

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

Chapter 2

436.1201 Alcoholic liquor; manufacture, sale, possession, or transportation lawful; terms, conditions, limitations, and restrictions; right, power, and duty of commission to control alcoholic beverage traffic and traffic in other alcoholic liquor; unreasonable discrimination against Michigan manufacturers prohibited; enforcement of act and rules; willful neglect or refusal of officer to perform duties as misdemeanor; penalty.

Sec. 201.

(1) On and after December 15, 1933, it shall be lawful to manufacture for sale, sell, offer for sale, keep for sale, possess, or transport any alcoholic liquor, as defined in this act, including alcoholic liquor used for medicinal, mechanical, chemical, or scientific purposes and wine used for sacramental purposes, subject to the terms, conditions, limitations, and restrictions contained in this act, and only as provided for in this act.

(2) Except as otherwise provided in this act, the commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof.

(3) A rule, regulation, or order made by the commission shall not unreasonably discriminate against Michigan manufacturers of alcoholic liquor.

(4) A peace officer or law enforcement officer of this state or a county, township, city, village, state university, or community college or an inspector of the commission is authorized, and it is the duty of each of them, to enforce the provisions of this act and the rules promulgated by the commission within his or her respective jurisdiction. It is the special duty of an officer described in this section to use his or her utmost efforts to repress and prevent crime and the violation of any of the provisions of this act. An officer described in this section who willfully neglects or refuses to perform the duties imposed upon him or her by this section is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 or imprisoned in the county jail not more than 90 days, or both.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1203 Sale, delivery, or importation of alcoholic liquor or wine; duties of direct shipper of wine; common carrier; verification that individual accepting delivery is 21 years of age or older; original purchase and importation into state of spirits for sale, use, storage, or distribution; requirements; exceptions; direct shipper license required; application; fee; violation; delivery of beer and wine to home or designated location of consumer; holder of specially designated merchant license; sale or delivery of spirits by qualified small distiller requirements; delivery or sale of beer, wine, mixed spirit drink, or spirits by third party facilitator; reports; retention of books, records, and documents; disclosure; definitions.

Sec. 203.

(1) Except as provided in this section and section 301, a person shall not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, in this state unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent approved by order of the commission, a person licensed by the commission, or by prior written order of the commission.

(2) Notwithstanding R 436.1011(7)(b) and R 436.1527 of the Michigan Administrative Code and except as provided in subsections (3), (12), (13), (14), (15), and (16), a retailer shall not deliver alcoholic liquor to a consumer in this state at the home or business of the consumer or at any location away from the licensed premises of the retailer. The purpose of this subsection is to exercise this state's authority under section 2 of Amendment XXI of the Constitution of the United States, to maintain the inherent police powers to regulate the transportation and delivery of alcoholic liquor, and to promote a transparent system for the transportation and delivery of alcoholic liquor. The regulation described in this subsection is considered necessary for both of the following reasons:

(a) To promote the public health, safety, and welfare.

(b) To maintain strong, stable, and effective regulation by having beer and wine sold by retailers to consumers in this state by passing through the 3-tier distribution system established under this act.

(3) For purposes of subsection (1), a qualified retailer that holds a specially designated merchant license located

in this state may use a common carrier to deliver beer, wine, and mixed spirit drink to a consumer in this state. A qualified retailer that holds a specially designated distributor license located in this state may use a common carrier to deliver spirits to a consumer in this state. A qualified retailer that uses a common carrier to deliver beer, wine, mixed spirit drink, or spirits to a consumer under this subsection shall comply with all of the following:

(a) Pay any applicable taxes to the commission and pay any applicable taxes to the department of treasury as directed by the department of treasury. On the request of the department of treasury, a qualified retailer shall furnish an affidavit to verify payment.

(b) Comply with all laws of this state, including, but not limited to, the prohibition on sales to minors.

(c) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by using an identification verification service. The person receiving and accepting the order on behalf of the qualified retailer shall record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the commission and provide a duplicate to the commission.

(d) On request of the commission, make available to the commission any document used to verify the age of the individual ordering or receiving the beer, wine, mixed spirit drink, or spirits from the qualified retailer.

(e) Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older.". The recipient at the time of the delivery shall provide identification verifying his or her age and sign for the delivery.

(f) Place a label on the top panel of the shipping container containing the name and address of the individual placing the order and the name of the designated recipient if different from the name of the individual placing the order.

(g) For a qualified retailer that has been issued licenses at 2 or more locations, the shipment of the beer, wine, mixed spirit drink, or spirits must be fulfilled from the location nearest to the consumer unless that location does not have the beer, wine, mixed spirit drink, or spirits ordered in stock.

(4) For purposes of subsection (1), a direct shipper may sell, deliver, or import wine to consumers in this state by means of any mail order, internet, telephone, computer, device, or other electronic means, or sell directly to a consumer on the winery premises. A direct shipper that sells, delivers, or imports wine to a consumer under this subsection shall comply with all of the following:

(a) Hold a direct shipper license.

(b) Pay any applicable taxes to the commission and pay any applicable taxes to the department of treasury as directed by the department of treasury. On the request of the department of treasury, a direct shipper shall furnish an affidavit to verify payment.

(c) Comply with all laws of this state, including, but not limited to, the prohibition on sales to minors.

(d) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by using an identification verification service. The person receiving and accepting the order on behalf of the direct shipper shall record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the commission and provide a duplicate to the commission.

(e) On request of the commission, make available to the commission any document used to verify the age of the individual ordering or receiving the wine from the direct shipper.

(f) Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older.". The recipient at the time of the delivery shall provide photo identification verifying his or her age and sign for the delivery.

(g) Place a label on the top panel of the shipping container containing the name and address of the individual placing the order and the name of the designated recipient if different from the name of the individual placing the order. The direct shipper must have received a registration number of approval from the commission for any wine imported into this state. However, the registration number of approval from the commission is not required to be on the invoice or on the label of the wine that the direct shipper sells, delivers, or imports to a consumer in this state.

(h) Direct ship not more than 1,500 9-liter cases, or 13,500 liters in total, of wine in a calendar year to consumers in this state. If a direct shipper, whether located in this state or outside this state, owns, in whole or in part, or commonly manages 1 or more direct shippers, it shall not in combination ship to consumers in this state more than 13,500 liters of wine in the aggregate.

(i) Pay wine taxes quarterly and report to the commission quarterly the total amount of wine, by type, brand, and price, shipped to consumers in this state during the preceding calendar quarter, and the order numbers.

(j) Authorize and allow the commission and the department of treasury to conduct an audit of the direct shipper's records.

(k) Consent and submit to the jurisdiction of the commission, the department of treasury, and the courts of this state concerning enforcement of this section and any related laws, rules, and regulations.

(l) For a direct shipper that is a wine manufacturer as described in subsection (10)(b), direct ship only the wine that the wine manufacturer has manufactured and registered with the commission, wine purchased from another

wine manufacturer and further manufactured or bottled and registered with the commission, or labeled shiners purchased from another manufacturer in compliance with section 204a and registered with the commission.

(5) For a delivery of beer, wine, mixed spirit drink, or spirits through the use of a common carrier under subsection (3), a person taking the order on behalf of the qualified retailer shall comply with subsection (3)(b) to (f). For a sale, delivery, or importation of wine occurring by any means described in subsection (4), a person taking the order on behalf of the direct shipper shall comply with subsection (4)(c) to (g).

