

Act No. 298
Public Acts of 2011
Approved by the Governor
December 21, 2011
Filed with the Secretary of State
December 22, 2011
EFFECTIVE DATE: December 22, 2011

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Reps. O'Brien, Barnett, Bledsoe, Callton, Cotter, Daley, Damrow, Darany, Dillon, Durhal, Foster, Geiss, Genetski, Haugh, Heise, Horn, Howze, Kandrevas, Liss, Lyons, MacGregor, McCann, Nesbitt, Olson, Pettalia, Pscholka, Shirkey, Smiley, Stallworth, Yonker and Zorn

ENROLLED HOUSE BILL No. 5087

AN ACT to amend 1998 PA 58, entitled "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," by amending sections 411, 537, and 603 (MCL 436.1411, 436.1537, and 436.1603), section 411 as added by 2000 PA 395 and sections 537 and 603 as amended by 2010 PA 213.

The People of the State of Michigan enact:

Sec. 411. A brewer that is not licensed as a micro brewer may sell its beer for on-premises consumption at not more than 1 location in this state that is on any of its licensed brewery premises.

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 license where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises.
- (c) Clubs where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to bona fide members where consumption is limited to these members and their bona fide guests, who 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 licenses where beer and wine or beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only.

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

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

(i) Class C.

(ii) Tavern.

(iii) Class A hotel.

(iv) Class B hotel.

(k) Micro brewers and brewers where beer produced by the micro brewer or brewer may be sold to a consumer for consumption on or off the brewery premises.

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

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

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

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

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

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

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

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

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

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

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

(c) The wine tasting locations 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, who does not hold a license allowing the consumption of alcoholic liquor on the premises at the same licensed address, may conduct beer and wine tastings on the licensed premises of a specially designated merchant under the following conditions:

(a) A customer is not charged for the tasting of beer or wine.

(b) The tasting samples provided to a customer do not exceed 3 servings at up to 3 ounces per serving of beer or 3 servings at up to 2 ounces of wine. A customer shall not be provided more than a total of 3 samples of beer or wine within a 24-hour period per licensed premises.

(c) The specially designated merchant, outstate seller of beer, outstate seller of wine, wine maker, micro brewer, or brewer has first obtained an annual beer and wine tasting permit approved by the commission.

(d) The commission is notified, in writing, a minimum of 10 working days 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 perform no other duties, including the sale of alcoholic liquor for consumption off the licensed premises. Beer and wine used for the tasting must come from the specially designated merchant's inventory, and all open bottles must be removed from the premises on the same business day or resealed and stored in a locked, separate storage compartment on the licensed premises when not being used for the activities allowed by the permit.

(7) A wholesaler 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 upon which the brandy and spirits tastings occur conform to local and state sanitation requirements.
- (b) Payment of a \$100.00 fee per location is made to the commission.
- (c) The brandy and spirits tasting locations 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.

Sec. 603. (1) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouser, 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, warehouser, or wholesaler or a stockholder of a supplier, warehouser, 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, warehouser, 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, warehouser, 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 2 other brewpubs if the combined production of all the locations in which the brewpub has an interest does not exceed 5,000 barrels of beer per calendar year.

(8) This section does not prohibit a supplier from having any 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 warehouser, 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.

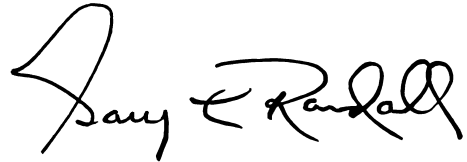
(14) Subsection (13) shall not be interpreted in a manner that would prohibit a class C, tavern, class A hotel, or class B hotel licensee from receiving a brewpub license or that would prohibit a micro brewer or brewer from having an on-site restaurant.

(15) As used in this section:

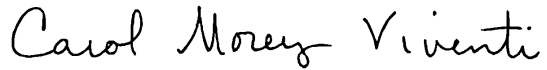
(a) "Manufacturer" means, notwithstanding section 109(1), a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, distiller, small distiller, brandy manufacturer, mixed spirit drink manufacturer, direct shipper, or a person licensed by the commission to perform substantially similar 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.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor