

**SUBSTITUTE FOR
SENATE BILL NO. 1140**

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 609 (MCL 436.1609), as amended by 2016 PA 81.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 609. (1) Except as provided in this section and sections
2 605 and 1029, a manufacturer, ~~mixed spirit drink manufacturer,~~
3 warehouser, wholesaler, outstate seller of beer, outstate seller of
4 wine, ~~outstate seller of mixed spirit drink,~~ or vendor of spirits
5 shall not aid or assist any other vendor by gift, loan of money or
6 property of any description, or other valuable thing, or by the
7 giving of premiums or rebates, and a vendor shall not accept the
8 same. However, if manufacturers of spirits reduce the price of
9 their products, the manufacturer of spirits may refund the amount



1 of the price reductions to specially designated distributor
2 licensees in a manner prescribed by the commission.

3 (2) A manufacturer, ~~mixed spirit drink manufacturer,~~
4 warehouse, wholesaler, outstate seller of beer, outstate seller of
5 wine, ~~outstate seller of mixed spirit drink,~~ or vendor of spirits
6 may, in a manner consistent with rules, regulations, and orders
7 made by the commission, provide another licensee with an
8 advertising item that promotes the brands and prices of alcoholic
9 liquor produced by the manufacturer; sold by the outstate seller of
10 beer, ~~or the outstate seller of wine; or the outstate seller of~~
11 ~~mixed spirit drink;~~ or distributed by the wholesaler. Except as
12 otherwise allowed under subsection (3), (4), (5), or (6), the
13 advertising item ~~shall~~**must** not have any use or value beyond the
14 actual advertising of brands and prices of the alcoholic liquor.

15 (3) Except for those orders that were approved for specific
16 sponsorships or festivals, a manufacturer, ~~mixed spirit drink~~
17 ~~manufacturer,~~ warehouse, wholesaler, outstate seller of beer,
18 outstate seller of wine, ~~outstate seller of mixed spirit drink,~~ or
19 vendor of spirits may provide goods and services to another
20 licensee that were approved by the commission under rules or orders
21 adopted before January 1, 2014 and the following items:

- 22 (a) Alcoholic liquor recipes literature.
- 23 (b) Calendars and matchbooks.
- 24 (c) Removable tap markers or signs.
- 25 (d) Table tents.
- 26 (e) Shelf talkers.
- 27 (f) Bottle neckers.
- 28 (g) Cooler stickers.
- 29 (h) Buttons, blinking and nonblinking.



- 1 (i) Menu clip-ons.
- 2 (j) Mirrors.
- 3 (k) Napkin holders.
- 4 (l) Spirits cold shot tap machines.
- 5 (m) Alcoholic liquor drink menus.
- 6 (n) Keg couplers that are lent to an on-premises retailer.
- 7 (o) Sporting event or entertainment tickets.
- 8 (p) Suction cups.
- 9 (q) Cooler door attachments.
- 10 (r) Tear pad holders.

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

15 (5) A retailer shall not use or possess, at its licensed
16 premises, advertising items that have a use or value beyond the
17 actual advertising of brands and prices of alcoholic liquor except
18 for those items allowed in subsection (3), (4), or (6), or as
19 otherwise allowed under this subsection. A retailer may possess and
20 use brand logoed barware that advertises spirits if the items are
21 purchased from a manufacturer of spirits, vendor of spirits,
22 salesperson, broker, or barware retailer. A retailer may possess
23 and use brand logoed barware that advertises beer or wine if the
24 items are purchased from a barware retailer. A retailer shall
25 maintain the receipts of all purchased brand logoed barware for at
26 least 3 years and shall make those receipts available for
27 inspection by the commission as provided in section 217. Beginning
28 in the 2015 licensing year, a retailer shall disclose, in a manner
29 as prescribed by the commission on the application for renewal of



1 an existing license, if any barware was purchased by the retailer
 2 during the immediately preceding license year.