(6) A person that delivers the wine for a direct shipper under this section shall verify that the individual accepting delivery is 21 years of age or older and is the individual who placed the order or the designated recipient, is an individual 21 years of age or older currently occupying or present at the address, or is an individual otherwise authorized through a rule promulgated under this act by the commission to receive alcoholic liquor under this section. If the delivery person, after a diligent inquiry, determines that the purchaser or designated recipient is not 21 years of age or older, the delivery person shall return the wine to the direct shipper. A delivery person who returns wine to the direct shipper because the purchaser or designated recipient is not 21 years of age or older is not liable for any damages suffered by the purchaser or direct shipper.

(7) All spirits for sale, use, storage, or distribution in this state must originally be purchased by and imported into the state by the commission, or by prior written authority of the commission.

(8) This section does not apply to alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by an individual 21 years of age or older at the time of reentry into this state from outside the territorial limits of the United States if the individual has been outside the territorial limits of the United States for more than 48 hours and has not brought alcoholic liquor into the United States during the preceding 30 days.

(9) An individual 21 years of age or older may do either of the following in relation to alcoholic liquor that contains less than 21% alcohol by volume:

(a) Personally transport from another state, once in a 24-hour period, not more than 312 ounces of alcoholic liquor for that individual's personal use, notwithstanding subsection (1).

(b) Ship or import from another state alcoholic liquor for that individual's personal use if that personal importation is done in compliance with subsection (1).

(10) A direct shipper shall not sell, deliver, or import wine to a consumer unless it applies for and is granted a direct shipper license from the commission. This subsection does not prohibit wine tasting or the selling at retail by a wine maker of wines he or she produced and bottled or wine manufactured for that wine maker by another wine manufacturer, if done in compliance with this act. Only the following persons qualify for the issuance of a direct shipper license:

(a) A wine maker.

(b) A wine manufacturer that is located inside this country but outside of this state and that holds both a federal basic permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury and a license to manufacture wine in its state of domicile.

(11) An applicant for a direct shipper license shall submit an application to the commission in a written or electronic format provided by the commission and accompanied by an application and initial license fee of \$100.00. The initial application must be accompanied by a copy or other verifiable evidence of the existing federal basic permit or license, or both, held by the applicant. The direct shipper may renew its license annually by submission of a license renewal fee of \$100.00 and a completed renewal application. The commission shall use the fees collected under this section to conduct investigations and audits of direct shippers. The failure to renew, or the revocation or suspension of, the applicant's existing Michigan license, federal basic permit, or license to manufacture wine in its state of domicile is grounds for revocation or denial of a direct shipper license. If a direct shipper is found guilty of violating this act or a rule promulgated by the commission, the commission shall notify both the alcoholic liquor control agency in the direct shipper's state of domicile and the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury of the violation.

(12) A retailer that holds a specially designated merchant license, a brewpub, a micro brewer, or an out-of-state entity that is the substantial equivalent of a brewpub or micro brewer may deliver beer, wine, or mixed spirit drink, as allowed by the license the retailer holds, to the home or other designated location of a consumer in this state if all of the following conditions are met:

(a) The beer, wine, or mixed spirit drink is delivered by the retailer's, brewpub's, or micro brewer's employee.

(b) The retailer, brewpub, or micro brewer or its employee who delivers the beer or wine, or both, verifies that the individual accepting delivery is at least 21 years of age.

(c) If the retailer, brewpub, or micro brewer or its employee intends to provide service to consumers, the retailer, brewpub, or micro brewer or its employee providing the service has successfully completed a server training program as provided for in section 906.

(13) A retailer that holds a specially designated merchant license may use a third party that provides delivery service to municipalities in this state that are surrounded by water and inaccessible by motor vehicle to deliver beer, wine, and mixed spirit drink to the home or other designated location of that consumer if the delivery service is approved by the commission and agrees to verify that the individual accepting delivery of the beer, wine, and mixed

spirit drink is at least 21 years of age.

(14) A retailer that holds a specially designated distributor license may deliver spirits to the home or other designated location of a consumer in this state if all of the following conditions are met:

(a) The spirits are delivered by the retailer's employee.

(b) The retailer or its employee who delivers the spirits verifies that the individual accepting delivery is at least 21 years of age.

(c) If the retailer or its employee intends to provide service to consumers, the retailer or its employee providing the service has successfully completed a server training program as provided for in section 906.

(15) A qualified retailer that holds a specially designated merchant license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of beer, wine, or mixed spirit drink to be delivered to the home or designated location of a consumer as provided in subsection (12), this subsection, or subsection (3), and a third party facilitator service may deliver beer, wine, or mixed spirit drink to a consumer on behalf of a qualified retailer that holds a specially designated merchant license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers beer, wine, or mixed spirit drink under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer, wine, or mixed spirit drink is at least 21 years of age.

(b) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drink does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drink does not aid or assist the third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and the third party facilitator service does not accept the same.

(d) The qualified retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

(16) A qualified retailer that holds a specially designated distributor license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of spirits to be delivered to the home or designated location of a consumer as provided in subsection (14) or this subsection, and a third party facilitator service may deliver spirits to a consumer on behalf of a retailer that holds a specially designated distributor license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers spirits under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the spirits is at least 21 years of age.

(b) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drink does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or supplier of spirits, or outstate seller of mixed spirit drink does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and a third party facilitator service does not accept the same.

(d) The qualified retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

(17) A third party facilitator service shall not deliver beer, wine, mixed spirit drink, or spirits to a consumer under subsection (15) or (16), as applicable, and shall not facilitate the sale of beer, wine, mixed spirit drink, or spirits under subsection (15) or (16), as applicable, unless it applies for and is granted a third party facilitator service license by the commission. The commission may charge a reasonable application fee, initial license fee, and annual license renewal fee. The commission shall establish a fee under this subsection by written order.

(18) If a third party facilitator service used by a retailer that holds a specially designated merchant or specially designated distributor license under subsection (15) or (16), as applicable, violates this section, the commission shall not treat the third party facilitator service's violation as a violation by the retailer.

(19) A common carrier that carries or transports alcoholic liquor into this state to a person in this state shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

(a) The name and business address of the person that ships the alcoholic liquor.

(b) The name and address of the recipient of the alcoholic liquor.

(c) The weight of the alcoholic liquor delivered to a consignee.

(d) The date of the delivery.

(20) For purposes of subsection (1), a qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller may sell and deliver spirits that it manufactured to a retailer licensed to purchase and sell spirits in this state if all of the following conditions are met:

(a) The spirits are sold and delivered by an employee of the qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller, not an agent, and are transported and delivered using a vehicle owned by the qualified small distiller or the out-of-state entity that is the substantial equivalent of a qualified

small distiller.

(b) The qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller complies with all applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act including, but not limited to, those requirements related to each of the following:

- (i) Employees that sell and deliver spirits to retailers.
 - (ii) Vehicles used to deliver spirits to retailers.
 - (iii) Uniform pricing established by the commission under section 233.
 - (iv) Labeling and registration of spirits under R 436.1829 of the Michigan Administrative Code.
 - (v) Payment of taxes.
- (c) The spirits are not listed in the state of Michigan price book.

(21) A common carrier described in subsection (19) shall maintain the books, records, and documents supporting a report submitted under subsection (19) for 3 years unless the commission notifies the common carrier in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the common carrier shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the common carrier shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the carrier resides or does business.

(22) A third party facilitator service that delivers beer, wine, mixed spirit drink, or spirits to a consumer under subsection (15) or (16), as applicable, shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

- (a) The name and business address of the person that ships beer, wine, mixed spirit drink, or spirits.
- (b) The name and address of the recipient of beer, wine, mixed spirit drink, or spirits.
- (c) The weight of beer, wine, mixed spirit drink, or spirits delivered to a consignee.
- (d) The date of the delivery.

(23) A third party facilitator service shall maintain the books, records, and documents supporting a report submitted under subsection (22) for 3 years unless the commission notifies the third party facilitator service in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the third party facilitator service shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the third party facilitator service shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the third party facilitator service resides or does business.

(24) A report submitted under subsection (19) or (22) is subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(25) As used in this section:

(a) "Common carrier" means a company that transports goods, on reasonable request, on regular routes and at set rates.

(b) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(c) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(d) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(e) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

(f) "Consumer" means an individual who purchases beer, wine, mixed spirit drink, or spirits for personal consumption and not for resale.

(g) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(h) "Diligent inquiry" means a diligent good faith effort to determine the age of an individual, that includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, or any other bona fide picture identification that establishes the identity and age of the individual.

(i) "Direct shipper" means either of the following:

- (i) A wine manufacturer that sells, delivers, or imports wine it has manufactured, bottled, and registered with the

commission, to consumers in this state or that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

(ii) A wine manufacturer that purchases wine from another wine manufacturer and further manufactures or bottles the wine or purchases shiners of wine from another wine manufacturer in compliance with section 204a, registers the wine with the commission and sells the wine to consumers in this state that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

(j) "Facilitate" means, subject to subdivision (k), advertising on behalf of a retailer, by means of the internet or mobile application, and pursuant to a written or oral agreement, the brands and prices of beer, wine, or spirits products sold by a retailer and 1 or more of the following:

(i) Assisting the retailer, in any manner, in the arrangement of delivery as allowed in this section.

(ii) Assisting the retailer, in any manner, in the processing of payment by the consumer for the beer, wine, or spirits.

(iii) Transmitting customer information to the retailer.

(iv) Assisting the retailer by providing customer service.

(v) If the retailer maintains supervision and control over the day-to-day operation of its business, providing other normal and customary operational services.

(k) "Facilitate" does not include web designing, operating an internet search engine, or publishing an internet version of a newspaper.

(l) "Identification verification service" means an internet-based service approved by the commission specializing in age and identity verification.

(m) "Mobile application" means a specialized software program downloaded onto a wireless communication device.

(n) "Qualified retailer" means a retailer licensed to sell alcoholic liquor for consumption off the premises that complies with all of the following:

(i) The retailer maintains physical licensed premises that are open to the general public for face-to-face sales transactions of alcoholic liquor, packaged food, and other products to consumers.

(ii) At least 25% of the retailer's annual gross sales of alcoholic liquor must be from face-to-face sales transactions with consumers on the premises described in subparagraph (i) unless the retailer's physical licensed premises is less than 15,000 square feet in total.

(iii) The retailer holds and maintains either of the following for the premises described in subparagraph (i):

(A) A retail food establishment license issued under the food law, 2000 PA 92, MCL 289.1101 to 289.8111. As used in this sub-subparagraph, "retail food establishment" means that term as defined in section 1111 of the food law, 2000 PA 92, MCL 289.1111.

(B) An extended retail food establishment license issued under the food law, 2000 PA 92, MCL 289.1101 to 289.8111. As used in this sub-subparagraph, "extended retail food establishment" means that term as defined in section 1107 of the food law, 2000 PA 92, MCL 289.1107.

(o) "Qualified small distiller" means a small distiller, or an out-of-state entity that is the substantial equivalent of a small distiller, that sells under 3,000 gallons of spirits per calendar year directly to retailers located in this state or out-of-state entities that are the substantial equivalent of retailers. If a small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller manufactures spirits at more than 1 location, the total number of gallons of spirits sold to retailers or out-of-state entities that are the substantial equivalent of retailers from all locations must be combined to determine the 3,000-gallon threshold.

(p) "Third party facilitator service" means a person licensed by the commission to do any of the following:

(i) Facilitate the sale of beer, wine, and mixed spirit drink to a consumer as provided in subsection (15) on behalf of a qualified retailer that holds a specially designated merchant license located in this state.

(ii) Facilitate the sale of spirits to a consumer as provided in subsection (16) on behalf of a qualified retailer that holds a specially designated distributor license located in this state.

(iii) Deliver beer, wine, and mixed spirit drink to a consumer as provided in subsection (15) on behalf of a qualified retailer that holds a specially designated merchant license located in this state.

(iv) Deliver spirits to a consumer as provided in subsection (16) on behalf of a qualified retailer that holds a specially designated distributor license located in this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2000, Act 289, Imd. Eff. July 10, 2000 ;-- Am. 2005, Act 268, Imd. Eff. Dec. 16, 2005 ;-- Am. 2008, Act 474, Eff. Mar. 31, 2009 ;-- Am. 2014, Act 50, Imd. Eff. Mar. 25, 2014 ;-- Am. 2016, Act 520, Eff. Mar. 29, 2017 ;-- Am. 2020, Act 106, Imd. Eff. July 1, 2020 ;-- Am. 2021, Act 16, Eff. Aug. 23, 2021

Compiler's Notes: Enacting section 2 of Act 268 of 2005 provides: "Enacting section 2. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control

code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."

436.1203a Sale and delivery of beer in this state by micro brewer or substantially-equivalent out-of state entity; requirements.

Sec. 203a.

(1) The legislature finds that the 3-tier system is necessary to protect public health and safety of Michigan residents and to promote competition and access to market for all alcoholic beverage suppliers.

(2) The legislature further finds that vertical integration of the alcoholic beverage industry is contrary to this state's interest in protecting public health and safety of Michigan residents and leads to anti-competitive behavior by beverage alcohol suppliers.

(3) The legislature further finds that the 3-tier system and the prohibitions under section 603 achieve the following public policy goals:

(a) Promote consumer choice and product variety by providing a platform that provides all suppliers access to Michigan's beverage alcohol market.

(b) Encourage wholesalers to invest in their businesses and all the brands they distribute, free from undue interference from the suppliers of the brands they distribute.

(c) Create a transparent and accountable alcohol distribution system that allows the commission to prevent the manufacture, distribution, or sale of counterfeit, adulterated, unregistered, recalled, or prohibited alcoholic beverages.

(4) This state has an interest in creating market access for all sizes of suppliers and finds that micro brewers create competition and variety in Michigan's beer market.

(5) For the purposes of creating access to Michigan's beer market while also preserving the 3-tier system and limiting vertical integration, a micro brewer or an out-of-state entity that is the substantial equivalent of a micro brewer may sell and deliver beer to a retailer in this state only if all of the following conditions are met:

(a) The retailer is not located in a sales territory for which the micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer has granted exclusive sales rights to a wholesaler under sections 401 and 403 for the sale of any brand or brands of beer produced by the micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer.

(b) The beer is sold and delivered by an employee of the micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer, not an agent, and is transported and delivered using a vehicle owned by the micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer.

(c) The micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer is in compliance with applicable state and federal law and applicable regulatory provisions of this act and rules promulgated by the commission under this act, including, but not limited to, those requirements related to each of the following:

(i) Employees that sell and deliver beer to retailers.

