

# SENATE BILL No. 667

December 10, 2015, Introduced by Senator STAMAS and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled "Michigan liquor control code of 1998," by amending section 609 (MCL 436.1609), as amended by 2014 PA 353, and by adding sections 609a and 609b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 609. (1) Except as provided in this section and sections  
2       605 and 1029, a manufacturer, mixed spirit drink manufacturer,  
3       warehouser, wholesaler, outstate seller of beer, outstate seller of  
4       wine, outstate seller of mixed spirit drink, or vendor of spirits  
5       shall not aid or assist any other vendor by gift, loan of money or  
6       property of any description, or other valuable thing, or by the  
7       giving of premiums or rebates, and a vendor shall not accept the  
8       same. However, if manufacturers of spirits reduce the price of

1 their products, the manufacturer of spirits may refund the amount  
2 of the price reductions to specially designated distributor  
3 licensees in a manner prescribed by the commission.

4 (2) A manufacturer, mixed spirit drink manufacturer,  
5 warehouser, wholesaler, outstate seller of beer, outstate seller of  
6 wine, outstate seller of mixed spirit drink, or vendor of spirits  
7 may, in a manner consistent with rules, regulations, and orders  
8 made by the commission, provide another licensee with **AN**  
9 advertising ~~items~~**ITEM** that ~~promote~~**PROMOTES** the brands and prices  
10 of alcoholic liquor produced by the manufacturer; sold by the  
11 outstate seller of beer, the outstate seller of wine, or the  
12 outstate seller of mixed spirit drink; or distributed by the  
13 wholesaler. Except as otherwise ~~provided~~**ALLOWED** under subsection  
14 (3), (4), ~~or~~(5), **OR (6)**, the advertising ~~items~~**ITEM** shall not have  
15 any use or value beyond the actual advertising of brands and prices  
16 of the alcoholic liquor.

17 (3) Except for those orders that were approved for specific  
18 sponsorships or festivals, a manufacturer, mixed spirit drink  
19 manufacturer, warehouser, wholesaler, outstate seller of beer,  
20 outstate seller of wine, outstate seller of mixed spirit drink, or  
21 vendor of spirits may provide goods and services to another  
22 licensee that were approved by the commission ~~pursuant to~~**UNDER**  
23 rules or orders adopted ~~prior to~~**BEFORE** January 1, 2014 and the  
24 following items:

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

- 1 (d) Table tents.
- 2 (e) Shelf talkers.
- 3 (f) Bottle neckers.
- 4 (g) Cooler stickers.
- 5 (h) Buttons, blinking and nonblinking.
- 6 (i) Menu clip-ons.
- 7 (j) Mirrors.
- 8 (k) Napkin holders.
- 9 (l) Spirits cold shot tap machines.
- 10 (m) Alcoholic liquor drink menus.
- 11 (n) Keg couplers that are lent to an on-premises retailer.
- 12 (o) Sporting event or entertainment tickets.

13 **(P) GRAVITY FEED RACKS.**

14 **(Q) SUCTION CUPS.**

15 **(R) COOLER DOOR ATTACHMENTS.**

16 **(S) TEAR PAD HOLDERS.**

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

21 (5) A retailer shall not use or possess, at its licensed  
 22 premises, advertising items that have a use or value beyond the  
 23 actual advertising of brands and prices of alcoholic liquor except  
 24 for those **ITEMS** allowed in ~~subsections~~ **SUBSECTION (3), and (4), OR**  
 25 **(6)**, or as otherwise ~~provided in~~ **ALLOWED UNDER** this subsection. A  
 26 retailer may possess and use brand logoed barware that advertises  
 27 spirits ~~as long as those~~ **IF THE** items are purchased from a

1 manufacturer of spirits, vendor of spirits, salesperson, broker, or  
2 barware retailer. A retailer may possess and use brand logoed  
3 barware that advertises beer or wine ~~as long as these~~ **IF THE** items  
4 are purchased from a barware retailer. A retailer shall maintain  
5 the receipts of all purchased brand logoed barware for at least 3  
6 years and shall make those receipts available for inspection by the  
7 commission as provided in section 217. Beginning in the 2015  
8 licensing year, a retailer shall disclose, in a manner as  
9 prescribed by the commission on the application for renewal of an  
10 existing license, if any barware was purchased by the retailer  
11 during the immediately preceding license year.