3 (6) A manufacturer, outstate seller, or vendor of spirits may
 4 provide brand logoed merchandise to an on-premises retailer and
 5 off-premises retailer to promote the brand and price of its
 6 products under R 436.1321(1) to (3) of the Michigan administrative
 7 code if all of the following conditions are complied

8 with **Administrative Code. All of the following apply to brand**
 9 **logoed merchandise under this subsection:**

10 (a) Brand logoed merchandise must be used for display purposes
 11 only.

12 (b) Brand logoed merchandise may only provide brand
 13 advertising when used in a display.

14 (c) Brand logoed merchandise must be returned to the alcoholic
 15 beverage supplier or wholesaler on completion of the display.

16 (d) Brand logoed merchandise ~~shall~~ **must** not be given to the
 17 ~~retail licensee~~ **retailer** or the ~~retail licensee's staff~~ **retailer's**
 18 **employee** or any other person for their personal use.

19 (e) The value of the brand logoed merchandise on display ~~may~~
 20 **must** not exceed \$200.00 per item.

21 (f) Brand logoed merchandise that a ~~licensee~~ **retailer** could
 22 use in the daily operation of the ~~licensee's~~ **retailer's** business is
 23 prohibited.

24 (g) Brand logoed merchandise must be unilluminated.

25 (h) Brand logoed merchandise ~~may~~ **must** not be more than 3,500
 26 square inches in dimension.

27 (i) Brand logoed merchandise must be owned by the manufacturer
 28 or supplier. The ownership of brand logoed merchandise may not be
 29 transferred to the ~~retail licensee~~ **retailer**, the ~~retail licensee's~~



1 **retailer's** employee, or any other person.

2 (j) A wholesaler may deliver and install a display using brand
3 logoed merchandise provided without charge by a manufacturer,
4 outstate seller of beer, outstate seller of wine, or outstate
5 seller of mixed drink.

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

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

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

24 (10) Beginning after September 25, 2015, the commission may,
25 by rule, add an item to or remove an item from the definition of
26 barware. The commission shall not add or remove more than 1 item
27 per rule and shall not promulgate more than 1 rule at a time on the
28 definition of barware. The commission shall not issue a rule that
29 adds refrigerator systems, draft systems, or furniture to the



1 definition of barware. A rule, regulation, or order adopted after
2 January 1, 2014 that is not adopted in accordance with this
3 subsection and that is not consistent with this section or is in
4 conflict with this section is void and unenforceable.

5 (11) As used in this section:

6 (a) "Barware" means the following brand logoed items:

7 (i) Trays.

8 (ii) Coasters.

9 (iii) Napkins.

10 (iv) Shirts.

11 (v) Hats.

12 (vi) Pitchers.

13 (vii) Drinkware that is intended to be reused.

14 (viii) Bar mats.

15 (ix) Buckets.

16 (x) Bottle openers.

17 (xi) Stir rods.

18 (xii) Patio umbrellas.

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

21 (xiv) Any other items that have been added by the commission
22 under subsection (10).

23 (b) "Barware retailer" means a person that offers brand logoed
24 barware for sale to retailers, whether or not it is in their
25 ordinary course of business, and that is not licensed as, or
26 directly or indirectly affiliated with, a manufacturer of beer or
27 wine, ~~mixed spirit drink manufacturer, warehouse, wholesaler,~~
28 outstate seller of beer, **or** outstate seller of wine. ~~, or outstate~~



~~seller of mixed spirit drink.~~ For purposes of this subdivision, a licensing agreement that authorizes use of a brand logo is not a direct or indirect affiliation.

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

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

(e) "Other valuable thing" means a good, service, or intangible good that is given, loaned, leased, or sold to another licensee that has value regardless of whether the value is nominal. ~~and Other valuable thing~~ includes, but is not limited to, a good, service, or intangible good that provided a benefit, regardless of how nominal, to the licensee other than advertising the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer ~~, or~~ the outstate seller of wine; ~~, or~~ ~~the outstate seller of mixed spirit drink;~~ or distributed by the wholesaler, except for consumable goods and those goods, services, or intangible goods approved by rule or order of the commission before January 1, 2014.

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

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are



1 enacted into law:

2 (a) Senate Bill No. 1138.

3 (b) Senate Bill No. 1139.