(ii) Vehicles used to deliver beer to retailers.

(iii) Price schedules and temporary price reductions.

(iv) 1976 IL 1, MCL 445.571 to 445.576.

(d) The micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer sells not more than 2,000 barrels of beer total per year. In determining the 2,000-barrel threshold under this subdivision, all brands and labels of a micro brewer or out-of-state equivalent of a micro brewer, whether sold to a wholesaler or a retailer in this state or outside of this state, must be combined. Sales to consumers on the licensed premises of the micro brewer or out-of-state entity that is the substantial equivalent of a micro brewer are not included in determining the 2,000-barrel threshold under this subdivision.

History: Add. 2020, Act 107, Imd. Eff. July 1, 2020

436.1203b Sale and delivery of mixed spirit drink by mixed spirit drink manufacturer or substantially-equivalent out-of-state entity to retailer; requirements.

Sec. 203b.

Notwithstanding anything in this act to the contrary, a mixed spirit drink manufacturer or an out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer may sell and deliver mixed spirit drink that it manufactures to a retailer in this state only if all of the following conditions are met:

(a) The retailer is not located in a sales territory for which the mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer has granted exclusive sales rights to a wholesaler under section 307 for the sale of any brand or brands of mixed spirit drink produced by the mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer.

(b) The mixed spirit drink is sold and delivered by an employee of the mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer, not an agent, and is transported and delivered using a vehicle owned by the mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer.

(c) The mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer is in compliance with applicable state and federal law and applicable regulatory provisions of this act and rules promulgated by the commission under this act related to each of the following:

(i) Employees that sell and deliver mixed spirit drink to retailers.

(ii) Vehicles used to deliver mixed spirit drink to retailers.

(iii) Price schedules and temporary price reductions.

(iv) 1976 IL 1, MCL 445.571 to 445.576.

(v) Labeling and registration of mixed spirit drink.

(vi) Payment of taxes.

(d) The mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer sells not more than 31,000 gallons of mixed spirit drink total per year. In determining the 31,000-gallon threshold under this subdivision, all brands and labels of a mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer, whether sold to a wholesaler or a retailer in this state or outside of this state, must be combined. Sales to consumers on the licensed premises of the mixed spirit drink manufacturer or out-of-state entity that is the substantial equivalent of a mixed spirit drink manufacturer are not included in determining the 31,000-gallon threshold under this subdivision.

History: Add. 2021, Act 17, Eff. Aug. 23, 2021

436.1204 Importation of liquor into this state; requirements; exceptions; inspection by the commission.

Sec. 204.

(1) Except for an individual who brings, transports, ships, or imports alcoholic liquor into this state under section 203(8) or (9), as applicable, for a retailer, or for sacramental wines imported under section 301, a person shall not sell, deliver, or import beer, wine, or mixed spirit drink in this state unless the person is 1 of the following:

(a) A supplier as that term is defined in section 603.

(b) A licensed direct shipper described in section 203(10).

(c) A wholesaler.

(2) Except for an individual who brings, transports, ships, or imports alcoholic liquor into this state under section 203(8) or (9), as applicable, for a retailer, or for sacramental wines imported under section 301, a person described in subsection (1) may only sell, deliver, or import beer, wine, or mixed spirit drink in this state in 1 of the following ways:

(a) A licensed direct shipper may sell to a consumer under section 203.

(b) An outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink, may deliver the beer, wine, or mixed spirit drink to the licensed premises of the wholesalers designated to sell and deliver the beer, wine, or mixed spirit drink to the individual licensed location of the retailer in the wholesaler's sales territory under section 305 or 403, as applicable.

(c) A wholesaler that picks up the beer, wine, or mixed spirit drink from the premises of an outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink, may deliver the beer, wine, or mixed spirit drink to the licensed premises of the wholesaler designated to sell and deliver the beer, wine, or mixed spirit drink to the individual licensed location of the retailer in the wholesaler's sales territory under section 305 or 403, as

applicable.

(d) An outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink may deliver the beer, wine, or mixed spirit drink to its licensed premises in this state. However, the beer, wine, or mixed spirit drink must be delivered to the licensed premises of the wholesaler designated to sell and deliver the beer, wine, or mixed spirit drink to the individual licensed location of the retailer in the wholesaler's sales territory under section 305 or 403, as applicable.

(e) A brewer, wine maker, or mixed spirit drink manufacturer that has a manufacturing plant located outside of this state may deliver the beer, wine, or mixed spirit drink manufactured in the manufacturing plant to its licensed premises in this state. However, the beer, wine, or mixed spirit drink must be delivered to the licensed premises of the wholesaler designated to sell and deliver the beer, wine, or mixed spirit drink to the individual licensed location of the retailer in the wholesaler's sales territory under section 305 or 403, as applicable.

(f) Except as otherwise provided in this act, a brewer, wine maker, or mixed spirit drink manufacturer may deliver the beer, wine, or mixed spirit drink to the licensed premises of the wholesaler designated to sell and deliver the beer, wine, or mixed spirit drink to the individual licensed location of the retailer in the wholesaler's sales territory under section 305 or 403, as applicable.

(3) Except as otherwise provided in subsection (4), both of the following apply to beer, wine, or mixed spirit drink that is delivered to a wholesaler under this act:

(a) The wholesaler shall maintain the beer, wine, or mixed spirit drink on the wholesaler's licensed premises.

(b) The wholesaler shall make the beer, wine, or mixed spirit drink maintained on the wholesaler's licensed premises as required under subdivision (a) available for inspection by the commission for at least 24 hours before the wholesaler delivers the beer, wine, or mixed spirit drink to a retailer.

(4) For beer, wine, or mixed spirit drink that has been delivered to a wholesaler under this act, subsection (3) does not apply and the wholesaler may deliver beer, wine, or mixed spirit drink to a retailer if all of the following apply:

(a) Either of the following applies:

(i) The wholesaler cannot fulfill the retailer's order for the beer, wine, or mixed spirit drink from the inventory currently available on the wholesaler's licensed premises.

(ii) The wholesaler intends to deliver the beer, wine, or mixed spirit drink to a special licensee, including as provided under section 526, before the 24-hour period under subsection (3)(b) has expired.

(b) Either of the following applies:

(i) The beer, wine, or mixed spirit drink has been delivered to the address of the wholesaler's licensed premises.

(ii) The wholesaler picked up the beer, wine, or mixed spirit drink from the licensed premises of any of the following:

(A) A brewer.

(B) A wine maker.

(C) A mixed spirit manufacturer.

(D) An outstate seller of beer.

(E) An outstate seller of wine.

(F) An outstate seller of mixed spirit drink.

(G) A wholesaler.

(c) The wholesaler maintains the invoice of the delivery and attaches documentation to the invoice that details each product and the amount of each product that was not placed on the wholesaler's floor.

(5) This section does not prohibit a brewer, micro brewer, wine maker, small wine maker, or retailer from selling alcoholic liquor or nonalcoholic beverages as provided in this act.

History: Add. 2018, Act 178, Imd. Eff. June 11, 2018

436.1204a Prohibition of the sale or transfer of alcoholic liquor in this state; exceptions; applicability of section to nonalcoholic ingredients.

Sec. 204a.

(1) A manufacturer shall not sell or transfer alcoholic liquor to a licensed manufacturer in this state except as provided in subsections (2) and (3).

(2) Notwithstanding any provision in this act to the contrary, a manufacturer may sell or transfer wine or spirits to a licensed manufacturer, and a licensed manufacturer may purchase or receive wine or spirits, under any of the following conditions:

- (a) For a sale or transfer of wine:
 - (i) The selling or transferring manufacturer is a wine maker, small wine maker, or out-of-state entity that is the substantial equivalent of a wine maker or small wine maker and is selling or transferring the wine to a wine maker, small wine maker, or out-of-state entity that is the substantial equivalent of a wine maker or small wine maker.
 - (ii) The purchasing or receiving wine maker or small wine maker manufactures wine at its licensed premises or the purchasing or receiving small wine maker bottles wine at its licensed premises.
- (b) For a sale or transfer of spirits:
 - (i) The selling or transferring manufacturer is a distiller, small distiller, or out-of-state entity that is the substantial equivalent of a distiller or small distiller and is selling or transferring the spirits to a distiller, small distiller, or out-of-state entity that is the substantial equivalent of a distiller or small distiller.
 - (ii) The purchasing or receiving distiller or small distiller manufactures spirits at their licensed premises.
- (3) A wine maker, small wine maker, distiller, or small distiller may not sell alcoholic liquor purchased or received under this section unless 1 of the following conditions is met:
 - (a) The purchasing or receiving manufacturer modifies the purchased or received alcoholic liquor by performing a portion of the manufacturing process as described in section 109(1).
 - (b) The purchasing or receiving small wine maker bottles the purchased or received wine.
 - (c) The purchasing or receiving wine maker or small wine maker is selling a shiner on which the wine maker or small wine maker has placed a label under section 111(10).
 - (4) This section does not prevent a manufacturer from selling, purchasing, or receiving nonalcoholic ingredients to or from another manufacturer.

History: Add. 2018, Act 404, Imd. Eff. Dec. 19, 2018

436.1205 Warehousing and delivery of spirits; authorized distribution agent; report.

Sec. 205.

- (1) The commission shall, as provided in section 203(1), by order appoint authorized distribution agents to warehouse and deliver spirits in this state to ensure that all retail licensees are properly serviced with spirits. An authorized distribution agent is subject to uniform requirements, including business operating procedures, that the commission may prescribe by rule, subject to this section.
- (2) A person is eligible for appointment by the commission as an authorized distribution agent if all of the following circumstances exist:
 - (a) The person satisfies all applicable commission rules prescribing qualifications for licensure promulgated under section 215.
 - (b) The person has entered into a written agreement or contract with a supplier of spirits to warehouse and deliver a brand or brands of spirits of that supplier of spirits.
 - (c) The person has an adequate warehousing facility located in this state to store spirits from which all delivery of spirits to retail licensees must be made.
- (3) An authorized distribution agent shall not have a direct or indirect interest in a supplier of spirits or in a retailer. A supplier of spirits or a retailer shall not have a direct or indirect interest in an authorized distribution agent. An authorized distribution agent shall not hold title to spirits.
- (4) An authorized distribution agent shall deliver to each retailer located in its assigned distribution area on at least a weekly basis if the order meets the minimum requirements. Except that in a week that accompanies a state holiday, the commission may order a modified delivery schedule if a retailer will not wait longer than 9 days between deliveries because of the modified delivery schedule. The commission shall provide for an integrated online ordering system for spirits and shall require the continuance of any ordering system in existence on the activation date of the system established under section 206. The commission shall set minimum requirements that must be a sufficient number of bottles to comprise not more than 2 cases. A retailer may pick up the product at the authorized distribution agent's warehouse. To avoid occasional emergency outages of spirits, a retail licensee may make up to 12 special emergency orders to an authorized distribution agent in each calendar year. An authorized distribution agent shall make a special emergency order available to the retail licensee within 18 hours of the placing of the order. An authorized distribution agent shall make a special emergency order placed on Saturday or Sunday available to the retail licensee before noon on the following Monday. An authorized distribution agent may impose a fee of up to \$20.00 to deliver a special emergency order to a retail licensee.
- (5) In locations inaccessible to a motor vehicle as that term is defined by section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, an authorized distribution agent shall arrange that a delivery of spirits to a retailer be in

compliance with the following procedures:

(a) After processing an order from a retailer, an authorized distribution agent shall contact a retailer to confirm the quantity of cases or bottles, or both, and the exact dollar total of the order.

(b) The authorized distribution agent shall coordinate with the retailer the date and time a driver is scheduled to deliver the order to a ferry transport dock, shall arrange any ferry, drayage, or other appropriate service, and shall pick up the retailer's payment at that time.

(c) The ferry transport company or company representing any other form of conveyance shall take the retailer's payment to the mainland dock and give that payment to the authorized distribution agent's driver.

(d) The ferry transport company or company representing any other form of conveyance shall transport the order to the drayage or other appropriate company at the island dock for immediate delivery to the retailer.

(e) The drayage or other appropriate company shall deliver the order to the retailer.

(6) An authorized distribution agent is responsible for the payment of all transportation and delivery charges imposed by the ferry, drayage, or other conveyance company and is responsible for all breakage and any shortages, whether attributable to the ferry, drayage, or other conveyance company or any combination of those companies, until the order is delivered to the retailer's establishment. This subsection does not prevent the authorized distribution agent from seeking reimbursement or damages from any company conveying the authorized distribution agent's product.

(7) Except as otherwise provided in subsection (4), an authorized distribution agent shall not charge a delivery fee or a split-case fee for delivery of spirits sold by the commission to a retailer.

(8) An authorized distribution agent or prospective authorized distribution agent shall maintain and make available to the commission or its representatives, on notice, any contract or written agreement it has with a supplier of spirits or other authorized distribution agent for the warehousing and delivering of spirits in this state.

(9) For a violation of this act, a rule promulgated under this act, or the terms of an order appointing an authorized distribution agent, an authorized distribution agent is subject to the suspension, revocation, forfeiture, and penalty provisions of sections 903(1) and 907 in the same manner in which a licensee would be subject to those provisions. An authorized distribution agent aggrieved by a penalty imposed by the commission may invoke the hearing and appeal procedures of section 903(2) and rules promulgated under section 903.

(10) A specially designated distributor may sell to an on-premises retailer up to 120 liters of spirits during any calendar year and an on-premises retailer may purchase, collectively from specially designated distributors, up to 120 liters of spirits during any calendar year. Notwithstanding any other provision of this act or rule promulgated under this act, a specially designated distributor is only liable for knowingly violating this section. An on-premises retailer shall maintain and make available to the commission on request records verifying the purchases described in this subsection. For each month in which an on-premises retailer purchases spirits under this subsection, the on-premises retailer shall submit a report to the commission indicating the purchases the on-premises retailer made under this subsection during that month. By July 1, 2020, the commission shall establish the method and form for the electronic reporting of purchases made under this subsection by on-premises retailers. The commission shall not require an on-premises retailer to submit a report under this subsection in less than monthly intervals and shall not require a report from an on-premises retailer in a month in which the on-premises retailer did not purchase spirits under this subsection.

(11) In addition to paying a vendor of spirits the acquisition price for purchasing spirits, the commission may pay a vendor of spirits an additional amount of not less than \$8.25 and not more than \$12.50 for each case of spirits purchased as an offset to the costs being incurred by that vendor of spirits in contracting with an authorized distribution agent for warehousing and delivering spirits to retailers. The payment described in this subsection may not be included in the cost of purchasing spirits by the commission and is not subject to the commission's markup, special taxes, or state sales tax. The per-case offset established by this subsection may be increased by the state administrative board each January to reflect reasonable increases in the authorized distribution agent's cost of warehousing and delivering. As used in this subsection, "case" means a container holding twelve 750 ml bottles of spirits or other containers containing spirits that are standard to the industry.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 2001, Act 274, Imd. Eff. Jan. 11, 2002 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010 ;-- Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010 ;-- Am. 2015, Act 246, Eff. Mar. 21, 2016 ;-- Am. 2020, Act 126, Imd. Eff. July 1, 2020 ;-- Am. 2022, Act 142, Imd. Eff. July 11, 2022

436.1206 Integrated on-line ordering system.

Sec. 206.

(1) Not later than January 1, 2003, the commission shall provide for an integrated on-line ordering system for retail licensees to place orders for spirits from authorized distribution agents. The system shall allow retail licensees to order all brands and types of spirits from the commission and provide the order to the appropriate authorized distribution agents.

(2) The commission may enter into any agreements with or contract with private or other public entities as provided for or allowed by law to establish the integrated on-line ordering system described in subsection (1). A licensee of the commission or an authorized distribution agent shall not have a direct or indirect interest in the person with whom the commission contracts or enters into an agreement to establish the integrated on-line ordering system described in subsection (1). Ownership of the integrated on-line ordering system remains with the commission. The commission may, through issuance of an order, allow banner advertising in conjunction with the on-line ordering system as a means of defraying the costs of operation or maintenance, or both, of the system.

History: Add. 2001, Act 274, Imd. Eff. Jan. 11, 2002

436.1207 Exceptions to act.

Sec. 207.

This act does not apply to any of the following:

(a) The manufacture of cider from fruit for the purpose of making vinegar and non-intoxicating cider and fruit juice for use and sale, and cider and fruit juice if used or sold, or both, within 30 days after manufacture.

(b) Beer, wine, mead, honey-based beer, or cider of any alcoholic content made on the premises by the owner or lessee of those premises if those premises are used and occupied by the owner or lessee as a dwelling and the beer, wine, mead, honey-based beer, or cider is made for family use and home consumption.

(c) The gift to an individual for noncommercial use or consumption of up to 20 gallons of beer, wine, mead, honey-based beer, or cider produced under the circumstances described in subdivision (b). This subdivision does not allow a person less than 21 years of age to possess, receive as a gift, or give beer, wine, mead, honey-based beer, or cider produced under the circumstances described in subdivision (b).

(d) The sale, gift, or keeping and storing for sale by druggists and general merchants and others of medicinal preparations manufactured in accordance with the formulas prescribed by the United States pharmacopoeia and national formulary, patent or proprietary preparations, and other bona fide medicinal and technical preparations, that contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in those preparations and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve them, that are manufactured and sold as medicine and not as beverages, that are unfit for use for beverage purposes, and the sale of which does not require the payment of a United States liquor dealer's tax.

(e) The manufacture and sale of tinctures or of toilet, medicinal, and antiseptic preparations and solutions that are not intended for internal human use or that are not intended to be sold as beverages, that are unfit for beverage purposes, and on the outside of each bottle, box, or package of which is conspicuously and legibly printed in English the quantity by volume of alcohol in those preparations.

(f) The manufacture and keeping for sale of the food product known as flavoring extracts that are manufactured and sold for cooking, culinary, or flavoring purposes and are unfit for use as a beverage or for beverage purposes, except that a person shall not manufacture or sell any toilet, medicinal, or antiseptic preparations or solutions, or any flavoring extracts or patent or proprietary medicines or preparations, if the manufacture and sale of those items require the payment of a United States liquor dealer's tax except as provided in this act.

(g) The manufacture or sale, or both, of ethyl, mechanical, or industrial alcohol, not used for or made unfit for beverage purposes.

(h) The purchase of alcoholic liquor for use in the manufacture of toilet, medicinal, or antiseptic preparations or solutions, or any flavoring extract or patent or proprietary medicines or preparations, by a manufacturer using alcoholic liquor exclusively for the manufacturing purposes and licensed by the commission for that use. A license issued for that use is predicated on the payment of an annual fee of \$10.00. The license expires on May 1 following the date of its issuance.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2019, Act 131, Imd. Eff. Nov. 21, 2019

436.1209 Liquor control commission; creation; appointment, duties, and terms of members; designation and duties of hearing commissioners and administrative commissioners; appeal board; duties; terms; oath; removal; vacancies; quorum; salary and expenses; work station; designation by chairperson.

Sec. 209.

(1) A commission to be known as the liquor control commission is created.

(2) The commission shall consist of 5 members, not more than 3 of whom shall be members of the same political party, to be appointed by the governor with the advice and consent of the senate. Two of these members, 1 from each political party, shall be designated by the chairperson as hearing commissioners to hear violation cases and to perform such other functions and duties as are assigned to them by the chairperson. The remaining 3 commissioners shall be designated as administrative commissioners and shall have the responsibility for administering the provisions of this act relating to licensing, purchasing, enforcement, merchandising, and distribution. The administrative commissioners shall also act as an appeal board to the decisions rendered by the hearing commissioners.

(3) The responsibilities of the 5-member commission shall be the administration of the provisions of this act that have not been specifically delegated to either the hearing commissioners or the administrative commissioners in this section.

(4) Each member of the commission shall devote that member's entire time to the performance of the duties of that office.

(5) The terms of the commissioners shall be 4 years each. Each member of the commission shall qualify by taking and filing the constitutional oath of office and shall hold office until the appointment and qualification of a successor. The members of the commission shall not be removed from office by the governor except for malfeasance, misfeasance, or neglect in office.

(6) In the event of a vacancy or vacancies in the membership of the commission the governor shall appoint in like manner a successor or successors to fill the unexpired term.

(7) A quorum for the transaction of business of the administrative commissioners shall consist of 2 administrative commissioners. A quorum for the transaction of business of the 5-member commission shall be 3 members.

(8) Each member of the commission shall receive an annual salary as appropriated by the legislature, shall be entitled to actual and necessary expenses while on the business of the commission, and shall have a work station designated by the chairperson. If an administrative commissioner's permanent or temporary residence is within 100 miles of an office in which the commission regularly conducts business, the chairperson shall designate an office as the member's work station.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1211 Liquor control business manager; selection; duty and responsibility.

Sec. 211.

(1) The powers of the commission, enumerated in this act, which are not specifically and exclusively reserved to the commission by the act, shall be vested in, and exercised and administered by a liquor control business manager, who shall be selected by and responsible to the commission, and whose position shall be in the state classified civil service. The powers of the commission enumerated in, and provided for by this act, shall be exercised in conformity with the provisions of the act pertaining to the duties of the liquor control manager, except that the commission shall exclusively exercise the power to make rules and regulations under the act to regulate the control of the alcoholic beverage traffic within the state; to hear and decide all cases of violation of the provisions of the act and regulations thereunder; to employ a liquor control business manager as provided for by the act; and to hear and decide all public appeals from the administrative decisions of the liquor control business manager.

(2) The liquor control business manager shall be and shall serve as the business manager of the commission, and, as such, it shall be his or her duty and responsibility to manage the business affairs of the commission relative to purchasing, merchandising, warehousing, rationing, distributing, inspecting, investigating, licensing, and accounting, in accordance with policies established by the commission and in compliance with the provisions of this act and with the rules and regulations adopted thereunder. In addition to the foregoing, the business manager shall be exclusively responsible for the assigning, training, and supervision of all commission classified employees.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1213 Liquor control commission; employment of assistants and employees; compensation; expenses.

Sec. 213.

The commission may employ assistants, clerks, stenographers, employees, and experts as it considers necessary, and fix their compensation, and incur such other expenses as are necessary to carry out the provisions of this act, subject to appropriations provided by the legislature. Assistants and employees of the commission are entitled to actual and necessary travel and other expenses while on the business of the commission, if those expenses are authorized and approved by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1215 Liquor control commission; rules and regulations; public hearings; record.

Sec. 215.

(1) The commission shall adopt rules and regulations governing the carrying out of this act and the duties and responsibilities of licensees in the proper conduct and management of their licensed places. Rules shall be promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The commission shall hold public hearings twice each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to the administration of this act.

(3) The hearings shall be kept and transcribed as a part of the records of the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Admin Rule: R 436.571 et seq.; R 436.1001 et seq.; R 436.1101 et seq.; R 436.1301 et seq.; R 436.1401 et seq.; R 436.1501 et seq.; R 436.1601 et seq.; R 436.1701 et seq.; R 436.1801 et seq.; R 436.1851 et seq.; R 436.1951 et seq.; R 436.1963; and R 436.2001 et seq. of the Michigan Administrative Code.

436.1217 Liquor control commission; investigations; inspection and search of licensed premises; seizure and use of evidence of violation; examining or copying books, records, and papers; issuance of subpoena; oath or affirmation; court order; contempt; fees of witnesses; service of subpoena; seal; certified copies as evidence.

Sec. 217.

(1) The commission may make investigations that it considers proper in the administration of this act and the rules promulgated under this act concerning alcoholic liquor, or the manufacture, distribution, or sale of alcoholic liquor, or the collection of taxes on alcoholic liquor.

(2) A licensee shall make the licensed premises available for inspection and search by a commission investigator or law enforcement officer empowered to enforce the commission's rules and this act during regular business hours or when the licensed premises are occupied by the licensee or a clerk, servant, agent, or employee of the licensee. Evidence of a violation of this act or rules promulgated under this act discovered under this subsection may be seized and used in an administrative or court proceeding.

(3) The commission or a duly authorized agent of the commission may examine or copy the books, records, or papers of a person relative to a requirement pertaining to this act, access to which has been obtained pursuant to this section.

(4) A member of the commission or a duly authorized agent of the commission may issue a subpoena requiring a person to appear before the commission or its duly authorized agent at any reasonable time and place, to be

examined with reference to any matter within the scope of the inquiry or investigation being conducted by the commission, and to produce any books, records, or papers pertaining to the question involved.

(5) A member of the commission or a duly authorized agent of the commission may administer an oath or affirmation to a witness in any matter before the commission, certify to official acts, and take depositions.

(6) In case of disobedience of a subpoena, the commission or its duly authorized agent may invoke the aid of any circuit court of the state to compel the attendance and testimony of witnesses and the production of books, records, and papers pertaining to the question involved. A circuit court of this state within the jurisdiction of which the inquiry is conducted may, in case of contumacy or refusal to obey a subpoena, issue an order requiring the person to appear before the commission or its duly authorized agent, to produce books, records, and papers if so ordered, and to give evidence regarding the matter in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(7) The fees of witnesses required to appear before the commission shall be the same as those allowed to witnesses in the circuit courts and shall be paid by the commission.

(8) A sheriff's department or police department shall, upon request of the commission, cause to be served a subpoena that is directed to a person located within the jurisdiction of the sheriff's department or police department. A fee shall not be charged for this service by the sheriff's department or police department. Subpoenas may also be served by an investigator of the commission.

(9) The commission shall adopt a suitable seal, of which all courts of the state shall take judicial notice, and all proceedings, orders, licenses, and official acts of the commission shall be authenticated by that seal. Certified copies of the orders and records of the commission shall be prima facie evidence of the acts of the commission in any court of this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1219 Liquor control commission; branch offices.

Sec. 219.

The commission shall be authorized to establish throughout the state of Michigan 4 branch offices. The expense of the branch offices shall be paid by the commission in the manner provided in this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1221 Liquor control commission; revolving fund; use; report; interest earnings; disposition of money received; "revolving fund" defined.

Sec. 221.

(1) The commission shall maintain a revolving fund derived from the money deposited to the credit of the commission with the state treasurer. Money from the revolving fund shall be periodically transferred to the general fund in accordance with the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594. The revolving fund must be used for replenishing, maintaining, warehousing, and distributing liquor stock throughout this state and for administration of this act. The commission shall prepare and submit a monthly report containing an accounting of the revolving fund to the state treasurer and to the budget director. The monthly report must include an itemized account of all money received and all expenditures made by the commission during the month covered in the report.

(2) Interest earnings on common cash attributable to the revolving fund must be credited to the revolving fund and must be available to the commission for administration of this act.

(3) All money received by the commission under this act must be turned over to the state treasurer according to department of treasury procedures.

(4) All money deposited by the commission with the state treasurer must be credited to the revolving fund for expenditures or transfers authorized under subsection (1).

(5) As used in this section, "revolving fund" means the revolving fund established under subsection (1).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2018, Act 155, Eff. Oct. 1, 2018 ;-- Am. 2018, Act 346, Imd. Eff. Oct. 16, 2018

436.1223 Liquor control commission; interest of members or employees.

Sec. 223.

A member or employee of the commission shall not be pecuniarily interested, directly or indirectly, in the manufacture, warehousing, sale, distribution or transportation, or selling or furnishing of any equipment, furnishings, or refrigeration used in the manufacture or sale of alcoholic liquor within this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1225 Liquor control commission; civil liability of commission or members.

Sec. 225.

The commission or a member of the commission shall not be personally liable for any action at law for damages sustained by a person because of an action performed or done by the commission or a member of the commission in the performance of their respective duties in the administration and implementation of this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1227 Liquor control commission; establishment of state liquor stores; basis.

Sec. 227.

The commission may establish state liquor stores throughout this state. In counties with a population of less than 40,000 according to the most recent federal census, there shall not be more than 1 store in that county, and in counties with a population of 40,000 or more according to the most recent federal census, there shall not be more than 1 store located in that county for each 40,000 population or major fraction thereof according to the most recent federal census. However, the commission may in its discretion establish a state liquor store in any village or city with a population of 3,000 or more according to the most recent federal census.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1229 Licensing hotel or merchant to sell spirits for consumption off premises; sale of alcoholic liquor; price; rules; definitions.

Sec. 229.

(1) The commission may license a hotel or merchant, in places that the commission may designate, to sell spirits for consumption off the premises, notwithstanding section 233(1). Except as otherwise provided in this section, if alcoholic liquor is sold by a specially designated distributor under a license issued under this section, it shall not be sold at less than the minimum retail selling price fixed by the commission and under rules promulgated by the commission.

(2) The commission may, by rule or order, allow a specially designated distributor to sell alcoholic liquor at less

than the minimum retail selling price in order to dispose of inventory at a price and under conditions and procedures established through that rule or order.

(3) As used in this section and in sections 1201, 1203, and 1207, "retail selling price" means the price the commission pays for spirits plus the gross profit established in section 233.

(4) As used in this section, "minimum retail selling price" means retail selling price plus the specific taxes imposed in sections 1201, 1203, and 1207.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2004, Act 407, Imd. Eff. Nov. 29, 2004 ;-- Am. 2005, Act 288, Imd. Eff. Dec. 19, 2005 ;-- Am. 2011, Act 166, Eff. Oct. 1, 2012

436.1231 Liquor control commission; handling of alcoholic liquor; gross profit; leasing and purchasing power.

Sec. 231.

The commission may buy, possess, and sell in its own name all alcoholic liquor for distribution as provided in sections 227 and 229. The commission shall supply such types of alcoholic liquor as are demanded by the public. However, if a brand so demanded is not manufactured within the United States or is not readily obtainable within the United States, then an order for that brand shall be filled by the commission at the entire expense of the person placing that order subject to any gross profit or discounts, or both, provided for in section 233. The commission may lease or occupy any building or land required for its operation, and may purchase any warehouse required for its operation, subject to the approval of the state administrative board.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

436.1233 Uniform prices for sale of alcoholic liquor; gross profit; prices for sale of alcoholic liquor to hospitals, charitable institutions, and military establishments; discount for certain sales of alcoholic liquor; application and certification of qualified small distiller by department of agriculture and rural development; annual report; expiration of certificate; record retention; definitions.

Sec. 233.

(1) The commission shall establish uniform prices for the sale of alcoholic liquor by specially designated distributors. Except as otherwise provided in this section, the prices must return a gross profit to the commission of not less than 51% and not greater than 65%. If alcoholic liquor purchased by the commission has not met sales standards established by the commission for 6 months, the commission may sell the alcoholic liquor at a price to be approved by the state administrative board.

(2) Notwithstanding subsection (1), the commission may establish by rule prices for the sale of alcoholic liquor to hospitals, charitable institutions, and military establishments located in this state.

(3) Except as otherwise provided in this subsection, specially designated distributors and on-premises licensees are entitled to a 17% discount from the uniform prices described in subsection (1) on alcoholic liquor purchased from this state. Beginning July 1, 2020 until July 1, 2021, on-premises licensees are entitled to a 23% discount from the uniform prices described in subsection (1) on alcoholic liquor purchased from this state.

(4) Beginning on the effective date of the amendatory act that added this subsection, and July 1 of each year after that date, a small distiller or an out-of-state entity that is the substantial equivalent of a small distiller may file an application with the department of agriculture and rural development to be certified as a qualified small distiller. An application under this subsection must be on a form prescribed and furnished by the department of agriculture and rural development. The department of agriculture and rural development may charge a reasonable certification fee. The certification fee received by the department of agriculture and rural development under this subsection must be deposited in the Michigan craft beverage council fund created under section 303a.

(5) Beginning January 1, 2023, the price for each bottle of qualified distilled spirits manufactured by a qualified small distiller must return a gross profit to the commission of 32.5%.

(6) The department of agriculture and rural development shall certify that an applicant under subsection (4) is a qualified small distiller if the department of agriculture and rural development determines that the base distillate of

the small distiller or the out-of-state entity that is the substantial equivalent of a small distiller is at least 40% distilled from qualified grain grown and harvested in this state.

(7) Not later than November 1, 2022, and each November 1 thereafter, the department of agriculture and rural development shall submit a report to the commission. A report under this subsection must include the name of each qualified small distiller certified under subsection (6).

(8) A qualified small distiller certificate expires on July 1 following the date of issuance.

(9) A small distiller or an out-of-state entity that is the substantial equivalent of a small distiller that knowingly supplies false information to the department of agriculture and rural development or the commission under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$3,000.00, or both. A small distiller or an out-of-state entity that is the substantial equivalent of a small distiller that knowingly supplies false information as described in this subsection shall pay the commission the difference between the gross profit the commission would have received under subsection (1) if the small distiller or the out-of-state entity that is the substantial equivalent of a small distiller was not a qualified small distiller, as determined by the commission.

(10) A qualified small distiller shall keep a complete and accurate set of records and accounts of all transactions pertaining to the operation of its distillery, including, but not limited to, records and accounts of all qualified grain received in or withdrawn from the distillery, all acknowledgment forms and Michigan certification of origination statements in the qualified small distiller's possession, copies of all contracts, and acknowledgment forms returned to and settled by the qualified small distiller. The department of agriculture and rural development and the commission may examine the records and accounts pertaining to the qualified small distiller's qualified grain handling business at any time during normal business hours.

(11) As used in this section:

(a) "Acknowledgment form" means a scale weight ticket, a load slip, or any other evidence of deposit issued by a small distiller, an out-of-state entity that is the substantial equivalent of a small distiller, or the authorized representative of a small distiller or out-of-state entity that is the substantial equivalent of a small distiller to a depositor that identifies the qualified grain being transferred from possession of the depositor to the possession of the small distiller or the out-of-state entity that is the substantial equivalent of a small distiller.

(b) "Depositor" means either of the following:

(i) A person that delivers qualified grain to a small distiller or an out-of-state entity that is the substantial equivalent of a small distiller for storage, processing, shipment, or sale and that has title to qualified grain at the time of delivery.

(ii) A person that owns or that is the legal holder of an acknowledgment form issued by a depositor for qualified grain.

(c) "Michigan certification of origination statement" means a signed statement from a depositor or producer on an acknowledgement form that deposited qualified grain was grown and harvested in this state.

(d) "Qualified distilled spirits" means distilled spirits manufactured by a qualified small distiller of which at least 40% of the base distillate is distilled from qualified grain grown and harvested in this state.

(e) "Qualified grain" means any of the following:

(i) Dry barley.

(ii) Malted barley.

(iii) Oats.

(iv) A small grain.

(v) A cereal grain.

(vi) Potato.

(vii) Corn.

(viii) Fruit.

(ix) Sugar beets.

(x) Honey.

(f) "Qualified small distiller" means a small distiller or an out-of-state entity that is the substantial equivalent of a small distiller certified by the department of agriculture and rural development under this section as having at least 40% of the base distillate used to manufacture spirits that are distilled from qualified grain grown and harvested in this state. The base distillates may be distilled by the small distiller or the out-of-state entity that is the substantial equivalent of a small distiller or may be distillates purchased or received and further manufactured in compliance with section 204a.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2020, Act 126, Imd. Eff. July 1, 2020 ;-- Am. 2022, Act 135, Eff. Oct. 5, 2022

436.1235 Search warrant; seizure of property.

Sec. 235.

A search warrant may be issued in accordance with the code of criminal procedure, 1927 PA 175, MCL 760.1 to 776.21. Under such a search warrant the officer may seize any alcoholic liquor, containers, implements, or conveyances used in connection with the violation of this act or any rule promulgated under this act. A property right does not exist in any alcoholic liquor had, kept, transported, or possessed contrary to law or in any receptacle or container of any kind in which the alcoholic liquor is found, and all such are hereby declared contraband and forfeited to the state and shall be seized. All alcoholic liquor, containers, implements, or conveyances seized under any such search warrant shall be turned over to the commission by direction of the court or magistrate and shall be disposed of in accordance with the rules promulgated under this act, which shall guarantee the return of such property, or payment of money received for the sale of that property, to the owner unless the owner is charged and convicted of the alleged offense or offenses in connection with which the search and seizure was made.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998