the tax shall be paid by the wine maker who manufactured the wine or if the wine is manufactured outside this state the tax shall be paid by the wholesaler assigned to distribute that wine.

(6) Beginning on and after February 1, 2015, if the mixed spirit drink is manufactured in this state the tax shall be paid by the manufacturer of the mixed spirit drink or if the mixed spirit drink is manufactured outside this state the tax shall be paid by the wholesaler assigned to distribute that mixed spirit drink.

(7) On approval by the commission, the department of licensing and regulatory affairs 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.

(8) A wine maker or manufacturer of a mixed spirit drink may designate a wholesaler to pay the tax on behalf of the wine maker or manufacturer, respectively. If a wine maker or manufacturer designates a wholesaler to pay the tax on its behalf, that wine maker or manufacturer shall notify the commission of the designation and provide the commission with a copy of its report of wine premises operations that it filed with the alcohol and tobacco tax and trade bureau of the United States department of treasury for each calendar year. A wholesaler that is responsible for the payment of the tax under this section or that is designated to pay the tax under this section on behalf of the wine maker or manufacturer of the mixed spirit drink is only required to pay the tax on the number of liters actually sold by the wholesaler to licensed retailers.

(9) The commission shall establish by rule a method for the collection of the tax levied in this section and reporting requirements for wholesalers, wine makers, outstate sellers of mixed spirit drink, and outstate sellers of wine to verify the remission of taxes to this state. The commission shall not require that the tax be paid in less than monthly intervals. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2014, Act 49, Imd. Eff. Mar. 25, 2014.

**Administrative rules:** 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.

**Compiler's note:** For transfer of powers and duties of the grape and wine industry council to the new grape and wine industry council, and abolishment of grape and wine industry council, see E.R.O. No. 2014-2, compiled at MCL 333.26253.

**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 to 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, Imd. Eff. Nov. 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 the food law, 2000 PA 92, MCL 289.1101 to 289.8111, 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 27 CFR 7.20 to 7.29, 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 18,000-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 27 CFR 25.1 to 25.301, 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, alcohol and tobacco tax and trade bureau in accordance with 27 CFR 25.61 to 25.85.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2014, Act 353, Imd. Eff. Oct. 17, 2014.

#### **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; payment of tax by wholesaler; designation; tax collection and reporting requirements by rule; 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 or refund; "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. Before February 1, 2015, 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.

(2) Beginning on and after February 1, 2015, the tax shall be paid by the brewer or brewpub if the beer is manufactured in this state or if the beer is manufactured outside this state the tax shall be paid by the wholesaler assigned to distribute that beer and the tax shall be levied and collected on the number of barrels the wholesaler actually sold to licensed retailers in this state. A brewer may designate a wholesaler to pay the tax on behalf of the brewer. If a brewer designates a wholesaler to pay the tax on its behalf, the brewer shall notify the commission of the designation and provide the commission with a copy of its brewer's report of operations that it filed with the alcohol and tobacco tax and trade bureau of the United States department of treasury for each calendar year.

(3) The commission shall establish by rule a method for the collection of the tax levied under subsection (1) and reporting requirements for wholesalers, brewers, brewpubs, and outstate sellers of beer to verify the remission of taxes to this state. The commission shall not require that the tax be paid in less than monthly intervals. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) The tax levied in subsection (1) shall not be collected on beer that is consumed on the premises of the manufacturer or is damaged in the process of brewing, packaging, storage, and distribution 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).

(5) The tax levied under subsection (1) shall be rebated to the person that 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.

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

(7) 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 wholesaler of beer in that state who applies for the license; that prohibits wholesalers of beer in that state from possessing or selling beer purchased in this state, unless the person from whom the beer was 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.

(8) Regardless of whether the tax was remitted to this state by the eligible brewer or a designated wholesaler, an eligible brewer may claim a credit or request a refund, in a manner as determined by the commission, 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;—Am. 2014, Act 48, Imd. Eff. Mar. 25, 2014.

#### **436.1411 Brewer not licensed as micro brewer; sale of beer for on-premises consumption on licensed brewery premises; limitations; "engages in the production of beer" defined.**

Sec. 411. (1) A brewer that is not licensed as a micro brewer may sell its beer for on-premises consumption at not more than 2 locations in this state that are on any of its licensed brewery premises where the brewer engages in the production of beer. A licensed micro brewer that produces in total fewer than 30,000 barrels of beer per year may sell its beer for on-premises consumption at any location in this state that is on any of its licensed brewery premises where the micro brewer engages in the production of beer. A licensed micro brewer that produces in total 30,000 barrels of beer or more per year may sell its beer for on-premises consumption at not more than 3 locations in this state that are on any of its licensed brewery premises where the micro brewer engages in the production of beer.

(2) Subject to the limitations in subsection (1), if a brewer or micro brewer has more than 1 licensed brewery premises, that brewer or micro brewer may sell for on-premises consumption beer that it has produced at 1 licensed brewery premises at any of its other licensed brewery premises.

(3) As used in this section, "engages in the production of beer" means the full and complete brewing process and not just a portion of the brewing process.

**History:** Add. 2000, Act 395, Imd. Eff. Jan. 8, 2001;—Am. 2011, Act 298, Imd. Eff. Dec. 22, 2011;—Am. 2014, Act 44, Imd. Eff. Mar. 25, 2014.

#### **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.

#### **436.1415 Issuance of farmer's market permit to qualified small wine maker.**

Sec. 415. (1) Subject to the limitations provided under this section, the commission may issue a farmer's market permit to a qualified small wine maker. Regardless of the location of the qualified small wine maker, the commission shall only issue 1 farmer's market permit in a county where the farmer's market is located for each 1,500 of population or fraction of 1,500 in that county as determined by the last federal decennial census, by a special census pursuant to section 6 of the home rule city act, 1909 PA 279, MCL 117.6, or section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, or by the latest census and corrections published by the United States department of commerce, bureau of the census, whichever is later.



The holder of a farmer's market permit may conduct tastings and sell, at retail at a farmer's market, the wine produced by that qualified small wine maker.

(2) The commission shall charge a fee for a farmer's market permit of \$25.00 for each farmer's market location. A farmer's market permit issued under this section is nontransferable. Notwithstanding the quota provision under subsection (1), the commission shall not limit the number of permits a qualified small wine maker obtains under this section, but an application for a farmer's market permit shall only contain up to 5 separate locations at 1 time. Section 503 does not apply to the application or issuance of a permit under this section or to the location of a farmer's market where the holder of a farmer's market permit intends to participate under this section.

(3) The commission shall not issue a farmer's market permit under this section unless the applicant provides documentation, in a manner prescribed by the commission, that the local police agency where the farmer's market is located and the farmer's market manager at that location have approved the proposed activity.

(4) The tastings and sales performed under a farmer's market permit shall be limited to an exclusive area that is well defined and clearly marked, in a manner prescribed by the commission, that is under the control of the holder of the farmer's market permit, as verified by the farmer's market manager.

(5) The tastings and sales performed under a farmer's market permit shall be conducted by employees of the holder of the farmer's market permit who have completed a server training program as provided for in section 906 and the rules promulgated by the commission.

(6) The wine sold or used for tastings shall be furnished from the stock of the holder of the farmer's market permit and removed from the farmer's market premises immediately after the farmer's market has concluded.

(7) Tasting samples provided to a customer shall not exceed 3 servings of not more than 2 ounces of wine in a 24-hour period of time.

(8) The commission shall develop an application for an annual farmer's market permit allowing for licensed activities under this section. A farmer's market manager shall verify on the application that the location listed on the application qualifies as a farmer's market under this section.

(9) A wholesaler shall not conduct or participate in any event allowed by this section.

(10) A holder of a farmer's market permit is considered a manufacturer as provided under section 603(15)(a).

(11) Two years after the enactment date of the amendatory act that added this section, the commission shall submit a report to the standing committees of the senate and house of representatives concerned with issues involving liquor control and the house and senate fiscal agencies assessing the continued issuance of farmer's market permits to qualified small wine makers. The report shall include, at a minimum, all of the following:

- (a) The number of applications received each year for a farmer's market permit.
- (b) The number of farmer's market permit applications approved each year.
- (c) The number of farmer's market permit applications approved in each county.

(12) As used in this section:

(a) "Farmer's market" means a group of farmers or their designees or a variety of vendors, as determined by the farmer's market manager or his or her designee, who assembles on a recurring basis at a defined community sponsored or municipally sponsored location for the purposes of selling, directly to a consumer, food and products produced by those farmers or their representatives.

(b) "Farmer's market manager" means the person responsible for enforcing the market policy and for the daily operation and management of the farmer's market.

(c) "Farmer's market permit" means an annual permit issued as part of an approved license to a qualified small wine maker allowing that person to conduct tastings and sell at retail, for consumption off the licensed premises, at a farmer's market, wine produced by the qualified small wine maker.

(d) "Qualified small wine maker" means a small wine maker, or an out-of-state entity that is the substantial equivalent of a small wine maker, that manufactures or bottles not more than 5,000 gallons of wine in 1 calendar year.

**History:** Add. 2013, Act 100, Eff. Aug. 31, 2013.

## CHAPTER 5

**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, as provided 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 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 the time 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 if that licensee does not 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 is 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 600,000 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 is not 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 that has been determined in commission violation hearings to have sold or furnished alcoholic liquor, on at least 3 separate occasions in a consecutive 12-month period, 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 that 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 if 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 and rural development for 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;—Am. 2012, Act 82, Imd. Eff. Apr. 11, 2012.

#### **436.1503 License; proximity of contemplated location to church or school building; measurement of distance; exceptions; presumption of validity; waiver; objection; hearing; transfer to location farther from church or school.**

Sec. 503. (1) The commission shall deny a new application for a license to sell alcoholic beverages at retail or a request to transfer location of an existing license 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 must 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 premises licenses.

(3) This section does not apply to an outstanding license issued before March 1, 2017, for a location within the distance described in subsection (1) or to the renewal or transfer of the outstanding license at the location. A license issued, renewed, or transferred as described in this subsection is conclusively presumed to be valid for purposes of this section only.

(4) The commission may waive this section for all classes of licenses. If an objection is not filed by the church or school, the commission may issue the license under this act. If an objection is filed, the commission shall hold a hearing under rules established by the commission before making a decision on issuing the license.

(5) This section does not 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 described in subsection (1).

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2017, Act 66, Imd. Eff. June 30, 2017.

**Administrative rules:** 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.

**Compiler's note:** For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

**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 Prahll 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.

#### **436.1513a Sale of alcoholic liquor for consumption at community college's or university's culinary or hospitality program's location; license; prohibition; submission of documents; cancellation of license; use; license to private entity; catering permit; definitions.**

Sec. 513a. (1) Beginning October 1, 2011, the commission may issue to the governing board of a community college or university that is accredited by a nationally recognized accrediting agency as determined by the United States secretary of education under 20 USC 1099b and that operates an accredited culinary or hospitality program, without regard to the quota provisions of section 531, a license to sell alcoholic liquor for consumption at the community college's or university's culinary or hospitality program's location for activities that further the community college's or university's community or academic mission.

(2) Except as otherwise provided in subsection (7), the sale of alcoholic liquor to patrons at a location other than the community college's or university's culinary or hospitality program's location or at activities that do not further the community college's or university's community or academic mission, including, but not limited to, public and private gatherings or meetings that do not have a direct correlation to the community college's or university's community or academic mission, is prohibited under this section.

(3) To obtain a license under this section, a community college or university shall submit both of the following to the commission:

(a) Documentation verifying that the community college or university is accredited by a nationally recognized accrediting agency as determined by the United States secretary of education under 20 USC 1099b.

(b) Either of the following:

(i) Documentation verifying that the community college's or university's culinary or hospitality program is accredited by a regionally recognized accrediting body.

(ii) Within 180 days after the effective date of the amendatory act that added this section, a copy of the community college's or university's application to a regionally recognized accrediting body for accreditation of its culinary or hospitality program.

(4) The commission shall cancel a license issued under this section if, within 2 years of applying for a license under this section, the community college's or university's culinary or hospitality program is not accredited by a regionally recognized accrediting body, unless the community college or university demonstrates good cause for an extension of time to obtain accreditation by a regionally recognized accrediting body.

(5) Except as otherwise provided in subsection (7), a liquor license issued under this section shall be granted and registered to the community college's or university's culinary or hospitality program's location.

(6) Except as otherwise provided in subsection (7), a liquor license issued under this section shall be used by the community college or university and not by a private entity.

(7) Subject to section 531, the commission may issue a license to a private entity for the sale of alcoholic liquor for consumption on the premises of an outdoor stadium located on land owned by Lake Michigan college and leased to a private entity. The prohibition in section 531(7) on licenses at outdoor stadiums does not apply to a license issued under this subsection.

(8) A community college or university that holds a liquor license under this section shall not obtain a catering permit under section 547.

(9) As used in this section:

(a) "Community college" means a community college established under the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195.

(b) "University" means a public university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

**History:** Add. 2011, Act 249, Imd. Eff. Dec. 8, 2011.

#### **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; issuance of class B hotel license; 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 or 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 in connection with international golf tournament; 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 license; issuance; circumstances; duration; limitation on number of licenses issued; recommendation of governing body of host governmental unit; certification of compliance with applicable laws, rules, and regulations; 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 the commission finds all of the following circumstances exist:

(a) The local governmental unit in which the national sporting event is to be conducted is the host governmental unit for the national sporting 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 the national sporting 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(11) and the rules of the commission.

(2) A license issued under this section must be for a period of not more than 30 consecutive days and is not transferable as to ownership or location. The license must 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 may 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 under this section in the theme area or theme areas. The commission shall not issue a license under this section that is 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 under 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 Collegiate Athletic Association Final Four games during calendar year 2009.

(e) The United States Golf Association Amateur Championship during calendar year 2016.

**History:** Add. 2004, Act 170, Imd. Eff. June 24, 2004;—Am. 2016, Act 180, Imd. Eff. June 14, 2016.

**436.1518 Definitions; issuance of motorsports event licenses; consumption and possession of beer and wine in motorsports entertainment complex; civil liability.**

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. Rendered Monday, October 16, 2017

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

Sec. 521a. (1) In order to allow cities, villages, and townships 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, villages, and townships under section 531(1). The licenses under this section shall be issued to businesses that meet either of the following conditions:

(a) Are located in a 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 125.990n.

(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 includes the following:

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

(ii) An affidavit from the assessor, as certified by the clerk of the city, village, or township, stating the total amount of investment in real and personal property within the redevelopment project area of the city, village, or township during the preceding 3 years.

(iii) An affidavit from the assessor, as certified by the clerk of the city, village, or township, separately stating the amount of investment money expended for manufacturing, industrial, residential, and commercial development within the redevelopment project area of the city, village, or township during the preceding 3 years.

(3) Relative to the licenses issued under subsection (1)(a), the amount of commercial investment in the redevelopment project area within the city, village, or township 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 assessor of the city, village, or township. This subsection does not prevent the city, village, or township 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, village, or township that meets at least 1 of the investment requirements of subsection (1)(a) during the 3 years preceding the submission of its application. The total investment in real and personal property in the redevelopment project area within the city, village, or township 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, villages, or townships 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, villages, or townships 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, that 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 development

district or 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 city, village, or township.

(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 city, village, or township may approve another applicant within a redevelopment project area or development district or 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-premises escrowed license or quota license issued under section 531 and that, to the best of his or her knowledge, an on-premises escrowed license or quota license issued under section 531 is not readily available within the county in which the applicant proposes to operate.

(10) 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 based on where the applicant will be located, 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;—Am. 2014, Act 270, Imd. Eff. July 2, 2014.

#### **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.

**Administrative rules:** 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 fees; fingerprints; criminal history check; filing completed application; issuance of license within certain period of time; conditional license; report; "completed application" defined.**

Sec. 525. (1) Except as otherwise provided in this section, the following license fees must 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, 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 whether the location is 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 \$1.00 for each bedroom in excess of 20, but not more than \$500.00 total.

(m) Hotels of class B selling beer, wine, mixed spirit drink, and spirits, a minimum fee of \$600.00 and \$3.00 for each bedroom in excess of 20. If a hotel of class B sells beer, wine, mixed spirit drink, and spirits in more than 1 public bar, a fee of \$350.00 must be paid for each additional public bar, other than a bedroom.

(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 must be paid for each additional bar. In municipally owned or supported facilities in which nonprofit organizations operate concession stands, a fee of \$100.00 must be paid for each additional bar.

(p) Clubs selling beer, wine, mixed spirit drink, and spirits, \$300.00 for clubs having 150 or fewer accredited members and \$1.00 for each member in excess of 150. Clubs shall submit a list of members by an affidavit 30 days before the closing of the license year. The affidavit must be used only for determining the license fees to be paid under this subdivision. 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 must not exceed \$750.00 for any 1 club.

(q) Warehouses, 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 the license or permit issued to a bona fide nonprofit association, organized and in continuous existence for 1 year before the filing of its application, is \$25.00. The commission shall not grant more than 12 special licenses 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.

(cc) Conditional license approved under subsection (6) and issued under subsection (7), \$300.00.

(2) The fees provided in this act for the various types of licenses must not be prorated for a portion of the effective period of the license. Notwithstanding subsection (1), the initial license fee for a license issued under section 531(3) or (4) is \$20,000.00. The renewal license fee is 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) If the commission requires an applicant to submit fingerprints, the applicant shall have the fingerprints taken by a local law enforcement agency, the department of state police, or any other person qualified to take fingerprints as determined by the department of state police. The applicant shall submit the fingerprints and the appropriate state and federal fees, which shall be borne by the applicant, to the department of state police and the Federal Bureau of Investigation for a criminal history check. After conducting the criminal history check, the department of state police shall provide the commission with a report of the criminal history check. The report must include criminal history record information concerning the person who is the subject of the criminal history check that is maintained by the department of state police. If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted under this act and stored in its automated fingerprint identification system (AFIS) database, the department of state police shall notify the commission.

(4) Except for a resort or resort economic development license issued under section 531(2), (3), (4), or (5)

or a license issued under section 521a, the commission shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. The application is considered to be received the date the application is received by an agency or department of this state. If the commission determines that an application is incomplete, 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 is not an approval of the application for the license and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license. The 90-day period is tolled for the following periods under any of the following circumstances:

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

(b) For the time required to complete actions required by a person, other than the applicant or the commission, including, but 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.

(5) 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 the application, on completion, must 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 because the license fee was refunded or discounted under this subsection.

(6) If, in addition to a completed application under this section, an applicant submits a separate form requesting a conditional license with an acceptable proof of financial responsibility form under section 803, an executed property document, and, for an application to transfer the location of an existing retailer license other than specially designated distributor license, a church or school proximity affidavit on a form prescribed by the commission attesting that the proposed location is not within 500 feet of a church or school building using the method of measurement required under section 503, the commission shall, after considering the arrest and conviction records or previous violation history in the management, operation, or ownership of a licensed business, approve or deny a conditional license. A conditional license issued under subsection (7) must only include any existing permits and approvals held in connection with the license, other than permits or approvals for which the conditional applicant does not meet the requirements in this act or rules promulgated under this act, or permits or approvals that the conditional applicant has requested to cancel as part of the application that serves as the basis for the conditional license. The commission shall not issue a new permit with a conditional license issued under subsection (7). The following applicants may request a conditional license:

(a) An applicant seeking to transfer ownership of an existing retailer license at the same location to sell alcoholic liquor for consumption on or off the premises.

(b) An applicant seeking to transfer the ownership and location of an existing retailer license, other than a specially designated distributor license, to sell alcoholic liquor for consumption on or off the premises.

(c) An applicant seeking a new specially designated merchant license, other than a specially designated merchant license issued under section 533(6), not to be held in conjunction with a license for the sale of alcoholic liquor for consumption on the premises.

(7) The commission shall issue a conditional license to applicants approved under subsection (6) within 20 business days after receipt of a completed application and a completed conditional license request form and documentation for a conditional license at a single location. The commission may take up to 30 business days to issue conditional licenses to approved applicants seeking conditional licenses at multiple locations. However, for an applicant described under this subsection that is seeking a specially designated merchant license under section 533(7), the commission may take up to 45 business days to issue a conditional license. Notwithstanding the applicant's submission of a church or school proximity affidavit under subsection (6), if the commission determines that a conditional license in conjunction with an application to transfer the location of an existing retailer license has been issued under this subsection at a proposed location that is within 500 feet of a church or school building, the commission shall suspend the conditional license and notify the church or school of the proposed location under the rules promulgated under this act. If the commission issues a conditional license under this subsection based on a church or school proximity affidavit under subsection (6) without knowledge that the representations included in the affidavit are incorrect, this state is not liable to any person for the commission's issuance of the conditional license. The commission may

assume without inquiry the existence of the facts contained in the affidavit.

(8) A conditional license approved under subsection (6) and issued under subsection (7) is nontransferable and nonrenewable. A conditional licensee is required to comply with the server training requirements in section 501(1) beginning on the date a conditional license is issued under subsection (7) regardless of whether the conditional licensee is actively operating under the conditional license.

(9) A conditional license approved under subsection (6) and issued under subsection (7) expires when the first of the following occurs:

(a) The commission issues an order of denial of the license application that serves as the basis for the conditional license and all administrative remedies before the commission have been exhausted.

(b) The commission issues the license under subsection (4) for which the applicant submitted the license application that serves as the basis for the conditional license.

(c) The licensee or conditional licensee notifies the commission in writing that the initial or conditional application should be canceled.

(d) One year passes after the date the conditional license was issued, notwithstanding any suspension of the conditional license by the commission.

(10) If a conditional licensee fails to maintain acceptable proof of its financial responsibility as required under section 803, the commission shall summarily suspend the conditional license under section 92(2) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, until the conditional licensee files an acceptable proof of financial responsibility form under section 803. If a conditional license is revoked, the conditional licensee shall not recover from this state or a unit of local government any compensation for property, future income, or future economic loss because of the revocation.

(11) On issuing a conditional license under subsection (7), the commission shall, until the conditional license expires under subsection (9), place the existing license under subsection (4) for which the applicant submitted the application that serves as the basis for the conditional license in escrow in compliance with R 436.1107 of the Michigan Administrative Code. If the conditional license expires under subsection (9), an existing licensee may do 1 of the following:

(a) Request that the commission release the license from escrow.

(b) Keep the license in escrow. The escrow date for compliance with R 436.1107 of the Michigan Administrative Code is the date the conditional license expires.

(12) 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 (4).

(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 (5).

(13) 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 this state.

**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, Imd. Eff. Nov. 17, 2010;—Am. 2010, Act 279, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 236, Eff. May 22, 2014;—Am. 2014, Act 353, Imd. Eff. Oct. 17, 2014;—Am. 2016, Act 315, Eff. Feb. 1, 2017;—Am. 2016, Act 434, Imd. Eff. Jan. 4, 2017.

**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 license and resort license; on-premises escrowed license; limitations and quotas; additional licenses for certain establishments; license for certain events at public university; outdoor stadium; 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-premises escrowed or quota license; issuance of available licenses; report; hotels; escrowed specially designated distributor license; transfer; applicability of administrative rule; 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. An on-premises escrowed license 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. If the local governmental unit within which the former licensee's premises were located spans more than 1 county, an escrowed license 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 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-premises 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 is subject to approval by the local governmental unit having jurisdiction.

(2) In a resort area, the commission may issue no more than 550 licenses for a period not to exceed 12 months without regard to a limitation because of population 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 under 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 all of the following:

- (a) The number of applications received under this subsection.
- (b) The number of licenses granted and to whom.
- (c) The number of applications rejected and the reasons they were rejected.
- (d) 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 or less, as determined by the last federal decennial census or as determined under 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 15 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 under 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 under this subsection shall not bar another specially designated distributor licensee from transferring location to within 2,640 feet of that licensed location. A specially designated distributor license issued under section 533 may be located within 2,640 feet of a specially designated distributor license issued under this subsection. The person signing the application for a specially designated distributor license under this subsection shall state that he or she attempted to secure an escrowed specially designated distributor license or quota license and that, to the best of his or her knowledge, an escrowed specially designated distributor license or quota license is not readily available within the county in which the applicant for the specially designated distributor license under this subsection proposes to operate.

(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 under this subsection shall be issued only for events that are to be held from May 1 to September 30, are artistic in nature, and that are to be held on the campus of a public university with an enrollment of 30,000 or more students. A special purpose license is 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 is \$50.00. A special purpose license may be issued only to a corporation that meets all of the following requirements:

- (a) Is a nonprofit corporation organized under 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. Except as otherwise provided in this subsection, a license issued under this subsection may not be issued at an outdoor stadium customarily used for intercollegiate athletic events. A license may be issued at an outdoor stadium customarily used for intercollegiate athletic events for not more than 30 consecutive days to a concessionaire of an entity granted exclusive use of a public university's property in conjunction with a hockey game sanctioned by an unincorporated not-for-profit association that operates a major professional ice hockey league consisting of teams located in Canada and in the United States or in conjunction with a professional international soccer match between 2 international soccer clubs as part of a tournament sanctioned by a not-for-profit association that is the governing body for soccer in the United States and organized and promoted by a match agent that is licensed by the international governing body for soccer if the concessionaire has entered into an agreement granting it control of the licensed premises for the purposes of complying with this act and rules promulgated under this act regarding the sale of alcoholic liquor. A nationally televised game between 2 professional hockey teams or 2 professional international soccer clubs played outdoors is considered an established outdoor program for the purposes of this subsection. Notwithstanding any provision of this act or any rule promulgated under this act, a concessionaire obtaining a license under this subsection may share the profits generated from that license with an unincorporated not-for-profit association that operates a major professional ice hockey league consisting of teams located in Canada and in the United States or an affiliated entity under a written contract reviewed by the commission or with a licensed match agent and a promoter that organizes and promotes international soccer matches under a written contract reviewed by the commission. If the established outdoor program is a nationally televised game between 2 professional hockey teams or 2 professional international soccer clubs, the commission may allow the promotion and advertising of alcoholic liquor brands on the campus of a public university where a concessionaire has been issued a license under this subsection for the duration of the license.

(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 issuing 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 issuing 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 are not applicable to issuing a new license or renewing 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. The local governmental unit shall provide public notice of the meeting to consider the granting of the license by the local governmental unit 2 weeks before the meeting.

(13) The person signing the application for an on-premises resort or resort economic development license shall state and verify that he or she attempted to secure an on-premises escrowed license or quota license and that, to the best of his or her knowledge, an on-premises escrowed license or quota license is not readily available within the county in which the applicant for the on-premises resort or resort economic development license proposes to operate.

(14) The commission shall not issue an on-premises 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-premises licenses available under subsection (1) or if an on-premises escrowed license exists and is readily available within the local governmental unit in which the applicant for the on-premises resort or resort economic development license proposes to operate. 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 under 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) An escrowed specially designated distributor license may be transferred, with the consent of the commission, to an applicant whose proposed operation is located within any local governmental unit in a county in which the specially designated distributor license is located. If the local governmental unit within which the escrowed specially designated distributor license is located spans more than 1 county, the license may be transferred to an applicant whose proposed operation is located within any local governmental unit in either county. If the specially designated distributor license is activated within a local governmental unit other than that local governmental unit within which the specially designated distributor license was originally issued, the commission shall count that activated license against the local governmental unit originally issuing the specially designated distributor license.

(19) Subsection (8) of R 436.1135 of the Michigan administrative code does not apply to a transfer under subsection (18).

(20) 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;—Am. 2012, Act 212, Imd. Eff. June 27, 2012;—Am. 2013, Act 237, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 135, Imd. Eff. May 27, 2014.

#### **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 Specially designated merchant license; specially designated distributor license; issuance; conditions; quota; waiver; transfer; limitation; owner or operator of motor vehicle fuel pump on or adjacent to licensed premises; issuance to marina; determination of population.**

Sec. 533. (1) Subject to subsection (12), the commission shall not issue a new specially designated merchant license or transfer an existing specially designated merchant license unless the applicant is an approved type of business. An applicant is not an approved type of business unless the applicant meets 1 or more of the following conditions:

(a) The applicant holds and maintains a retail food establishment license issued under the food law, 2000 PA 92, MCL 289.1101 to 289.8111. As used in this subdivision, "retail food establishment" means that term as defined in section 1111 of the food law, 2000 PA 92, MCL 289.1111.

(b) The applicant holds and maintains an extended retail food establishment license issued under the food law, 2000 PA 92, MCL 289.1101 to 289.8111. As used in this subdivision, "extended retail food establishment" means that term as defined in section 1107 of the food law, 2000 PA 92, MCL 289.1107.

(c) The applicant holds or the commission approves the issuance of a specially designated distributor license to the applicant.

(d) The applicant holds or the commission approves the issuance of a class C license to the applicant.

(e) The applicant holds or the commission approves the issuance of a class A hotel license to the applicant.

(f) The applicant holds or the commission approves the issuance of a class B hotel license to the applicant.

(g) The applicant holds or the commission approves the issuance of a club license to the applicant.

(h) The applicant holds or the commission approves the issuance of a tavern license to the applicant.

(i) The applicant holds or the commission approves the issuance of a class G-1 license to the applicant.

(j) The applicant holds or the commission approves the issuance of a class G-2 license to the applicant.

(2) A specially designated distributor may apply for a license as a specially designated merchant.

(3) An applicant for a specially designated merchant license not in conjunction with an on-premises license, except as provided in section 229(1), or a person licensed under this act as a specially designated merchant only or a class B hotel may apply for a license as a specially designated distributor.

(4) 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 commission may waive the quota requirement under this subsection if there is no existing specially designated distributor licensee within 2 miles of the applicant, measured along the nearest traffic route.

(5) Except as otherwise provided in this section, in cities, incorporated villages, or townships, the commission shall issue only 1 specially designated merchant license for each 1,000 of population. The quota under this subsection does not apply to any of the following:

(a) An applicant for a specially designated merchant license that is an applicant for or the holder of a license listed in subsection (1)(d) to (j).

(b) An applicant for or the holder of a specially designated merchant license whose licensed establishment meets 1 or more of the following conditions:

(i) Meets both of the following conditions:

(A) The licensed establishment is at least 20,000 square feet.

(B) The licensed establishment's gross receipts derived from the sale of food are at least 20% of the total gross receipts.

(ii) The licensed establishment is also a pharmacy as that term is defined in section 17707 of the public

health code, 1978 PA 368, MCL 333.17707.

(c) A secondary location permit issued to a specially designated merchant under section 541.

(d) A specially designated merchant license issued under subsection (7).

(e) A specially designated merchant license issued to a marina under section 539.

(6) The commission may waive the quota under subsection (5) if there is no existing specially designated merchant within 2 miles of the applicant, measured along the nearest traffic route.

(7) The commission shall waive the quota under subsection (5) if both of the following apply:

(a) The applicant applies for the specially designated merchant license within 60 days after the effective date of the amendatory act that added subsection (5).

(b) The applicant is a retail dealer that holds a license issued under section 6(1) of the motor fuels quality act, 1984 PA 44, MCL 290.646. The applicant shall include a copy of the license described in this subdivision with the applicant's application under this subsection. As used in this subdivision, "retail dealer" means that term as defined in section 2 of the motor fuels quality act, 1984 PA 44, MCL 290.642.

(8) A specially designated merchant license issued under this section may be transferred to an applicant whose proposed operation is located within any local governmental unit in a county in which the specially designated merchant license was located. If the local governmental unit within which the former licensee's premises were located spans more than 1 county, a specially designated merchant license may be transferred to an applicant whose proposed operation is located within any local governmental unit in either county. If a specially designated merchant license is transferred to a local governmental unit other than that local governmental unit within which the specially designated merchant license was originally issued, the commission shall count that transferred specially designated merchant license against the local governmental unit originally issuing the specially designated merchant license.

(9) Except as otherwise provided in subsection (10), the quota under subsection (5) does not bar the right of an existing specially designated merchant to renew the specially designated merchant license or transfer the specially designated merchant license. This subsection applies to a specially designated merchant license issued or renewed before, on, or after the effective date of the amendatory act that added subsection (5).

(10) A specially designated merchant license issued after the effective date of the amendatory act that added subsection (5) to a person described in subsection (5)(a) or (b) or to a specially designated merchant license issued under subsection (6) may not be transferred to another location.

(11) An applicant for or the holder of a specially designated merchant license that owns or operates a motor vehicle fuel pump on or adjacent to the licensed premises is not required to meet the conditions under section 541 as that section existed before the effective date of the amendatory act that added subsection (5).

(12) For a marina that maintains motor vehicle fuel pumps on or adjacent to the licensed premises, or maintains a financial interest in any motor vehicle fuel pumps, the commission may only issue a special designated merchant license to the marina under section 539.

(13) For purposes of this section, population is determined by the latest federal decennial census, by a special census under section 6 of the home rule city act, 1909 PA 279, MCL 117.6, or section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, or by the latest census and corrections published by the United States Department of Commerce, Bureau of the Census, whichever is later.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998;—Am. 2016, Act 137, Eff. Aug. 24, 2016;—Am. 2016, Act 434, Imd. Eff. Jan. 4, 2017.

#### **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 liquor at retail; sale of wine by wine maker; beer and wine tastings; brandy and spirits tasting; filling and selling growlers with beer; definitions.**

Sec. 537. (1) The following classes of vendors may sell alcoholic liquor 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 licensee, 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 are 21 years of age or older.
- (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 licensee, 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, 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 licensee, 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 licensee, 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 licensee, 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.
- (r) A small wine maker or an out-of-state entity that is the substantial equivalent of a small wine maker, that holds a farmer's market permit, where wine may be sampled and sold at a farmer's market for consumption off 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 on which the wine tasting occurs conform 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 are considered licensed premises, and the wine maker may include a charge for the samples.
- (d) The 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, that 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 before 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), a 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 not perform 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 shall not conduct or participate in beer and wine tastings allowed under a permit issued under subsection (5).

(8) A beer and wine tasting under subsection (5) may only be conducted during the legal hours for the 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 on which the brandy and spirits tastings occur conform to local and state sanitation requirements.

(b) The brandy manufacturer or small distiller pays the commission a \$100.00 fee per location.

(c) The brandy and spirits tasting locations are considered licensed premises.

(d) The brandy and spirits tasting takes place during the legal hours for the sale of alcoholic liquor by the licensee.

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

(10) An eligible merchant may fill and sell growlers with beer for consumption off the premises under the following conditions:

(a) The premises where the filling of growlers takes place comply with the requirements for food service establishments under the food law, 2000 PA 92, MCL 289.1101 to 289.8111.

(b) The growler is sealed and has a label affixed to it that includes at least the brand name of the beer, the class of the beer, the net contents of the container, and the name of the retailer filling the growler.

(c) The eligible merchant or his or her agent or employee shall not fill a growler in advance of the sale.

(d) The eligible merchant or his or her agent or employee shall only use containers that have a capacity of 5 gallons or more to fill a growler.

(e) The beer to be dispensed has received a registration number from the commission and has been approved for sale by the commission.

(f) The eligible merchant complies with all applicable rules promulgated by the commission.

(11) As used in this section:

(a) "Eligible merchant" means a person that holds a specially designated merchant license and a specially designated distributor, class C, tavern, class A hotel, class B hotel, club, class G-1, or class G-2 license.

(b) "Growler" means any clean, refillable, resealable container that is exclusively intended, and used only, for the sale of beer for consumption off the premises and that has a liquid capacity that does not exceed 1 gallon.

**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, Imd. Eff. Nov. 17, 2010;—Am. 2011, Act 298, Imd. Eff. Dec. 22, 2011;—Am. 2013, Act 101, Imd. Eff. July 2, 2013;—Am. 2016, Act 514, Eff. Apr. 9, 2017.

#### **436.1539 Marina as specially designated merchant or specially designated 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 all 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).

(c) The marina is an approved type of business as provided in section 533(1).

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2016, Act 434, Imd. Eff. Jan. 4, 2017.

#### **436.1541 Motor vehicle fuel pumps.**

Sec. 541. (1) Except as provided in section 539 or subsections (2) to (5), the commission shall not allow 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, unless 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.

(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 of alcoholic liquor and selection of alcoholic liquor is not less than 5 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 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 that 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 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 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.

(4) A person that 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.

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

(6) 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 the site of payment of alcoholic liquor and selection of alcoholic liquor is not less than 5 feet from that point where motor vehicle fuel is dispensed. This subsection does not apply to a specially designated merchant license issued to a marina under section 539.

(7) If a specially designated merchant's licensed premises are a primary location, the commission may issue a secondary location permit to the specially designated merchant, as an extension of the specially designated merchant's license, for the sale of beer, wine, or both, at the secondary location. The commission shall issue a secondary location permit only to a specially designated merchant to which both of the following apply:

(a) The holder of the specially designated merchant license for the primary location premises or a subsidiary or affiliate of the license holder owns or leases the secondary location.

(b) The holder of the specially designated merchant license for the primary location or a subsidiary or affiliate of the license holder owns or operates motor vehicle fuel pumps at the secondary location.

(8) An applicant for a secondary location permit shall submit an application to the commission in a format provided by the commission and accompanied by an application and initial permit fee of \$100.00. The application must include a diagram of the secondary location with building dimensions and a depiction of the distance measurement described in subsection (6). The secondary location permit expires on the same date as the specially designated merchant license and may be renewed in conjunction with the specially designated merchant license. The secondary location permit holder may renew the secondary location permit by submitting a permit renewal fee of \$100.00 and a completed renewal application.

(9) After a specially designated merchant is issued a secondary location permit under subsection (7), if a subsidiary or affiliate of the specially designated merchant owns or operates the secondary location and the subsidiary or affiliate shares the same ultimate controlling party of the specially designated merchant, the secondary location may receive and sell beer, wine, or both under the specially designated merchant's license.

(10) The holder of a secondary location permit shall prominently display the secondary location permit at the secondary location in the point-of-sale area.

(11) As used in this section:

(a) "Neighborhood shopping center" means 1 commercial establishment, or a group of commercial establishments organized or operated as a unit, that is related in location, size, and type of shop to the trade area that the unit serves, and consists of not less than 50,000 square feet of leasable retail space, and has access to off-street parking spaces.

(b) "Primary location" means licensed premises that meets both of the following conditions:

(i) One or both of the following conditions exist:

(A) The applicant or licensee is located in a neighborhood shopping center.

(B) 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.

(ii) The site of payment of alcoholic liquor and selection of alcoholic liquor is not less than 5 feet from that point where motor vehicle fuel is dispensed.

(c) "Secondary location" means a business operation of the holder of a specially designated merchant license for a primary location, or a subsidiary or affiliate of that license holder, that takes place on real property, that includes at least 1 building and 1 or more motor vehicle fuel pumps, and that is located on or adjacent to the primary location. On commission approval of the secondary location permit, the secondary location is considered licensed premises and an extension of the licensed primary location.

**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;—Am. 2016, Act 84, Eff. July 11, 2016;—Am. 2016, Act 434, Imd. Eff. Jan. 4, 2017.

#### **436.1543 Disposition and use of license and license renewal fees; liquor control enforcement and license investigation revolving fund; "license fee enhancement" defined.**

Sec. 543. (1) Quarterly, on the commission's recommendation, 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 must 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 must revert to the general fund of this state 12 months after the end of each fiscal year in which the money was 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 and wholesale vendor license and license renewal fees, must 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 must not revert to the general fund at the close of the fiscal year, but must 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 must 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) must 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) must be allocated and appropriated under subsection (1).

(5) The license fee imposed on direct shipper licenses and any violation fines imposed by the commission must 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 must remain in the fund and must not lapse to the general fund. The commission shall expend money from the fund, on 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) must be deposited into the general fund.

(7) Notwithstanding any other provision of this section, the additional \$160.00 license fee imposed on a licensee selling alcoholic liquor between the hours of 7 a.m. on Sunday and 12 noon on Sunday is allocated to the general fund.

(8) Wholesale vendor license fees and license renewal fees must be deposited into the liquor control enforcement and license investigation revolving fund created under subsection (9).

(9) The liquor control enforcement and license investigation 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 must remain in the fund and must not lapse to the general fund. The commission shall expend money from the fund, on appropriation, only for enforcement of this act and the rules promulgated under this act and for license investigations. The commission shall not use more than 35% of the money appropriated to the fund under this subsection to carry out the licensing provisions of this act.

(10) 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).

**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, Imd. Eff. Nov. 17, 2010;—Am. 2016, Act 434, Imd. Eff. Jan. 4, 2017.

#### **436.1545 "Nonpublic continuing care retirement center" defined; license; limitation.**

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) Meets 1 of the following conditions:

(i) Is registered as a facility under former 1976 PA 440 or the continuing care community disclosure act, 2014 PA 448, MCL 554.901 to 554.993.

(ii) Is a home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21335.

(2) The commission, on submission of a completed application, shall grant a nonpublic continuing care retirement center license to an applicant complying with this section. Subject to subsection (4), the commission shall not issue more than 25 licenses under this section. If the holder of a license issued under this section goes out of business, the license must be surrendered to the commission. The commission may allow the transfer of a surrendered license to a new business owner on transfer of the owner's interest in the business if the new business owner meets the same condition under subsection (1)(b) as the previous business owner.

(3) The holder of a nonpublic continuing care retirement center license may 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.

(4) The commission shall not issue more than 20 licenses under this section to facilities described in subsection (1)(b)(i). The commission shall not issue more than 5 licenses under this section to homes for the aged described in subsection (1)(b)(ii).

**History:** Add. 2010, Act 213, Imd. Eff. Nov. 17, 2010;—Am. 2016, Act 328, Eff. Mar. 8, 2017.

#### **436.1547 Definitions; catering permits.**

Sec. 547. (1) As used in this section:

(a) "Private event" means an event where no consideration, as defined in section 913, is paid by the guests.

(b) "Catering permit" means a permit issued by the commission to a specially designated distributor, specially designated merchant, or holder of a public on-premises license for the sale of beer, wine, or spirits, or any combination thereof, that is also licensed as a food service establishment or retail food establishment under the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111, which permit authorizes the permit holder to sell and deliver beer, wine, and spirits in the original sealed container to a person for off-premises consumption but only if the sale is not by the glass or drink and the permit holder serves the beer, wine, or spirits. The permit does not allow the permit holder to deliver, but not serve, the beer, wine, or spirits.

(2) Spirits sold by a specially designated distributor, specially designated merchant, or on-premises licensee under a catering permit shall not be sold at less than the minimum retail selling price fixed by the commission, including under rules promulgated by the commission for specially designated distributors under section 229.

(3) The commission may issue a catering permit to a specially designated distributor, specially designated merchant, or public on-premises licensee, as a supplement to that license, to allow the sale and delivery of beer, wine, or spirits in the original sealed container at locations other than the licensed premises and to require the catering permit holder to serve beer, wine, or spirits at the private event where the alcoholic liquor is not resold to guests. The commission shall not issue a catering permit to an applicant who delivers beer, wine, or spirits but does not serve the beer, wine, or spirits.

(4) This section does not limit the number of catering permits the commission may issue within any local unit of government.

(5) This section does not prevent a catering permit holder from using the catering permit at multiple locations and events during the same time period.

(6) This section does not prohibit a catering permit holder from selling beer, wine, or spirits to a person who has obtained a special license if that catering permit holder serves the beer, wine, or spirits and complies with all catering permit rules promulgated by the commission.

(7) An applicant for a catering permit shall apply on a form approved and provided by the commission and pay an application and processing fee of \$70.00 and a catering permit fee of \$100.00 on the issuance of the catering permit. The applicant shall also pay the catering permit fee on renewal of the specially designated distributor, specially designated merchant, or on-premises licensee.

(8) The person delivering the beer, wine, or spirits under a catering permit shall verify that the individual accepting delivery is at least 21 years of age. The catering permit holder 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, wine, or spirits to the designated location of the private event if the delivery service is approved by the commission and agrees to verify that the individual accepting delivery of the beer, wine, or spirits is at least 21 years of age.

(9) A catering permit holder providing the service, or an employee of the catering permit holder, shall

successfully complete a server training program approved by the commission before providing the service.

(10) A catering permit holder delivering the beer, wine, or spirits, or an employee of the catering permit holder, shall have in his or her possession while delivering the beer, wine, or spirits documentation demonstrating that the beer, wine, or spirits being delivered are for a private event being conducted under this section.

(11) A catering permit holder who prepares food or drink for direct consumption through service on the premises or elsewhere shall comply with the requirements for food service establishments under the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(12) A catering permit holder is subject to all sanctions, liabilities, and penalties provided under this act or under law.

**History:** Add. 2011, Act 20, Imd. Eff. Apr. 20, 2011.

## 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 stock in portfolio under arrangement, trust agreement, or investment trust agreement; issuance and sale of participating shares within state; prohibitions; sale of brandy and spirits by manufacturer or small distiller; conditions; sale by small distiller; interest of brewpub in other locations; interest in business of other supplier; approval pursuant to R 436.1023(3); interest of manufacturer in wholesaler prohibited; delivery of wine by wine maker to retail licensees prohibited; tiers; interpretation of subsection (13); definitions.**

Sec. 603. (1) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouse, or wholesaler shall not have any direct or indirect financial interest in the establishment, maintenance, operation, or promotion of the business of any other vendor.

(2) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouse, or wholesaler or a stockholder of a supplier, warehouse, or wholesaler shall not have any direct or indirect interest by ownership in fee, leasehold, mortgage, or otherwise in the establishment, maintenance, operation, or promotion of the business of any other vendor.

(3) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouse, or wholesaler shall not have any direct or indirect interest 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 (14) and section 605, a person shall not buy the stocks of a

supplier, warehouse, or wholesaler and place the stock in any portfolio under an arrangement, written trust agreement, or form of investment trust agreement, 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 5 other brewpubs if the combined production of all the locations in which the brewpub has an interest does not exceed 18,000 barrels of beer per calendar year.

(8) This section does not prohibit a supplier from having any direct or indirect interest in any other supplier.

(9) The commission may approve the following under 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 24.136.

(b) A brewer participating with 1 or more brewers in an alternating proprietor operation in accordance with 27 CFR 25.52.

(10) A manufacturer shall not have any direct or indirect interest in a wholesaler.

(11) A wine maker shall not collectively deliver wine, with any other wine maker, to retail licensees.

(12) Except in the case of a licensed warehouse, all licensees in this state shall be separated into 3 distinct and independent tiers composed of the following:

(a) Supplier tier, comprising suppliers.

(b) Wholesaler tier, comprising wholesalers.

(c) Retailer tier, comprising retailers.

(13) Except as otherwise provided in subsection (14), 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 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 does 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, Imd. Eff. Nov. 17, 2010;—Am. 2011, Act 298, Imd. Eff. Dec. 22, 2011;—Am. 2014, Act 43, Imd. Eff. Mar. 25, 2014.

**436.1605 Acquisition, development, sale, lease, financing, maintenance, operation, or promotion 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, wine maker, distiller, brandy manufacturer, or the parent company, a subsidiary or an affiliate of a brewer, wine maker, distiller, or brandy manufacturer 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, wine maker, distiller, or brandy manufacturer 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.

(c) Any arrangement or contract entered into between the brewer, wine maker, distiller, brandy manufacturer, 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.

(d) The brewer, wine maker, distiller, brandy manufacturer, its parent company, subsidiary, or affiliate has not acquired, developed, sold, leased, financed, or maintained, operated, or promoted more than 7 real properties that are occupied or to be occupied by another vendor, except a wholesaler.

(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, warehouse, 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 559.276, 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, warehouse, wholesaler, outstate seller of mixed spirit drink, or vendor of spirits who owns, leases, maintains, finances, or operates the condominium project.

(e) A wholesaler that 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 that 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, warehouse, 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, 1996 IL 1, MCL 432.201 to 432.226. Subsection (5) does not prohibit a direct physical connection between a condominium unit that is the licensed premises and a condominium unit that is not the licensed premises.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2014, Act 45, Imd. Eff. Mar. 25, 2014.

#### **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 warehouse, 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, warehouse, 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; providing licensee with advertising items; providing licensee with goods and services; approval by commission; sale of brand logoed items; possession and use of brand logoed barware; conditions for promotion of brand under R 436.1321(1) to (3); unauthorized providing or selling of barware; fine; on-premises brand promotional event; removal of merchandise; purchase and sale of brand logoed inventory by retailer holding off-premises license; adding or removing item by rule; definitions.**

Sec. 609. (1) Except as provided in this section and sections 605 and 1029, a manufacturer, mixed spirit drink manufacturer, warehouse, 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.

(2) A manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may, in a manner consistent with rules, regulations, and orders made by the commission, provide another licensee with an advertising item that promotes the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink; or distributed by the wholesaler. Except as otherwise allowed under subsection (3), (4), (5), or (6), the advertising item shall not have any use or value beyond the actual advertising of brands and prices of the alcoholic liquor.

(3) Except for those orders that were approved for specific sponsorships or festivals, a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may provide goods and services to another licensee that were approved by the commission under rules or orders adopted before January 1, 2014 and the following items:

- (a) Alcoholic liquor recipes literature.
- (b) Calendars and matchbooks.
- (c) Removable tap markers or signs.

- (d) Table tents.
- (e) Shelf talkers.
- (f) Bottle neckers.
- (g) Cooler stickers.
- (h) Buttons, blinking and nonblinking.
- (i) Menu clip-ons.
- (j) Mirrors.
- (k) Napkin holders.
- (l) Spirits cold shot tap machines.
- (m) Alcoholic liquor drink menus.
- (n) Keg couplers that are lent to an on-premises retailer.
- (o) Sporting event or entertainment tickets.
- (p) Suction cups.
- (q) Cooler door attachments.
- (r) Tear pad holders.

(4) A wholesaler may sell brand logoed items to an off-premises licensee if those brand logoed items are contained within the packaging of an alcoholic liquor product that is to be sold to a consumer.

(5) A retailer shall not use or possess, at its licensed premises, advertising items that have a use or value beyond the actual advertising of brands and prices of alcoholic liquor except for those items allowed in subsection (3), (4), or (6), or as otherwise allowed under this subsection. A retailer may possess and use brand logoed barware that advertises spirits if the items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer. A retailer may possess and use brand logoed barware that advertises beer or wine if the items are purchased from a barware retailer. A retailer shall maintain the receipts of all purchased brand logoed barware for at least 3 years and shall make those receipts available for inspection by the commission as provided in section 217. Beginning in the 2015 licensing year, a retailer shall disclose, in a manner as prescribed by the commission on the application for renewal of an existing license, if any barware was purchased by the retailer during the immediately preceding license year.

(6) A manufacturer, outstate seller, or vendor of spirits may provide brand logoed merchandise to an on-premises retailer and off-premises retailer to promote the brand and price of its products under R 436.1321(1) to (3) of the Michigan administrative code if all of the following conditions are complied with:

- (a) Brand logoed merchandise must be used for display purposes only.
- (b) Brand logoed merchandise may only provide brand advertising when used in a display.
- (c) Brand logoed merchandise must be returned to the alcoholic beverage supplier or wholesaler on completion of the display.
- (d) Brand logoed merchandise shall not be given to the retail licensee or the retail licensee's staff or any other person for their personal use.
- (e) The value of the brand logoed merchandise on display may not exceed \$200.00 per item.
- (f) Brand logoed merchandise that a licensee could use in the daily operation of the licensee's business is prohibited.

(g) Brand logoed merchandise must be unilluminated.

(h) Brand logoed merchandise may not be more than 3,500 square inches in dimension.

(i) Brand logoed merchandise must be owned by the manufacturer or supplier. The ownership of brand logoed merchandise may not be transferred to the retail licensee, the retail licensee's employee, or any other person.

(j) A wholesaler may deliver and install a display using brand logoed merchandise provided without charge by a manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed drink.

(7) In addition to the penalties provided under section 903, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink that provides or sells barware and is not authorized to provide or sell barware is subject to a fine in an amount of up to \$2,500.00 as determined by the commission. Multiple violations resulting from the same incident may be treated as a single violation for purposes of issuance of any penalty imposed under this act.

(8) An on-premises retailer that hosts an on-premises brand promotional event conducted by a wholesaler or supplier has 14 days after the event to remove from the premises any brand logoed merchandise from the event to maintain compliance with this section.

(9) This act and rules promulgated under this act do not prevent a retailer that holds an off-premises license only from purchasing brand logoed inventory and selling that inventory to its customers.

(10) Beginning after September 25, 2015, the commission may, by rule, add an item to or remove an item

from the definition of barware. The commission shall not add or remove more than 1 item per rule and shall not promulgate more than 1 rule at a time on the definition of barware. The commission shall not issue a rule that adds refrigerator systems, draft systems, or furniture to the definition of barware. A rule, regulation, or order adopted after January 1, 2014 that is not adopted in accordance with this subsection and that is not consistent with this section or is in conflict with this section is void and unenforceable.

(11) As used in this section:

(a) "Barware" means the following brand logoed items:

(i) Trays.

(ii) Coasters.

(iii) Napkins.

(iv) Shirts.

(v) Hats.

(vi) Pitchers.

(vii) Drinkware that is intended to be reused.

(viii) Bar mats.

(ix) Buckets.

(x) Bottle openers.

(xi) Stir rods.

(xii) Patio umbrellas.

(xiii) Any packaging used to hold and deliver the alcoholic liquor purchased by the retailer.

(xiv) Any other items that have been added by the commission under subsection (10).

(b) "Barware retailer" means a person that offers brand logoed barware for sale to retailers, whether or not it is in their ordinary course of business, and that is not licensed as, or directly or indirectly affiliated with, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink. For purposes of this subdivision, a licensing agreement that authorizes use of a brand logo is not a direct or indirect affiliation.

(c) "Broker" means a person, other than an individual, that is licensed by the commission and that is employed or otherwise retained by a manufacturer of spirits or a vendor of spirits to sell, promote, or otherwise assist in the sale or promotion of spirits.

(d) "Indirectly affiliated" means, for purposes of this section only, that a person owns 5% or more of the voting interest of another person.

(e) "Other valuable thing" means a good, service, or intangible good that is given, loaned, leased, or sold to another licensee that has value regardless of whether the value is nominal and includes, but is not limited to, a good, service, or intangible good that provided a benefit, regardless of how nominal, to the licensee other than advertising the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink; or distributed by the wholesaler, except for consumable goods and those goods, services, or intangible goods approved by rule or order of the commission before January 1, 2014.

(f) "Salesperson" means, for purposes of this subsection only, a person who is employed by a vendor of spirits or a broker and who is licensed by the commission to sell, deliver, or promote, or otherwise assist in the sale of, spirits in this state.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010;—Am. 2014, Act 47, Imd. Eff. Mar. 25, 2014;—Am. 2014, Act 353, Imd. Eff. Oct. 17, 2014;—Am. 2016, Act 81, Imd. Eff. Apr. 12, 2016.

#### **436.1609a Filing by manufacturer or wholesaler; schedule of net cash prices; beer package price; sale of beer at quantity discount prohibited; disclosure of filing under subsections (1) and (2); comparison of filing under subsections (1) and (2) with tax filing; reasons for regulation.**

Sec. 609a. (1) A manufacturer or wholesaler shall file with the commission 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 a beer package price reduction for its market area. The manufacturer or wholesaler shall file the price reduction before its effective date. A price reduction under this subsection must continue for at least 90 days after the effective date.

(3) The beer package price for a market area may be increased during the 90-day period described in subsection (2) for any of the following reasons:

(a) To reflect a tax increase in the market area.

(b) To reflect a general industry price increase in the market area.

(4) The beer package price for a market area may be decreased during the 90-day period described in

subsection (2) if both of the following conditions are met:

(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 90 days filed by the competition.

(5) A manufacturer or wholesaler shall not sell beer at a quantity discount.

(6) A net cash price filed under subsection (1) and a price reduction filed under subsection (2) are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, until 1 year after the net cash price or price reduction is filed, as applicable.

(7) The commission shall periodically compare a manufacturer's or wholesaler's filing under subsection (1) or (2) with the manufacturer's or wholesaler's tax filing under section 409.

(8) The regulation described in this section is necessary for both of the following reasons:

(a) To promote temperance and the public health and welfare.

(b) To promote a stable 3-tier distribution system with orderly markets for wine and malt beverage products in which there is no price discrimination by a wholesaler in its sales to retailers within the wholesaler's sales territory.

**History:** Add. 2016, Act 81, Imd. Eff. Apr. 12, 2016.

#### **436.1609b Expenditure records for each call on retail licensee; drink purchase for promotional purposes; limitation.**

Sec. 609b. (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 accurate records of expenditures for each call on a retail licensee. The records must be maintained for 4 years and must be made available for commission inspection.

(2) A vendor representative or salesperson of spirits or wine, for promotional purposes, may purchase 1 drink for each customer of an on-premises licensee. A drink purchased under this subsection must 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 \$100.00 per day. A drink purchased under this subsection must 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 a drink under subsection (3) more than twice per month at the same on-premises retail licensed location.

(5) A licensee employed to deliver alcoholic liquor shall not purchase a drink of alcoholic liquor for a retail licensee while on duty or in the course of employment.

**History:** Add. 2016, Act 81, Imd. Eff. Apr. 12, 2016.

#### **436.1610 Advertising; use of unpaid social media; definitions.**

Sec. 610. (1) Notwithstanding section 609, a wholesaler, manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, vendor of spirits, broker, or retailer may use unpaid social media to advertise any of the following in accordance with all applicable laws and regulations:

(a) An on-premises brand promotion.

(b) Beer, wine, or spirits tastings under section 537.

(c) A product location communication.

(2) As used in this section:

(a) "Broker" means that term as defined in section 609.

(b) "On-premises brand promotion" means a promotion in the manner provided by the order of the commission issued on October 27, 1999. That order's prohibition against advertising an on-premises promotion by a party off the licensed premises does not apply to this section.

(c) "Product location communication" means a listing or program that allows an individual to determine the availability of a specific product at licensed retailers in a certain geographic area.

(d) "Social media" means a service, platform, or website where users communicate with one another and share media, such as pictures, videos, music, and blogs, with other users free of charge. Social media includes the website of a wholesaler, manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, vendor of spirits, broker, or retailer.

**History:** Add. 2016, Act 106, Eff. Aug. 1, 2016.

\*\*\*\*\* 436.1610b.added THIS ADDED SECTION IS EFFECTIVE OCTOBER 10, 2017 \*\*\*\*\*

#### **436.1610b.added Temporary bin display.**

Sec. 610b. (1) A manufacturer, vendor of spirits, outstate seller of beer, outstate seller of wine, or wholesaler shall not sell or in any manner furnish or install, and a retailer shall not accept, a permanent display in the licensed premises of the retailer.

(2) A manufacturer, vendor of spirits, outstate seller of beer, or outstate seller of wine may furnish and install a temporary bin display that has a capacity of up to 25 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 retailer that is licensed for off-premises sales only.

(3) Notwithstanding section 609, a wholesaler may install, on the premises of a retailer that is licensed for off-premises sales only, a temporary bin display that has been provided without charge by the manufacturer, outstate seller of beer, or outstate seller of wine.

(4) A retailer shall ensure that a temporary bin display installed on the retailer's premises clearly indicates by a tag, stamp, label, or other method that is securely affixed to the temporary bin display the date on which the temporary bin display was installed.

(5) The 3,500-square-inch limit on an inside retail advertising sign under section 609 does not apply to advertising on a temporary bin display described in subsection (2) or (3).

(6) As used in this section, "temporary bin display" means a freestanding device that is constructed of a material that is used for the exhibition of beer, wine, or spirits on the premises of a retailer that is licensed for off-premises sales only and that must be removed from the retail licensed premises not later than 120 days after installation.

**History:** Add. 2017, Act 83, Eff. Oct. 10, 2017.

#### **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 minor; failure to make diligent inquiry; violation as misdemeanor; penalty; 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, Eff. June 30, 2011.

\*\*\*\*\* 436.1703 THIS SECTION IS AMENDED EFFECTIVE JANUARY 1, 2018; See 436.1703.amended  
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\*\*\*\*\* 436.1703 ENACTING SECTION 1 OF 2017 PA 89 IS AMENDED BY 2017 PA 123: See  
436.1703.amended[2] \*\*\*\*\*

\*\*\*\*\* 436.1703 THIS SECTION IS AMENDED EFFECTIVE JANUARY 1, 2018: See 436.1703.amended[3]  
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**436.1703 Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; prior violation; screening and assessment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; definitions.**

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 by a fine of not more than \$100.00. A court may order a minor under this subdivision 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 the office of substance abuse services, and may order that minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

(b) For a second 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 court finds that the minor 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, by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision 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 the office 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 (5).

(c) For a third or subsequent 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 court finds that the minor 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, by a fine of not more than \$500.00, or both. A court may order a minor under this subdivision 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 the office 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 (5).

(2) An individual 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. The terms and conditions of that probation 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. If a court finds that an individual violated a term or condition of probation or 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. If an individual fulfills 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 disqualifications or disabilities imposed by law upon conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. 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) A violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior violation for the purposes of subsection (1)(b) and (c).

(5) A court may order an individual 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 individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual 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. The parent, guardian, or custodian of a minor under 18 years of age not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

(6) 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.

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require that individual to submit to a preliminary chemical breath analysis. A peace officer may arrest an individual 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.

(8) A law enforcement agency, upon determining that an individual 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 individual 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 law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual 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 law enforcement agency may notify the parent, guardian, or custodian 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.

(9) 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.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

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

(13) 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.

(14) 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.

(15) 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.

(16) 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 701(1), or section 801(2).

(17) 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.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

(i) 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.

(ii) 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.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

**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;—Am. 2012, Act 125, Eff. June 1, 2012.

\*\*\*\*\* 436.1703.amended THIS AMENDED SECTION IS EFFECTIVE JANUARY 1, 2018 \*\*\*\*\*

**436.1703.amended Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; penalties; furnishing fraudulent identification to minor; probation; prior judgment; screening and assessment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment for undercover operation prohibited;**

**affirmative defense; definitions.**

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 responsible for a state civil infraction or guilty of a misdemeanor as follows and is not subject to the penalties prescribed in section 909:

(a) For the first violation, the minor is responsible for a state civil infraction and shall be fined not more than \$100.00. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, and may order the minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5). A minor may be found responsible or admit responsibility only once under this subdivision.

(b) If a violation of this subsection occurs after 1 prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 30 days if the court finds that the minor 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, by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office 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 (5).

(c) If a violation of this subsection occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 60 days, if the court finds that the minor 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, by a fine of not more than \$500.00, or both, as applicable. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office 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 (5).

(2) An individual 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) If an individual who pleads guilty to a misdemeanor violation of subsection (1)(b) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (1)(b), 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. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(c), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIIA 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. If a court finds that an individual violated a term or condition of probation or 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. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is 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 disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. 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 on 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, on 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) A misdemeanor violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior judgment for the purposes of subsection (1)(c).

(5) A court may order an individual found responsible for or convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor 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. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

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

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a state civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(8) A law enforcement agency, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, or 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 individual 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 law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual 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 law enforcement agency may notify the parent, guardian, or custodian 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.

(9) 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.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor who is less than 18 years of age and who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a

parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

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

(13) 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.

(14) 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.

(15) 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.

(16) 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 701(1), or section 801(2).

(17) In a 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.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

(i) 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.

(ii) 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.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(d) "Prior judgment" means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) This section or section 701 or 707.

(ii) Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

(iii) Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(iv) Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

**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;—Am. 2012, Act 125, Eff. June 1, 2012;—Am. 2016, Act 357, Eff. Jan. 1, 2018.

\*\*\*\*\* 436.1703.amended[2] ENACTING SECTION 1 OF 2017 PA 89 IS AMENDED BY 2017 PA 123.  
THIS SECTION IS EFFECTIVE JANUARY 1, 2018 \*\*\*\*\*

**436.1703.amended[2] Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; use by minor; prior violation; screening and assessment; prior judgment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment of minor for undercover operation prohibited; affirmative defense; definitions.**

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 responsible for a state civil

infraction or guilty of a misdemeanor as follows and is not subject to the penalties prescribed in section 909:

(a) For the first violation, the minor is responsible for a state civil infraction and shall be fined not more than \$100.00. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, and may order the minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5). A minor may be found responsible or admit responsibility only once under this subdivision.

(b) If a violation of this subsection occurs after 1 prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 30 days if the court finds that the minor 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, or by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office 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 (5).

(c) If a violation of this subsection occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 60 days, if the court finds that the minor 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, or by a fine of not more than \$500.00, or both, as applicable. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office 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 (5).

(2) An individual 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) If an individual who pleads guilty to a misdemeanor violation of subsection (1)(b) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (1)(b), 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. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(c), payment of the costs including minimum state cost as provided for in section 18m of chapter XIII A 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. If a court finds that an individual violated a term or condition of probation or 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. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is 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 disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. 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 on 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, on 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) A misdemeanor violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior judgment for the purposes of subsection (1)(c).

(5) A court may order an individual found responsible for or convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor 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. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

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

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. If a minor does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a state civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(8) A law enforcement agency, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, or 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 individual 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 law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual 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 law enforcement agency may notify the parent, guardian, or custodian 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.

(9) 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.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor who is less than 18 years of age and who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

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

(13) 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.

(14) 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.

(15) 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.

(16) 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 701(1), or section 801(2).

(17) In a 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.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

(i) 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.

(ii) 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.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(d) "Prior judgment" means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) This section or section 701 or 707.

(ii) Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

(iii) Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(iv) Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

**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;—Am. 2012, Act 125, Eff. June 1, 2012;—Am. 2016, Act 357, Eff. Jan. 1, 2018;—Am. 2017, Act 89, Eff. Oct. 10, 2017.

\*\*\*\*\* 436.1703.amended[3] THIS AMENDED SECTION IS EFFECTIVE JANUARY 1, 2018: See enacting section 1 of Act 123 of 2017 \*\*\*\*\*

**436.1703.amended[3] Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; use by minor; prior violation; screening and assessment; prior judgment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment of minor for undercover operation prohibited; affirmative defense; definitions.**

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 responsible for a state civil infraction or guilty of a misdemeanor as follows and is not subject to the penalties prescribed in section 909:

(a) For the first violation, the minor is responsible for a state civil infraction and shall be fined not more than \$100.00. A court may order a minor under this subdivision to participate in substance use disorder



services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, and may order the minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5). A minor may be found responsible or admit responsibility only once under this subdivision.

(b) If a violation of this subsection occurs after 1 prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 30 days if the court finds that the minor 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, or by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office 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 (5).

(c) If a violation of this subsection occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 60 days, if the court finds that the minor 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, or by a fine of not more than \$500.00, or both, as applicable. A court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office 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 (5).

(2) An individual 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) If an individual who pleads guilty to a misdemeanor violation of subsection (1)(b) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (1)(b), 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. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(c), 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. If a court finds that an individual violated a term or condition of probation or 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. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is 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 disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. 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 on 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, on 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) A misdemeanor violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior judgment for the purposes of subsection (1)(c).

(5) A court may order an individual found responsible for or convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor 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. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

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

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. If a minor does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a state civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(8) A law enforcement agency, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, or 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 individual 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 law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual 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 law enforcement agency may notify the parent, guardian, or custodian 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.

(9) 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.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor who is less than 18 years of age and who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

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

(13) 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.

(14) 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.

(15) 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.

(16) 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 701(1), or section 801(2).

(17) In a 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.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

(i) 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.

(ii) 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.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(d) "Prior judgment" means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) This section or section 701 or 707.

(ii) Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

(iii) Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(iv) Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

**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;—Am. 2012, Act 125, Eff. June 1, 2012;—Am. 2016, Act 357, Eff. Jan. 1, 2018;—Am. 2017, Act 89, Eff. Oct. 10, 2017;—Am. 2017, Act 123, Imd. Eff. Oct. 5, 2017.

#### **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, (3) 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.

(7) 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.

(8) 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).

(9) 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.

(10) 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.

(11) 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 note:** 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; proof of financial responsibility; 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 policy; revocation; section inapplicable to special licensee or applicant for special license; rules.**

Sec. 803. (1) 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) A licensee may furnish proof of financial responsibility that exceeds the requirements of this section.

(3) An insurer under a policy or policies of liquor liability insurance or a surety under 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 does 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.

(4) An insured retail licensee shall not cancel a liquor liability insurance policy 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 before the expiration of the 30-day period. The commission shall revoke the license of a retail licensee that violates this subsection.

(5) This section does not apply to a special licensee or applicant for a special license.

(6) The commission shall promulgate rules under 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;—Am. 2016, Act 105, Eff. Aug. 1, 2016.

**Compiler's note:** 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

**436.1805 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 note:** 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 note:** 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 note:** 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.

**Compiler's note:** 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

#### **436.1813 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.

**Compiler's note:** 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

#### **436.1815 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.

**Compiler's note:** 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

### CHAPTER 9

#### **436.1901 Compliance required; prohibited acts; violation; sanctions and penalties.**

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; administrative fine; 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.

#### **436.1903a Conviction or administrative disqualification of licensee; electronic transaction; sanctions; hearing and appeal procedures; definitions.**

Sec. 903a. (1) A licensee is subject to the licensing sanctions in subsection (2) if the licensee is convicted or administratively disqualified as the result of an electronic transaction to which all of the following apply:

- (a) The transaction is a transaction for food assistance program benefits.
- (b) The transaction involves an item other than eligible food.
- (c) The transaction is related to the sale of alcoholic liquor under that licensee's liquor license.

(2) The commission or a commissioner or duly authorized agent of the commission designated by the chairperson of the commission shall, upon due notice and proper hearing, impose the following license sanctions upon a licensee described in subsection (1):

- (a) For a first violation, a license suspension for between 30 and 60 days.
- (b) For a second violation, a license suspension for between 61 and 120 days.
- (c) For a third or subsequent violation, revocation of the license.

(3) A licensee aggrieved by a sanction imposed under subsection (2) may invoke the hearing and appeal procedures of section 903(2) and rules promulgated under that section.

(4) As used in this section:

(a) "Administratively disqualified" means administratively disqualified from acting as a merchant under the food and nutrition act of 2008, 7 USC 2011 to 2036a, or 7 CFR 278.6 because the licensee has engaged in trafficking as that term is defined in 7 CFR 271.2. A licensee is not administratively disqualified until any administrative or judicial review under 7 CFR 279 is complete.

(b) "Convicted" means that the licensee either was convicted of or pled guilty to a crime under section 300a(1)(c) of the Michigan penal code, 1931 PA 328, MCL 750.300a.

(c) "Eligible food" means that term as defined in 7 CFR 271.2.

**History:** Add. 2013, Act 55, Eff. Sept. 10, 2013.

#### **436.1903b Payment by means dishonored by financial institution for lack of sufficient funds; violation of act.**

Sec. 903b. A retailer violates this act if the retailer or the retailer's clerk, servant, agent, or employee makes a payment to a wholesaler, the commission, or this state by any means that has been dishonored by a financial institution for lack of sufficient funds.

**History:** Add. 2016, Act 434, Imd. Eff. Jan. 4, 2017.

#### **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 on 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 THIS SECTION IS AMENDED EFFECTIVE OCTOBER 10, 2017: See 436.1909 \*\*\*\*\*

#### **436.1909 Violation of act as misdemeanor; penalties or sanctions; remedies; 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.

\*\*\*\*\* 436.1909.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 10, 2017 \*\*\*\*\*

**436.1909.amended Violation of act as misdemeanor or felony; penalties or sanctions; remedies; violation of MCL 436.1203; "person" defined; 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 an 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) Subject to subsection (6), a person, whether or not a licensee, who sells, delivers, or imports beer or wine in violation of section 203(1) is subject to the following penalties or sanctions:

(a) A person who sells, delivers, or imports beer or wine in violation of section 203(1) in the amount of at least 225,000 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 beer or wine in violation of section 203(1) in the amount of at least 45,000 milliliters but less than 225,000 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 beer or wine in violation of section 203(1) in the amount of less than 45,000 milliliters is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(6) As used in subsection (5), "person" does not include any of the following:

(a) An air carrier as that term is defined in 49 USC 40102.

(b) A freight forwarder as that term is defined in 49 USC 13102.

(c) A motor carrier as that term is defined in 49 USC 13102.

(7) 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 the person or the use of a lawful remedy by another person.

(8) 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;—Am. 2017, Act 87, Eff. Oct. 10, 2017.

#### **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 Prohibited conduct; 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 device; use, possession, sale, or offer to sell prohibited; violation; rules.**

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.

**436.1914a Powdered alcohol; use, possession, sale, or offer for sale prohibited; violation as misdemeanor; exception; "powdered alcohol" defined.**

Sec. 914a. (1) Except as otherwise provided in subsection (2), a person shall not use or offer for use, possess, sell, or offer for sale powdered alcohol. A person that violates this section is guilty of a misdemeanor punishable as provided in section 909.

(2) This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.

(3) As used in this section, "powdered alcohol" means alcohol that is sold in powder form for either direct use or reconstitution.

**History:** Add. 2015, Act 165, Eff. Jan. 26, 2016.

**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; extended hours permit; 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; severability.**

Sec. 925. (1) This act shall be construed to effect the intent and purposes set forth in this act and to protect the public health, safety, and welfare of the citizens of this state.

(2) If any provision of this act is found to be unconstitutional by a court of competent jurisdiction and all rights of appeal have expired or been exhausted, the offending provision shall be severed and shall not affect the remaining portions of the act.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2014, Act 46, Imd. Eff. Mar. 25, 2014.

## 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.

#### **436.2014 Sale of unlimited quantity of alcoholic liquor at specific price; conditions; sale of 2 or more identical drinks containing alcoholic liquor for 1 price; prohibition; "private function" defined.**

Sec. 1014. (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 unless all of the following conditions are met:

- (a) The sale, offer, or advertisement is in connection with a private function.
  - (b) The on-premises licensee has entered into a written agreement with the organizer of the private function stating all of the following:
    - (i) The date and time the event will be held.
    - (ii) The location of the event.
    - (iii) The terms under which alcohol will be sold and served during the event.
  - (c) The on-premises licensee makes available to the commission and local law enforcement, on notice, the written agreement described in subdivision (b).
- (2) An on-premises licensee shall not sell, offer to sell, or advertise the sale of 2 or more identical drinks containing alcoholic liquor to an individual for the individual's consumption for 1 price. If 2 or more identical drinks containing alcoholic liquor are served to an individual at 1 time, the price charged for the second and each additional drink must be the same as the price charged for the first drink.
- (3) As used in this section, "private function" means an event that meets all of the following conditions:
- (a) It is a prearranged private party, private function, or private event for a specific social or business occasion.
  - (b) Attendance is only by invitation or reservation.
  - (c) It is not open to the general public.
  - (d) The guests are served in an outdoor service area or room that is well-defined and clearly marked and designated and used exclusively for the event.

