

Act No. 300
Public Acts of 1992
Approved by the Governor
December 18, 1992
Filed with the Secretary of State
December 18, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Hertel, Olshove, Perry Bullard, Profit, DeMars, Leland, Ostling, Johnson, Knight, Gilmer, Griffin, Wozniak, Murphy, Porreca and Keith

ENROLLED HOUSE BILL No. 5407

AN ACT to amend sections 2b, 19, 24, and 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "An act to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limitations; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores; 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 thereto; to provide for the licensing and taxation thereof, and the disposition of the moneys received under this act; to prescribe liability for retail licensees under certain circumstances; 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 the confiscation and disposition of property seized under the provisions of this act; to provide a referendum in certain cases; and to repeal certain acts and parts of acts," section 2b as amended by Act No. 170 of the Public Acts of 1981, sections 19 and 24 as amended by Act No. 118 of the Public Acts of 1989, and section 40 as amended by Act No. 130 of the Public Acts of 1989, being sections 436.2b, 436.19, 436.24, and 436.40 of the Michigan Compiled Laws; and to add sections 2aa, 2bb, 31b, and 31c.

The People of the State of Michigan enact:

Section 1. Sections 2b, 19, 24, and 40 of Act No. 8 of the Public Acts of the Extra Session of 1933, section 2b as amended by Act No. 170 of the Public Acts of 1981, sections 19 and 24 as amended by Act No. 118 of the Public Acts of 1989, and section 40 as amended by Act No. 130 of the Public Acts of 1989, being sections 436.2b, 436.19, 436.24, and 436.40 of the Michigan Compiled Laws, are amended and sections 2aa, 2bb, 31b, and 31c are added to read as follows:

Sec. 2b. "Brewer" means any person located in this state which is duly licensed to manufacture and sell to licensed wholesalers beer produced by it.

Sec. 2aa. "Brewpub" means a license issued in conjunction with a class "C", tavern, class "A" hotel, or class "B" hotel license which authorizes the person licensed with the class "C", tavern, class "A" hotel, or class "B" hotel to manufacture and sell at that licensed premises not more than 2,000 barrels of beer per year for consumption on that premises only.

Sec. 2bb. "Micro brewer" means a brewer which produces in total less than 20,000 barrels of beer per year and who may sell at the licensed brewery premises the beer produced to consumers for consumption on or off the licensed brewery premises. In determining the 20,000 barrels threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

Sec. 19. (1) The following license fees shall be paid at the time of filing applications or as otherwise provided in this act:

(a) Manufacturers of spirits, but not including makers, blenders, and rectifiers of wines containing 21% of alcohol or less by volume, \$10,000.00.

(b) Manufacturers of beer, \$50.00 per 1,000 barrels, or fraction of a barrel, production annually with a maximum fee of \$1,000.00, and in addition \$50.00 for each motor vehicle used in delivery to retail licensees. A fee increase shall not apply to a manufacturer of less than 15,000 barrels production per year.

(c) Outstate seller of beer, delivering or selling beer in this state, \$1,000.00.

(d) Wine makers, blenders, and rectifiers of wine, including makers, blenders, and rectifiers of wines containing 21% or less alcohol by volume, \$100.00. The small wine maker license fee shall be \$25.00.

(e) Outstate seller of wine, delivering or selling wine in this state, \$300.00.

(f) Outstate seller of mixed spirit drink, delivering or selling mixed spirit drink in this state, \$300.00.

(g) Dining cars or other railroad or pullman cars selling alcoholic liquor, \$100.00 per train.

(h) Wholesale vendors other than manufacturers of beer, \$300.00 for the first motor vehicle used in delivery to retail licensees and \$50.00 for each additional motor vehicle used in delivery to retail licensees.

(i) Watercraft, licensed to carry passengers, selling alcoholic liquor, a minimum fee of \$100.00 and a maximum fee of \$500.00 per year computed on the basis of \$1.00 per person per passenger capacity.

(j) Specially designated merchants, for selling beer or wine for consumption off the premises only, but not at wholesale, \$100.00 for each location regardless of the fact that the location may be a part of a system or chain of merchandising.

(k) Specially designated distributors licensed by the commission to distribute spirits and mixed spirit drink in the original package for the commission for consumption off the premises, \$150.00 per year; and \$3.00 additional fee for each \$1,000.00 or major fraction of that amount in excess of \$25,000.00 of the total retail value of merchandise purchased under each license from the liquor control commission during the previous calendar year.

(l) Hotels of class A selling beer and wine, a minimum fee of \$250.00 and for all bedrooms in excess of 20, \$1.00 for each additional bedroom, but not to exceed \$500.00.

(m) Hotels of class B selling beer, wine, mixed spirit drink, and spirits, a minimum fee of \$600.00 and for all bedrooms in excess of 20, \$3.00 for each additional bedroom. If a hotel of class B sells beer, wine, mixed spirit drink, and spirits in more than 1 public bar, the fee shall entitle the hotel to sell in only 1 public bar, other than a bedroom, and a license shall be secured for each additional public bar, other than a bedroom, the fee for which shall be \$350.00.

(n) Taverns, selling beer and wine, \$250.00.

(o) Class C license selling beer, wine, mixed spirit drink, and spirits, \$600.00. If a class C licensee sells beer, wine, mixed spirit drink, and spirits in more than 1 bar, a fee of \$350.00 shall be paid for each additional bar. In municipally owned or supported facilities in which nonprofit organizations operate concession stands, a fee of \$100.00 shall be paid for each additional bar.

(p) Clubs selling beer, wine, mixed spirit drink, and spirits, \$300.00 for clubs having 150 or less duly accredited members and \$1.00 for each additional member. The membership list for the purpose only of determining the license fees to be paid under this section shall be the accredited list of members as determined by a sworn affidavit 30 days before the closing of the license year. This section shall not prevent the commission from checking a membership list and making its own determination from the list or otherwise. The list of members and additional members shall not be required of a club paying the maximum fee. The maximum fee shall not exceed \$750.00 for any 1 club.

(q) Warehouses, to be fixed by the commission with a minimum fee for each warehouse of \$50.00.

(r) Special licenses, a fee of \$50.00 per day, except that the fee for that license or permit issued to any bona fide nonprofit association, duly organized and in continuous existence for 1 year before the filing of its application, shall be \$25.00. Not more than 5 special licenses may be granted to any organization, including an auxiliary of the organization, in a calendar year.

(s) Airlines licensed to carry passengers in this state, which sell, offer for sale, provide, or transport alcoholic liquor, \$600.00.

- (t) Brandy manufacturer, \$100.00.
- (u) Mixed spirit drink manufacturer, \$100.00.
- (v) Brewpub, \$100.00.

(2) The fees provided in this act for the various types of licenses shall not be prorated for a portion of the effective period of the license.

Sec. 24. The following classes of vendors may sell alcoholic liquors at retail as provided in this section:

- (a) Taverns where beer and wine may be sold for consumption on the premises only.
- (b) Class C license where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises.
- (c) Clubs where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to bona fide members, who have attained the age of 21 years.
- (d) Hotels of class A where beer and wine may be sold for consumption on the premises and in the rooms of bona fide registered guests. Hotels of class B where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises and in the rooms of bona fide registered guests.
- (e) Specially designated merchants, where beer and wine may be sold for consumption off the premises only.
- (f) Specially designated distributors where spirits and mixed spirit drink may be sold for consumption off the premises only.
- (g) Special licenses where beer and wine or beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only.
- (h) Dining cars or other railroad or pullman cars, watercraft, or aircraft, where alcoholic liquor may be sold for consumption on the premises only, subject to rules promulgated by the commission.
- (i) Brewpubs where beer manufactured on the premises by the licensee may be sold only for consumption on the premises by any of the following licensees:
 - (i) Class "C".
 - (ii) Tavern.
 - (iii) Class "A" hotel.
 - (iv) Class "B" hotel.
- (j) Micro brewers where beer produced by the micro brewer may be sold to a consumer for consumption on or off the brewery premises.

Sec. 31b. (1) Subject to section 31c, the commission shall issue a brewpub license to a person who is licensed as a food service establishment under part 129 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.12901 to 333.12922 of the Michigan Compiled Laws, and at the time of application for the brewpub license is licensed and continues to be licensed as 1 or more of the following:

- (a) Class "C".
- (b) Tavern.
- (c) Class "A" hotel.
- (d) Class "B" hotel.
- (2) A person shall not, directly or indirectly, have an interest in more than 1 brewpub.
- (3) A brewpub shall possess the necessary equipment for a satisfactory operation which shall be maintained in good working order and in a sanitary condition.
- (4) Agricultural products processed by a manufacturer shall comply with laws and rules of the department of agriculture.
- (5) A brewpub shall not sell beer in this state unless it provides for each brand or type of beer sold a label that truthfully describes the content of each container and provides proof that a valid "application for and certification/exemption of label/bottle approval" has been obtained and is unrevoked under the federal malt beverage labeling requirements as published in title 27, part 7, subpart C, C.F.R. 1935 which are hereby adopted by reference.
- (6) Beer shall be manufactured pursuant to federal malt beverage regulations published in title 27, part 25, C.F.R. 1935 which are hereby adopted by reference.
- (7) Each brewpub shall submit to the commission, on forms acceptable to the commission and postmarked not later than January 15, April 15, July 15, and October 15 of each year, a beer tax report of all beer sold under their brewpub license during the preceding quarter and shall also submit, with the beer tax report, the payment of the required beer excise tax due pursuant to section 40.

(8) A brewpub shall be the holder of a "brewers notice" as issued by the United States department of treasury, bureau of alcohol, tobacco and firearms in accordance with title 27, part 25, subpart G, C.F.R. 1935.

Sec. 31c. (1) The commission shall grant a brewpub license to a person who, in addition to complying with section 31b, does all of the following:

(a) Pays the fee as prescribed in section 19.

(b) Provides evidence to the commission that not less than 25% of the gross sales of the restaurant during the 1-year licensure period are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.

(c) Complies with section 31b(3) through (8).

(2) The commission shall renew a brewpub license of a person who does all of the following:

(a) Pays the fee as prescribed in section 19.

(b) Provides evidence to the commission that not less than 25% of the gross sales of the restaurant during the 1-year licensure period are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.

(c) Complies with section 31b(3) through (8).

(3) The commission shall revoke a brewpub license if, during the 1-year licensure period, less than 25% of the gross sales of the restaurant are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.

Sec. 40. (1) Except as provided in this section, the commission shall levy and collect a tax on all beer manufactured or sold in this state at the rate of \$6.30 per barrel if the beer is sold in bulk or in different quantities. The tax shall be paid by the brewer or brewpub if manufactured in this state or by the wholesaler or the person from whom purchased if manufactured outside this state, whichever is designated by the commission. The commission shall establish by rule a method for the collection of the tax levied in this subsection. The rules shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The tax levied in subsection (1) shall not be collected with respect to beer that is consumed on the premises of the manufacturer or is damaged in the process of brewing, packaging, and storage and is not offered for sale except that beer sold by a brewpub for consumption on the premises or beer produced and consumed on the premises of a micro brewer shall be subject to the tax levied under subsection (1).

(3) The tax collected under subsection (1) shall be rebated to the person who paid the tax if that person provides satisfactory proof to the commission that the beer was shipped outside of this state for sale and consumption outside this state.

(4) For the purposes of taxation, a barrel shall be construed to contain 31 gallons.

(5) The commission may promulgate a rule that designates the states, the laws, or the rules of other states that require a licensed wholesaler of beer to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; that denies the issuance of a license authorizing the importation of beer to any licensed wholesaler of beer in that state who may make application for the license; that prohibits licensed wholesalers of beer in that state from possessing or selling beer purchased in this state, unless the person from whom purchased has secured a license and paid a fee in that state, if the seller neither transports the beer into the state nor sells the beer in the state; or that imposes any higher taxes or inspection fees upon beer manufactured in this state when transporting into or sold in that state, than is imposed upon beer manufactured and sold within that state. The rule shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state designated in the rule. The rule shall become effective as provided in section 47 of Act No. 306 of the Public Acts of 1969, being section 24.247 of the Michigan Compiled Laws. Any licensee or person adversely affected by the rule is entitled to review by leave to the proper court the question as to whether the commission acted illegally or in excess of authority in making its finding with respect to any state.

(6) For tax years after 1988, an eligible brewer may claim a credit against the tax levied in subsection (1) in the amount of \$2.00 per barrel. As used in this subsection, "eligible brewer" means a brewer, whether or not located in this state, that manufactures less than 20,000 barrels of beer during the tax year for which the credit is claimed. In determining the number of barrels for purposes of the credit, all brands and labels of a brewer shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.