

Act No. 81
Public Acts of 2016
Approved by the Governor
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Senator Stamas

ENROLLED SENATE BILL No. 667

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 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:

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.

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.

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.

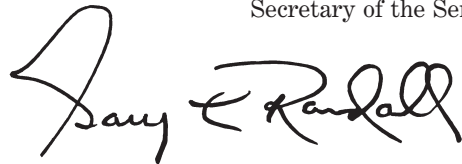
(4) A vendor representative or salesperson of a manufacturer of beer, a wholesaler of beer, or an outstate seller of beer shall not purchase a drink under subsection (3) more than twice per month at the same on-premises retail licensed location.

(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.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor