

Act No. 226
Public Acts of 2022
Approved by the Governor
October 14, 2022
Filed with the Secretary of State
October 14, 2022
EFFECTIVE DATE: October 14, 2022

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. Steenland and Hauck

ENROLLED HOUSE BILL No. 6106

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 105 and 603 (MCL 436.1105 and 436.1603), as amended by 2021 PA 19.

The People of the State of Michigan enact:

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) “Alternating proprietorship” means 1 of the following:

(a) An arrangement in which 2 or more wine makers or small wine makers take turns using the same space and equipment to manufacture wine under section 603(9)(a) and in accordance with 27 CFR 24.136.

(b) An arrangement in which 2 or more brewers or micro brewers take turns using the same space and equipment to manufacture beer under section 603(9)(b) and in accordance with 27 CFR 25.52.

(5) “Approved tasting room” means a tasting room that is approved by the commission. A licensee with an approved tasting room is not a retail licensee as that term is used in this act and the rules promulgated under this act except for sections 701, 801, 803, 815, 905, and 906.

(6) “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.

(7) “Bar” means a barrier or counter at which alcoholic liquor is sold to, served to, or consumed by customers.

(8) “Beer” means a beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, sugar, or other cereal in potable water.

(9) “Bottle” or “bottling” means a process, separate from manufacturing, using owned or leased equipment to fill and seal a container, including a keg, with alcoholic liquor for sale at wholesale or retail in accordance with this act. Bottle or bottling does not include filling a growler for sale at retail.

(10) “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 subsection, “supplier” means a brewer, micro 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.

(11) “Brand extension” means any brand that incorporates all or a substantial part of the unique features of a preexisting brand, regardless of whether the extension is beer, wine, mixed wine drink, or mixed spirit drink.

(12) “Brandy” means an alcoholic liquor as defined in 27 CFR 5.22(d).

(13) “Brandy manufacturer” means a wine maker or a small wine maker licensed under this act to manufacture brandy. A wine maker or small wine maker authorized to manufacture brandy shall not manufacture any other spirits. The commission may approve a brandy manufacturer to sell brandy that it manufactures at retail in accordance with section 537.

(14) “Brewer” means a person located in this state that is licensed to manufacture beer and sell at retail in accordance with section 537 and to licensed wholesalers beer manufactured by the person.

(15) “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 this state and sell at its licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner provided for in sections 405, 407, and 537.

Sec. 603. (1) Except as provided in subsections (5) to (9), subsections (14) to (16), 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 (5) to (9), subsections (14) to (16), 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 (5) to (9), subsections (14) to (16), 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 (5) to (9), subsections (14) to (16), 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 on 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 must 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 Alcohol and Tobacco Tax and Trade Bureau:

(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 retailers.

(12) Except for a warehouse, all licensees in this state must 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), 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) does not prohibit a class C, tavern, class A hotel, or class B hotel licensee from receiving a brewpub license or a micro brewer or brewer from having an on-site restaurant.

(15) A person licensed in the supplier tier may manufacture a private label of beer, wine, or mixed spirit drink for a retailer if the commission determines that all the following requirements are met:

(a) The supplier registers the private label with the commission as required under R 436.1611, R 436.1719, and R 436.1829 of the Michigan Administrative Code.

(b) The supplier, independent of the retailer's involvement, appoints 1 or more wholesalers to distribute the private label as required under section 307 or 401, as applicable. However, if the supplier is a micro brewer, the supplier may distribute the private label in accordance with section 203a.

(c) The supplier complies with and does not violate section 305 or 403, as applicable.

(d) The wholesaler engages in commercially reasonable efforts to make the private label available to a retailer that places an order for the private label beer, wine, or mixed spirit drink.

(e) An appointed wholesaler remains the wholesaler for the private label and any brand extensions of the private label regardless of whether the retailer switches the supplier that manufactures the private label, unless the wholesaler is terminated under section 305 or 403, as applicable.

(16) The commission shall not issue a wholesaler license to a producer of nonalcoholic beverages or an entity that the producer of nonalcoholic beverages has a direct or indirect ownership or financial interest in, if the producer of nonalcoholic beverages or the entity the producer of nonalcoholic beverages has a direct or indirect ownership or financial interest in has a direct or indirect ownership or financial interest in a person licensed in the supplier tier.

(17) As used in this section:

(a) "Manufacturer" means, notwithstanding section 109(2), a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, distiller, small distiller, brandy manufacturer, mixed spirit drink manufacturer, direct shipper, a licensee with an approved tasting room, or a person licensed by the commission to perform substantially similar functions.

(b) "Private label" means a brand of beer, wine, or mixed spirit drink that is manufactured by a supplier on behalf of a retailer using the retailer's recipe or intellectual property.

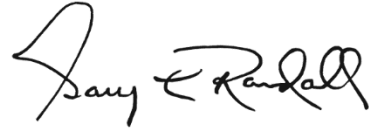
(c) "Supplier" means a manufacturer, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, and vendor of spirits or a person licensed by the commission to perform substantially similar functions but does not include a master distributor.

Enacting section 1. R 436.1625 and R 436.1726 of the Michigan Administrative Code are rescinded.

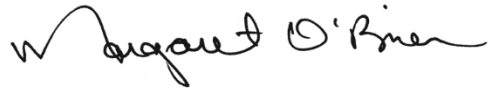
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

- (a) House Bill No. 6105.
- (b) House Bill No. 6107.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor