

Act No. 353
Public Acts of 2014
Approved by the Governor
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Reps. Crawford, Haugh, Dianda, Stanley, Brown, Geiss, Schor, VerHeulen, Yonker, Rogers, Singh, Bumstead, Lori, MacGregor, Haveman, Genetski, Heise, Segal, Potvin, Schmidt, Victory, Townsend, McCann, Slavens, Darany, Clemente, Franz, Lauwers, Foster, Kesto, Phelps, Pettalia, Knezek, Pscholka, Abed and Kosowski

ENROLLED HOUSE BILL No. 5798

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to prohibit the use of certain devices for the dispensing of alcoholic vapor; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending sections 105, 405, 525, and 609 (MCL 436.1105, 436.1405, 436.1525, and 436.1609), section 105 as amended by 2005 PA 320, section 525 as amended by 2013 PA 236, and section 609 as amended by 2014 PA 47.

The People of the State of Michigan enact:

Sec. 105. (1) "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(2) "Alcohol vapor device" means any device that provides for the use of air or oxygen bubbled through alcoholic liquor to produce a vapor or mist that allows the user to inhale this alcoholic vapor through the mouth or nose.

(3) "Alcoholic liquor" means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this chapter.

(4) "Authorized distribution agent" means a person approved by the commission to do 1 or more of the following:

(a) To store spirits owned by a supplier of spirits or the commission.

(b) To deliver spirits sold by the commission to retail licensees.

(c) To perform any function needed to store spirits owned by a supplier of spirits or by the commission or to deliver spirits sold by the commission to retail licensees.

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

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

(7) “Brand” means any word, name, group of letters, symbol, trademark, or combination thereof adopted and used by a supplier to identify a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product and to distinguish that product from another beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product that is produced or marketed by that or another supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), “supplier” means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

(8) “Brand extension” means any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same supplier. As used in this section and notwithstanding sections 305(2)(j) and 403(2)(j), “supplier” means a brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

(9) “Brandy” means an alcoholic liquor as defined in 27 CFR 5.22(d) (1980).

(10) “Brandy manufacturer” means a wine maker or a small wine maker licensed under this act to manufacture, rectify, or blend brandy only and no other spirit. The commission may approve a brandy manufacturer to sell brandy that it manufactures, blends or rectifies, or both, at its licensed premises or at other premises authorized in this act.

(11) “Brewer” means a person located in this state that is licensed to manufacture and sell to licensed wholesalers beer produced by it.

(12) “Brewpub” means a license issued in conjunction with a class C, tavern, class A hotel, or class B hotel license that authorizes the person licensed with the class C, tavern, class A hotel, or class B hotel to manufacture and brew not more than 18,000 barrels of beer per calendar year in Michigan and sell at those licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner provided for in sections 405 and 407.

Sec. 405. (1) Subject to section 407, the commission shall issue a brewpub license to a person who is licensed as a food service establishment under the food law, 2000 PA 92, MCL 289.1101 to 289.8111, and who 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 brewpub shall possess the necessary equipment for a satisfactory operation which shall be maintained in good working order and in a sanitary condition.

(3) Agricultural products processed by a manufacturer shall comply with state law and with rules of the department of agriculture.

(4) 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 27 CFR 7.20 to 7.29, which are hereby adopted by reference.

(5) Each location of a brewpub shall have a manufacturing operation on the licensed premises that complies with subsection (6). A brewpub shall apply for and obtain a license for each location of that brewpub. In determining the 18,000-barrel threshold, all brands and labels of the brewpub produced in this state shall be combined.

(6) Beer shall be manufactured pursuant to federal malt beverage regulations published in 27 CFR 25.1 to 25.301, 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. Each brewpub shall also submit, with the beer tax report, the payment of the required beer excise tax due pursuant to section 409.

(8) A brewpub shall be the holder of a “brewers notice” as issued by the United States department of treasury, alcohol and tobacco tax and trade bureau in accordance with 27 CFR 25.61 to 25.85.

Sec. 525. (1) Except as otherwise provided in this section, the following license fees shall be paid at the time of filing applications or as otherwise provided in this act and are subject to allocation under section 543:

(a) Manufacturers of spirits, not including makers, blenders, and rectifiers of wines containing 21% or less alcohol by volume, \$1,000.00.

(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 does 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 is \$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 whether the location is 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 an additional fee of \$3.00 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 commission during the previous calendar year.

(l) Hotels of class A selling beer and wine, a minimum fee of \$250.00 and \$1.00 for each bedroom in excess of 20, but not more than \$500.00 total.

