

## "SECONDARY USE": ADVERTISING ITEMS AND LOGOED BARWARE IN RESTAURANTS AND BARS

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**Senate Bill 505 as enacted**  
**Public Act 47 of 2014**  
**Sponsor: Sen. Joe Hune**  
**House Committee: Regulatory Reform**  
**Senate Committee: Regulatory Reform**

**Complete to 4-9-14**

### A SUMMARY OF SENATE BILL 505 AS ENACTED

Senate Bill 505 amended the Michigan Liquor Control Code (MCL 436.1609) to allow certain types of logoed and branded barware, promotional materials, and other items in establishments with liquor licenses under certain conditions.

The bill creates an exception to the prohibition in Section 609 of the code that prevented 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 from aiding or assisting any other vendor by gift, loan of money, or property of any description, or other valuable thing, or by giving premiums or rebates. It also prohibited a vendor from accepting those items. The bill provides exceptions to this, as described below.

#### *Advertising Items*

Under the bill, the following are allowed to provide another licensee with items that feature brand logos and prices of alcoholic liquor for advertising purposes (i.e., advertising brands and prices):

- Manufacturer
- Mixed spirit drink manufacturer
- Warehouse
- Wholesaler
- Outstate seller of beer
- Outstate seller of wine
- Outstate seller of mixed spirit drink
- Vendor of spirits

In addition to promotional items intended for use in connection with specific sponsorships of festivals and items that do not have any value beyond advertising brands and prices or alcoholic liquor, the following advertising items may be provided by the entities listed above:

- Alcoholic liquor recipes literature
- Calendars and matchbooks
- Removable tap markers or signs
- Table tents
- Shelf talkers
- Bottle neckers
- Cooler stickers
- Blinking and non-blinking buttons
- Menu clip-ons
- Mirrors
- Napkin holders
- Cold Shot tap machines
- Alcoholic liquor drink menus

Under the bill, on their licensed premises, retailers are prohibited from using or possessing advertising items that have a use or value beyond advertising liquor, with the exception of the items previously listed.

***Brand Logoed Barware***

Under the bill, a retailer can possess and use brand logoed barware that advertises *spirits* as long as the items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer.

A retailer can possess and use brand logoed barware that advertises *beer or wine* as long as those items are purchased from a barware retailer.

A retailer is required to maintain the receipts of all purchased brand logoed barware for at least three years and must make those receipts available for inspection by the Liquor Control Commission. In addition, beginning in the 2015 licensing year, a retailer must disclose, in the manner prescribed by the LCC on the application for license renewal, whether they purchased any barware during the immediately preceding license year.

Beginning 18 months from the effective date of the bill, the LCC will be able to, by rule, add or remove items from the list of items defined as "barware" below. The commission cannot add or delete more than one item per rule.

Barware is defined in the bill as the following brand logoed items:

- Trays
- Coasters
- Napkins
- Shirts
- Hats
- Pitchers
- Drinkware intended to be reused

- Bar mats
- Buckets
- Bottle openers
- Stir rods
- Patio umbrellas
- Any packaging used to hold and deliver the alcoholic liquor purchased by the retailer

The term "barware retailer" is defined as "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, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits. (A licensing agreement would not constitute a direct or indirect affiliation.)

Retailers hosting an on-premises brand promotional event conducted by a wholesaler or supplier must remove any brand logoed merchandise from the event from their premises within 14 days following the event.

In addition to other penalties in the code, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or an outstate seller of mixed spirit drinks that provides or sells barware and is not authorized to do so is subject to a fine of up to \$2,500 as determined by the LCC.

The bill was tie-barred to Senate Bills 504, 506, 507 and 650, and House Bills 4709-4711 and 4277, all of which are amendments to the Liquor Control Code. However, none of those bills dealt directly with the same topics as Senate Bill 505. All of those bills have been enacted.

#### **BRIEF DISCUSSION OF BILL:**

The bill represents a compromise between those who supported the previous prohibition on certain logoed and branded barware and those who advocated lifting the ban and permitting unlimited distribution and use of such products.

Those who initially supported the prohibition (such as wholesalers of beer and wine) say the intent of the prohibition was to prevent the distribution of products by manufacturers or distributors to influence what products are sold by retailers and bought by customers. Supporters say the bill is needed as part of the state's three-tiered regulatory system, which keeps the manufacturers of alcoholic beverages, the distributors, and the retailers separate. Supporters of this system say that one of its pillars is prohibiting unfair aid and assistance between businesses in separate tiers. The three-tiered system works in the public interest, they argue, because it helps ensure proper regulation between the groups and prevents one interest from becoming too powerful.

Opponents of the prohibition say that the state does not have a compelling interest in restricting what types of items can be used in bars or restaurants or where such establishments can obtain them. Several bar and restaurant owners testified in opposition to earlier versions of legislation, saying it would hinder the ability of smaller businesses to compete, because it does not allow them to accept logoed barware free or at reduced prices, and instead requires them to purchase barware at full price from a third party. Furthermore, it does not seem realistic to think that customers in today's consumer culture are influenced in the drinks they will order by the names on glasses, coasters, napkins, and wall clocks they encounter.

**FISCAL IMPACT:**

The bill would not have a substantial fiscal impact on the state or on local units of government.

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