**History:** Add. 2015, Act 47, Imd. Eff. June 9, 2015.

#### **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 Selling or serving food; removal of liquor from premises; removal of partially consumed bottle of wine from premises; class A or B hotel; consumption of wine brought into premises by consumer.**

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 subsection (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 cap the bottle or 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.

(5) Notwithstanding section 901(6), an on-premises licensee may, in a manner as determined by that licensee, allow for the consumption of wine that is produced by a wine maker, a small wine maker, or an out-of-state entity that is the substantial equivalent of a wine maker or small wine maker and that is brought into the licensed premises in its original sealed container by a consumer who is not prohibited under this act from possessing wine. The licensee shall not allow the consumer to remove a partially consumed bottle of wine brought by the consumer unless the licensee or the licensee's clerk, agent, or employee caps the bottle or reinserts the cork so that the top of the cork is level with the lip of the bottle. The licensee may charge a corkage fee for each bottle of wine brought by the consumer and opened on the premises by the licensee or the licensee's clerk, agent, or employee. This subsection does not exempt the licensee or the consumer from any other applicable requirements, responsibilities, or sanctions imposed under this act.

**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;—Am. 2013, Act 235, Eff. Mar. 14, 2014.

#### **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.

#### **436.2024 Automatic teller machine; preventing access to cash benefits from Michigan bridge card; definitions.**

Sec. 1024. (1) A retailer shall work with the department of human services and with persons that provide automatic teller machine services on the retailer's premises to prevent an individual's access to cash benefits from Michigan bridge cards through a point of sale device or withdrawal from an automatic teller machine on the retailer's premises. For purposes of this section only, a retailer does not include a retail food store.

(2) As used in this section:

(a) "Michigan bridge card" means the card that is used to distribute cash benefits by the department of human services.

(b) "Retail food store" means that term as defined in 7 USC 2012.

**History:** Add. 2013, Act 197, Eff. Feb. 1, 2014.

#### **436.2025 Giving away alcoholic liquor prohibited; exception; sale to intoxicated individual prohibited; inadmissibility of breathalyzer or blood alcohol test results.**

Sec. 1025. (1) Except as otherwise provided in subsection (3), and subject to subsection (2), 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 a vendor that is a manufacturer 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 subdivision, 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 any sampling or tasting authorized by rule of the commission.

(c) The holder of a farmer's market permit from conducting a tasting authorized under section 415.

(d) A person from conducting of any sampling or tasting authorized under section 537.

(e) A retailer licensed for consumption on the premises from conducting a sampling authorized under section 1027(2).

(f) A person from conducting a sampling at a consumer sampling event authorized under section 1027(4) and (5).

(g) 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 wholesaler or manufacturer may give samples of beer or wine to an employee of the wholesaler if all of the following conditions are met:

(a) The sampling is for the purpose of educating the employee regarding the beer or wine.

(b) The employee is at least 21 years of age.

(c) The sampling takes place on the licensed premises of the wholesaler.

(4) A vendor shall not sell an alcoholic liquor to an individual in an intoxicated condition.

(5) 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, is not 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 individual'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, Imd. Eff. Nov. 17, 2010;—Am. 2017, Act 88, Imd. Eff. July 12, 2017.

#### **436.2027 Samplings or tastings of alcoholic liquor; consumption on premises; holding of consumer sampling event; violation; rule or order; sampling for other than commercial purpose; written agreement; definitions.**

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) or (2), a retailer licensed by the commission for consumption on the premises may allow customers to sample beer, wine, and spirits if 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 spirits. A customer shall not be provided more than 2 samples within a 24-hour period per licensed premises.

(3) This section does not prohibit any 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 if 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.

(d) A micro brewer, brewpub, or on-premises licensee from allowing the sampling and consumption on the licensed premises of beer, wine, mead, honey-based beer, or cider produced by 1 or more home brewers at a meeting of home brewers, or a club composed primarily of home brewers, under the following circumstances:

(i) The sampling or consumption is for the purpose of exhibitions or competitions involving home brewers.

(ii) The beer, honey-based beer, or cider is served in portions that do not exceed 3 ounces. The wine or mead is served in portions that do not exceed 2 ounces.

(iii) The beer, wine, mead, honey-based beer, or cider produced by the home brewer is only consumed by the home brewer, the home brewer's family, a club member, a judge, or a guest speaker and is not sold to members of the general public.

(iv) The participants in the sampling or consumption otherwise comply with applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act.

(v) The participants in the sampling or consumption are not charged for the sampling or consumption of the beer, wine, mead, honey-based beer, or cider.

(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 a consumer sampling event license shall comply with the following:

(a) The commission must be notified in writing a minimum of 10 working days before 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 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 if 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) Before a micro brewer, brewpub, or on-premises licensee allows an event to be held under subsection (3)(d), the micro brewer, brewpub, or on-premises licensee shall enter into a written agreement with the home brewers or home brewers club stating all of the following:

(a) The date and time the event will be held.

(b) The location of the event.

(c) Either of the following:

(i) A statement that the micro brewer, brewpub, or on-premises licensee acknowledges that it is not in control of an unregulated alcoholic beverage at its establishment and agrees to assume liability under section 801(3) for the event.

(ii) Proof that the home brewers or home brewers club has obtained a bond or liability insurance equal to that required under section 803(1).

(10) As used in this section:

(a) "Commercial purpose" means a purpose for which monetary gain or other remuneration could reasonably be expected.

(b) "Home brewer" means an individual who manufactures beer, wine, mead, honey-based beer, or cider at his or her dwelling.

**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, Imd. Eff. Nov. 17, 2010;—Am. 2011, Act 219, Imd. Eff. Nov. 10, 2011.

#### **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:** Add. 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 that is licensed as a specially designated merchant or through a seller that is a partner 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 that is 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) If it receives 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 that is a partner 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 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 that is 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 the license, if at the time of sale the tag or label remains permanently affixed to the bottle.

(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.

**History:** Add. 2010, Act 175, Imd. Eff. Sept. 30, 2010;—Am. 2014, Act 194, Imd. Eff. June 24, 2014.

## 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 Sunday sale of beer and wine during certain hours; circumstances for prohibiting.**

Sec. 1111. (1) The sale of beer and wine between the hours of 7 a.m. on Sunday and 2 a.m. on Monday is allowed. Except as otherwise provided in subsection (6), a county, city, village, or township may prohibit the sale of beer and wine between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday 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) 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 morning sale of beer and wine or 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 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.

(4) The question of the sale of beer and wine shall be submitted by ballot in substantially the following forms:

(a) For the sale between the hours of 7 a.m. and 12 noon on Sunday:

"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. and 12 noon on Sunday be prohibited?"

Yes .....

No .....

(b) For the sale between the hours of 7 a.m. on Sunday and 2 a.m. on Monday:

"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) Votes on a 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 elections, 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. and 12 noon on Sunday or 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. and 12 noon on Sunday or 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 these 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. and 12 noon on Sunday or 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.

(7) Any prohibitions on the sale of beer and wine between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday adopted by a county, city, village, or township before the effective date of the amendatory act that added this subsection shall remain in effect.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2010, Act 213, Eff. Dec. 1, 2010;—Am. 2011, Act 27, Imd. Eff. May 16, 2011

**436.2113 Selling at retail, 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; "motorsports entertainment complex" defined.**

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 between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday, by resolution approved by a majority of the legislative body voting on that resolution, 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 between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday. 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 shall be submitted by ballot in substantially the following forms:

(a) For the sale between the hours of 7 a.m. and 12 noon on Sunday:

"Shall the sale of spirits and mixed spirit drink for consumption on the premises be prohibited between the hours of 7 a.m. and 12 noon on Sunday within the county of ..... under the provisions of the law governing the sale of spirits and mixed spirit drink for consumption?

Yes .....

No ..... "

(b) For the sale between the hours of 7 a.m. on Sunday and 2 a.m. on Monday:

"Shall the sale of spirits and mixed spirit drink for consumption on the premises be prohibited between the hours of 7 a.m. on Sunday and 2 a.m. on Monday 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 between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday 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 between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday. 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 off the premises, in addition to beer and wine, in a retail establishment licensed under this act shall be submitted by ballot in substantially the following forms:

(a) For the sale between the hours of 7 a.m. and 12 noon on Sunday:

"Shall the sale of spirits and mixed spirit drink for consumption off the premises be prohibited between the hours of 7 a.m. and 12 noon 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 ....."

(b) For the sale between the hours of 7 a.m. on Sunday and 2 a.m. on Monday:

"Shall the sale of spirits and mixed spirit drink for consumption off the premises be prohibited between the hours of 7 a.m. on Sunday and 2 a.m. on Monday 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 to the electors 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, between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday. The sale of spirits and mixed spirit drink 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. The legislative body of a city, village, or township, by resolution or ordinance, may prohibit the sale of alcoholic liquor on a legal holiday, primary election day, general election day, municipal election day, between the hours of 7 a.m. and 12 noon on Sunday, or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday.

(6) The sale of spirits or mixed spirit drink in any county between the hours of 7 a.m. and 12 noon on Sunday or 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 those 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. and 12 noon on Sunday or 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.

(7) Any prohibitions on the sale of alcoholic liquor between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday adopted by a county, city, village, or township before the effective date of the amendatory act that added this subsection shall remain in effect.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998;—Am. 2004, Act 134, Imd. Eff. June 7, 2004;—Am. 2010, Act 213, Eff. Dec. 1, 2010;—Am. 2011, Act 27, Imd. Eff. May 16, 2011.

#### **436.2114 Selling, giving away, furnishing, or buying alcoholic liquor or spirits on any day; annual fee.**

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 between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday under section 1111 and does not prevent any local governmental unit from prohibiting the sale of

spirits and mixed spirit drink between the hours of 7 a.m. and 12 noon on Sunday or between the hours of 7 a.m. on Sunday and 2 a.m. on Monday under section 1113. A licensee selling alcoholic liquor between 7 a.m. and 12 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:** Add. 2004, Act 134, Imd. Eff. June 7, 2004;—Am. 2010, Act 213, Eff. Dec. 1, 2010;—Am. 2011, Act 27, Imd. Eff. May 16, 2011.

#### **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. Dec. 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 Repealed. 2011, Act 166, Eff. Oct. 1, 2012.**

**Compiler's note:** The repealed section pertained to imposition and levy of tax on retail selling price of spirits for consumption off premises and deposit to liquor purchase revolving fund.

#### **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.