(m) Hotels of class B selling beer, wine, mixed spirit drink, and spirits, a minimum fee of \$600.00 and \$3.00 for each bedroom in excess of 20. If a hotel of class B sells beer, wine, mixed spirit drink, and spirits in more than 1 public bar, a fee of \$350.00 shall be paid for each additional public bar, other than a bedroom.

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

(o) Class C license selling beer, wine, mixed spirit drink, and spirits, \$600.00. Subject to section 518(2), 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 fewer accredited members and \$1.00 for each member in excess of 150. Clubs shall submit a list of members by a sworn affidavit 30 days before the closing of the license year. The sworn affidavit shall be used only for determining the license fees to be paid under this subdivision. This subdivision does 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 is not required of a club paying the maximum fee. The maximum fee shall not exceed \$750.00 for any 1 club.

(q) Warehousemen, 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, is \$25.00. Not more than 12 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 that 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.

(w) Class G-1, \$1,000.00.

(x) Class G-2, \$500.00.

(y) Motorsports event license, the amount as described and determined under section 518(2).

(z) Small distiller, \$100.00.

(aa) Wine auction license, \$50,000.00.

(bb) Nonpublic continuing care retirement center license, \$600.00.

(cc) Conditional license approved under subsection (6) and issued under subsection (7), \$300.00.

(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. Notwithstanding subsection (1), the initial license fee for any licenses issued under section 531(3)

or (4) is \$20,000.00. The renewal license fee shall be the amount described in subsection (1). However, the commission shall not impose the \$20,000.00 initial license fee for applicants whose license eligibility was already approved on July 20, 2005.

(3) If the commission requires an applicant to submit fingerprints, the applicant shall have the fingerprints taken by a local law enforcement agency, the department of state police, or any other person qualified to take fingerprints as determined by the department of state police. The applicant shall submit the fingerprints and the appropriate state and federal fees, which shall be borne by the applicant, to the department of state police and the federal bureau of investigation for a criminal history check. After conducting the criminal history check, the department of state police shall provide the commission with a report of the criminal history check. The report shall contain criminal history record information concerning the person who is the subject of the criminal history check that is maintained by the department of state police. If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted pursuant to this act and stored in its automated fingerprint identification system (AFIS) database, the department of state police shall notify the commission.

(4) Except in the case of any resort or resort economic development license issued under section 531(2), (3), (4), or (5) or a license issued under section 521a, the commission shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. The application is considered to be received the date the application is received by any agency or department of this state. If the commission determines that an application is incomplete, the commission shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility upon an applicant determined otherwise ineligible for issuance of a license. The 90-day period is tolled for the following periods under any of the following circumstances:

(a) If notice is sent by the commission of a deficiency in the application, until the date all of the requested information is received by the commission.

(b) For the time required to complete actions required by a person, other than the applicant or the commission, including, but not limited to, completion of construction or renovation of the licensed premises; mandated inspections by the commission or by any state, local, or federal agency; approval by the legislative body of a local unit of government; criminal history or criminal record checks; financial or court record checks; or other actions mandated by this act or rule or as otherwise mandated by law or local ordinance.

(5) If the commission fails to issue or deny a license within the time required by this section, the commission shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the commission to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The commission shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(6) If, in addition to a completed application under this section, an applicant submits a separate form requesting a conditional license with an acceptable proof of financial responsibility form under section 803, and an executed property document, the commission shall, after considering the arrest and conviction records or previous violation history in the management, operation, or ownership of a licensed business, approve or deny a conditional license. A conditional license issued under subsection (7) for the transfer of an existing license at the same location shall include any existing permits and approvals held in connection with that license. The following applicants may request a conditional license:

(a) An applicant seeking to transfer ownership of or interest in an existing license at the same location to sell alcoholic liquor for consumption on or off the premises.

(b) An applicant seeking an initial license other than a specially designated distributor license or a license for the sale of alcoholic liquor for consumption on the premises.

(7) The commission shall issue a conditional license to applicants approved under subsection (6) within 20 business days after receipt of a completed application and a completed conditional license request form and documentation for a conditional license at a single location. The commission may take up to 30 business days to issue conditional licenses to approved applicants seeking conditional licenses at multiple locations.

(8) A conditional license approved under subsection (6) and issued under subsection (7) is nontransferable and nonrenewable. A conditional license approved under subsection (6) and issued under subsection (7) expires when the commission issues an order of denial of the license application that serves as the basis for the conditional license after all administrative remedies before the commission have been exhausted, expires 20 business days after the commission issues an order of approval of the license application that serves as the basis for the conditional license, expires when the licensee or conditional licensee notifies the commission in writing that the initial application should be canceled, or expires 1 year after the date the conditional license was issued, whichever occurs first. If a conditionally approved licensee fails to maintain acceptable proof of its financial responsibility, the commission shall, after due notice and proper hearing, suspend the conditional license until the licensee files an acceptable proof of financial responsibility form under section 803. If a conditional license is revoked, the conditional licensee shall not recover from a unit of local government any compensation for property, future income, or future economic loss due to the revocation.