12 (6) A MANUFACTURER, OUTSTATE SELLER, OR VENDOR OF SPIRITS MAY  
13 PROVIDE BRAND LOGOED MERCHANDISE TO AN ON-PREMISES RETAILER AND  
14 OFF-PREMISES RETAILER TO PROMOTE ITS PRODUCTS UNDER R 436.1321(1)  
15 TO (3) OF THE MICHIGAN ADMINISTRATIVE CODE IF ALL OF THE FOLLOWING  
16 CONDITIONS ARE COMPLIED WITH:

17 (A) BRAND LOGOED MERCHANDISE MUST BE USED FOR DISPLAY PURPOSES  
18 ONLY.

19 (B) BRAND LOGOED MERCHANDISE MAY ONLY PROVIDE BRAND  
20 ADVERTISING WHEN USED IN A DISPLAY.

21 (C) BRAND LOGOED MERCHANDISE MUST BE RETURNED TO THE ALCOHOLIC  
22 BEVERAGE SUPPLIER OR WHOLESALER ON COMPLETION OF THE DISPLAY.

23 (D) BRAND LOGOED MERCHANDISE SHALL NOT BE GIVEN TO THE RETAIL  
24 LICENSEE OR THE RETAIL LICENSEE'S STAFF OR ANY OTHER PERSON FOR  
25 THEIR PERSONAL USE.

26 (E) THE VALUE OF THE BRAND LOGOED MERCHANDISE ON DISPLAY MAY  
27 NOT EXCEED \$200.00 PER ITEM.

1 (F) BRAND LOGOED MERCHANDISE THAT A LICENSEE COULD USE IN THE  
2 DAILY OPERATION OF THE LICENSEE'S BUSINESS IS PROHIBITED.

3 (G) BRAND LOGOED MERCHANDISE MUST BE UNILLUMINATED.

4 (H) BRAND LOGOED MERCHANDISE MAY NOT BE MORE THAN 3,500 SQUARE  
5 INCHES IN DIMENSION.

6 (I) BRAND LOGOED MERCHANDISE MUST BE OWNED BY THE MANUFACTURER  
7 OR SUPPLIER. THE OWNERSHIP OF BRAND LOGOED MERCHANDISE MAY NOT BE  
8 TRANSFERRED TO THE RETAIL LICENSEE, THE RETAIL LICENSEE'S EMPLOYEE,  
9 OR ANY OTHER PERSON.

10 (J) A WHOLESALER MAY DELIVER AND INSTALL A DISPLAY USING BRAND  
11 LOGOED MERCHANDISE PROVIDED WITHOUT CHARGE BY A MANUFACTURER,  
12 OUTSTATE SELLER OF BEER, OUTSTATE SELLER OF WINE, OR OUTSTATE  
13 SELLER OF MIXED DRINK.

14 (7) ~~(6)~~—In addition to the penalties provided under section  
15 903, a manufacturer of beer or wine, mixed spirit drink  
16 manufacturer, warehouser, wholesaler, outstate seller of beer,  
17 outstate seller of wine, or outstate seller of mixed spirit drink  
18 that provides or sells barware and is not authorized to provide or  
19 sell barware is subject to a fine in an amount of up to \$2,500.00  
20 as determined by the commission. Multiple violations resulting from  
21 the same incident may be treated as a single violation for purposes  
22 of issuance of any penalty imposed under this act.

23 (8) ~~(7)~~—An on-premises retailer that hosts an on-premises  
24 brand promotional event conducted by a wholesaler or supplier has  
25 14 days after the event to remove from the premises any brand  
26 logoed merchandise from the event to maintain compliance with this  
27 section.

1           (9) ~~(8)~~—This act and rules promulgated under this act do not  
2 prevent a retailer that holds an off-premises license only from  
3 purchasing brand logoed inventory and selling that inventory to its  
4 customers.

5           (10) ~~(9)~~—Beginning after September 25, 2015, the commission  
6 may, by rule, add an item to or remove an item from the definition  
7 of barware. The commission shall not add or remove more than 1 item  
8 per rule and shall not promulgate more than 1 rule at a time on the  
9 definition of barware. The commission shall not issue a rule that  
10 adds refrigerator systems, draft systems, or furniture to the  
11 definition of barware. A rule, regulation, or order adopted after  
12 January 1, 2014 that is not adopted in accordance with this  
13 subsection and that is not consistent with this section or is in  
14 conflict with this section is void and unenforceable.

15           (11) ~~(10)~~—As used in this section:

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

17           (i) Trays.

18           (ii) Coasters.

19           (iii) Napkins.

20           (iv) Shirts.

21           (v) Hats.

22           (vi) Pitchers.

23           (vii) Drinkware that is intended to be reused.

24           (viii) Bar mats.

25           (ix) Buckets.

26           (x) Bottle openers.

27           (xi) Stir rods.

1           (xii) Patio umbrellas.

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

4           (xiv) Any other items that have been added by the commission  
5 ~~pursuant to UNDER~~ subsection ~~(9)-(10)~~.

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

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

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

23           (e) "Other valuable thing" means ~~any goods, services, A GOOD,~~  
24 **SERVICE**, or intangible ~~goods~~ **GOOD** that ~~are~~ **IS** given, loaned,  
25 leased, or sold to another licensee that ~~have~~ **HAS** value regardless  
26 of whether the value is nominal and includes, but is not limited  
27 to, ~~goods, services, A GOOD, SERVICE,~~ or intangible ~~goods~~ **GOOD** that

1 provided ~~any~~ **A** benefit, regardless of how nominal, to the licensee  
2 other than advertising the brands and prices of alcoholic liquor  
3 produced by the manufacturer; ~~—~~ sold by the outstate seller of  
4 beer, the outstate seller of wine, or the outstate seller of mixed  
5 spirit drink; ~~—~~ or distributed by the wholesaler, except for  
6 consumable goods and those goods, services, or intangible goods  
7 approved by rule or order of the commission ~~prior to~~ **BEFORE** January  
8 1, 2014.

9 (f) "Salesperson" means, **FOR PURPOSES OF THIS SUBSECTION ONLY,**  
10 a person who is employed by a vendor of spirits or a broker and who  
11 is licensed by the commission to sell, deliver, or promote, or  
12 otherwise assist in the sale of, spirits in this state.

13 **SEC. 609A. (1) A MANUFACTURER OR WHOLESALER SHALL FILE WITH**  
14 **THE COMMISSION A SCHEDULE OF NET CASH PRICES TO THE RETAIL LICENSEE**  
15 **FOR ALL BRANDS OF CASE AND KEG BEER FOR ITS MARKET AREA.**

16 (2) A MANUFACTURER OR WHOLESALER SHALL FILE WITH THE  
17 COMMISSION A BEER PACKAGE PRICE REDUCTION FOR ITS MARKET AREA. THE  
18 MANUFACTURER OR WHOLESALER SHALL FILE THE PRICE REDUCTION BEFORE  
19 ITS EFFECTIVE DATE. A PRICE REDUCTION UNDER THIS SUBSECTION MUST  
20 CONTINUE FOR AT LEAST 90 DAYS AFTER THE EFFECTIVE DATE.

21 (3) THE BEER PACKAGE PRICE FOR A MARKET AREA MAY BE INCREASED  
22 DURING THE 90-DAY PERIOD DESCRIBED IN SUBSECTION (2) FOR ANY OF THE  
23 FOLLOWING REASONS:

24 (A) TO REFLECT A TAX INCREASE IN THE MARKET AREA.

25 (B) TO REFLECT A GENERAL INDUSTRY PRICE INCREASE IN THE MARKET  
26 AREA.

27 (4) THE BEER PACKAGE PRICE FOR A MARKET AREA MAY BE DECREASED



1 DURING THE 90-DAY PERIOD DESCRIBED IN SUBSECTION (2) IF BOTH OF THE  
2 FOLLOWING CONDITIONS ARE MET:

3 (A) THE PRICE REDUCTION IS NOT GREATER ON A CENTS-PER-CASE  
4 BASIS THAN THE PRICE REDUCTION FILED BY THE COMPETITION.

5 (B) THE PRICE REDUCTION CONTINUES FOR THE BALANCE OF THE 90  
6 DAYS FILED BY THE COMPETITION.

7 (5) A MANUFACTURER OR WHOLESALER SHALL NOT SELL BEER AT A  
8 QUANTITY DISCOUNT.

9 (6) A NET CASH PRICE FILED UNDER SUBSECTION (1) AND A PRICE  
10 REDUCTION FILED UNDER SUBSECTION (2) ARE EXEMPT FROM DISCLOSURE  
11 UNDER SECTION 13 OF THE FREEDOM OF INFORMATION ACT, 1976 PA 442,  
12 MCL 15.243, UNTIL 1 YEAR AFTER THE NET CASH PRICE OR PRICE  
13 REDUCTION IS FILED, AS APPLICABLE.

14 (7) THE COMMISSION SHALL PERIODICALLY COMPARE A MANUFACTURER'S  
15 OR WHOLESALER'S FILING UNDER SUBSECTION (1) OR (2) WITH THE  
16 MANUFACTURER'S OR WHOLESALER'S TAX FILING UNDER SECTION 409.

17 (8) THE REGULATION DESCRIBED IN THIS SECTION IS NECESSARY FOR  
18 BOTH OF THE FOLLOWING REASONS:

19 (A) TO PROMOTE TEMPERANCE AND THE PUBLIC HEALTH AND WELFARE.

20 (B) TO PROMOTE A STABLE 3-TIER DISTRIBUTION SYSTEM WITH  
21 ORDERLY MARKETS FOR WINE AND MALT BEVERAGE PRODUCTS IN WHICH THERE  
22 IS NO PRICE DISCRIMINATION BY A WHOLESALER IN ITS SALES TO  
23 RETAILERS WITHIN THE WHOLESALER'S SALES TERRITORY.

24 SEC. 609B. (1) A VENDOR REPRESENTATIVE AND SALESPERSON OF A  
25 VENDOR OF SPIRITS, MANUFACTURER OF BEER, MANUFACTURER OF WINE,  
26 OUTSTATE SELLER OF BEER, OUTSTATE SELLER OF WINE, OR WHOLESALER  
27 SHALL MAINTAIN ACCURATE RECORDS OF EXPENDITURES FOR EACH CALL ON A

1 RETAIL LICENSEE. THE RECORDS MUST BE MAINTAINED FOR 4 YEARS AND  
2 MUST BE MADE AVAILABLE FOR COMMISSION INSPECTION.

3 (2) A VENDOR REPRESENTATIVE OR SALESPERSON OF SPIRITS OR WINE,  
4 FOR PROMOTIONAL PURPOSES, MAY PURCHASE 1 DRINK FOR EACH CUSTOMER OF  
5 AN ON-PREMISES LICENSEE. A DRINK PURCHASED UNDER THIS SUBSECTION  
6 MUST BE OF THE BRAND REPRESENTED BY THE VENDOR REPRESENTATIVE OR  
7 SALESPERSON.

8 (3) A VENDOR REPRESENTATIVE OR SALESPERSON OF A MANUFACTURER  
9 OF BEER, A WHOLESALER OF BEER, OR AN OUTSTATE SELLER OF BEER, FOR  
10 PROMOTIONAL PURPOSES, MAY PURCHASE 1 DRINK FOR EACH CUSTOMER OF AN  
11 ON-PREMISES RETAIL LICENSEE SUBJECT TO A TOTAL SPENDING LIMIT OF  
12 \$100.00 PER DAY. A DRINK PURCHASED UNDER THIS SUBSECTION MUST BE OF  
13 THE BRAND REPRESENTED BY THE VENDOR REPRESENTATIVE OR SALESPERSON.

14 (4) A VENDOR REPRESENTATIVE OR SALESPERSON OF A MANUFACTURER  
15 OF BEER, A WHOLESALER OF BEER, OR AN OUTSTATE SELLER OF BEER SHALL  
16 NOT PURCHASE A DRINK UNDER SUBSECTION (3) MORE THAN TWICE PER MONTH  
17 AT THE SAME ON-PREMISES RETAIL LICENSED LOCATION.

18 (5) A LICENSEE EMPLOYED TO DELIVER ALCOHOLIC LIQUOR SHALL NOT  
19 PURCHASE A DRINK OF ALCOHOLIC LIQUOR FOR A RETAIL LICENSEE WHILE ON  
20 DUTY OR IN THE COURSE OF EMPLOYMENT.

21 Enacting section 1. This amendatory act takes effect 90 days  
22 after the date it is enacted into law.