(9) Upon issuing a conditional license under subsection (7), the commission shall, until the conditional license expires under subsection (8), place an existing license under subsection (4) in escrow in compliance with R 436.1107 of the Michigan administrative code. If the conditional license expires because a transfer of an existing license was denied or because the license was not transferred within the 1-year period, an existing licensee may do 1 of the following:

(a) Request that the commission release the license from escrow.

(b) Keep the license in escrow. The escrow date for compliance with R 436.1107 of the Michigan administrative code shall be the date the conditional license expires.

(10) The chair of the commission shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with liquor license issues. The chair of the commission shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the commission received and completed within the 90-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees under subsection (5).

(11) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

Sec. 609. (1) Except as provided in this section and sections 605 and 1029, a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not aid or assist any other vendor by gift, loan of money or property of any description, or other valuable thing, or by the giving of premiums or rebates, and a vendor shall not accept the same. However, if manufacturers of spirits reduce the price of their products, the manufacturer of spirits may refund the amount of the price reductions to specially designated distributor licensees in a manner prescribed by the commission.

(2) A manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may, in a manner consistent with rules, regulations, and orders made by the commission, provide another licensee with advertising items that promote the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink; or distributed by the wholesaler. Except as otherwise provided under subsection (3), (4), or (5), the advertising items shall not have any use or value beyond the actual advertising of brands and prices of the alcoholic liquor.

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

(a) Alcoholic liquor recipes literature.

(b) Calendars and matchbooks.

(c) Removable tap markers or signs.

(d) Table tents.

(e) Shelf talkers.

(f) Bottle neckers.

(g) Cooler stickers.

(h) Buttons, blinking and nonblinking.

(i) Menu clip-ons.

(j) Mirrors.

(k) Napkin holders.

(l) Spirits cold shot tap machines.

(m) Alcoholic liquor drink menus.

(n) Keg couplers that are lent to an on-premises retailer.

(o) Sporting event or entertainment tickets.

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

(5) A retailer shall not use or possess, at its licensed premises, advertising items that have a use or value beyond the actual advertising of brands and prices of alcoholic liquor except for those allowed in subsections (3) and (4) or as otherwise provided in this subsection. A retailer may possess and use brand logoed barware that advertises spirits as long as those items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer. A retailer may possess and use brand logoed barware that advertises beer or wine as long as those items are purchased from a barware retailer. A retailer shall maintain the receipts of all purchased brand logoed barware for at least 3 years and shall make those receipts available for inspection by the commission as provided in section 217. Beginning in the 2015 licensing year, a retailer shall disclose, in a manner as prescribed by the commission on the application for renewal of an existing license, if any barware was purchased by the retailer during the immediately preceding license year.

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

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

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

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

(10) As used in this section:

(a) “Barware” means the following brand logoed items:

(i) Trays.

(ii) Coasters.

(iii) Napkins.

(iv) Shirts.

(v) Hats.

(vi) Pitchers.

(vii) Drinkware that is intended to be reused.

(viii) Bar mats.

(ix) Buckets.

(x) Bottle openers.

(xi) Stir rods.

(xii) Patio umbrellas.

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

(xiv) Any other items that have been added by the commission pursuant to subsection (9).

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

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

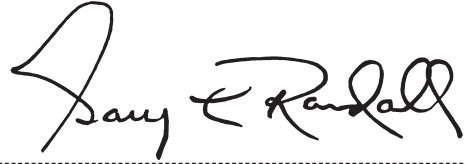
(d) “Indirectly affiliated” means, for purposes of this section only, that a person owns 5% or more of the voting interest of another person.

(e) “Other valuable thing” means any goods, services, or intangible goods that are given, loaned, leased, or sold to another licensee that have value regardless of whether the value is nominal and includes, but is not limited to, goods, services, or intangible goods that provided any benefit, regardless of how nominal, to the licensee other than advertising

the brands and prices of alcoholic liquor produced by the manufacturer, sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink, or distributed by the wholesaler, except for consumable goods and those goods, services, or intangible goods approved by rule or order of the commission prior to January 1, 2014.

(f) "Salesperson" means a person who is employed by a vendor of spirits or a broker and who is licensed by the commission to sell, deliver, or promote, or otherwise assist in the sale of, spirits in this state.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor