

# SENATE BILL NO. 1140

September 22, 2020, Introduced by Senators MOSS, VANDERWALL and SCHMIDT and referred to the Committee on Regulatory Reform.

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

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,~~ warehouse, 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 an advertising item that promotes 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 as otherwise allowed under subsection (3), (4), (5), or (6), the advertising item ~~shall~~**must** 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,~~ warehouse, 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 under rules or orders adopted before 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.

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

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

18 (5) A retailer shall not use or possess, at its licensed  
19 premises, advertising items that have a use or value beyond the  
20 actual advertising of brands and prices of alcoholic liquor except  
21 for those items allowed in subsection (3), (4), or (6), or as  
22 otherwise allowed under this subsection. A retailer may possess and  
23 use brand logoed barware that advertises spirits if the items are  
24 purchased from a manufacturer of spirits, vendor of spirits,  
25 salesperson, broker, or barware retailer. A retailer may possess  
26 and use brand logoed barware that advertises beer or wine if the  
27 items are purchased from a barware retailer. A retailer shall  
28 maintain the receipts of all purchased brand logoed barware for at  
29 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) A manufacturer, outstate seller, or vendor of spirits may provide brand logoed merchandise to an on-premises retailer and off-premises retailer to promote the brand and price of its products under R 436.1321(1) to (3) of the Michigan ~~administrative code if all of the following conditions are complied~~

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

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

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

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

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

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

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

(g) Brand logoed merchandise must be unilluminated.

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

1 (i) Brand logoed merchandise must be owned by the manufacturer  
2 or supplier. The ownership of brand logoed merchandise may not be  
3 transferred to the retail licensee, the ~~retail licensee's~~  
4 **retailer's** employee, or any other person.

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

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

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

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

27 (10) Beginning after September 25, 2015, the commission may,  
28 by rule, add an item to or remove an item from the definition of  
29 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.

(11) 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 under subsection (10).

(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

1 directly or indirectly affiliated with, a manufacturer of beer or  
 2 wine, ~~mixed spirit drink manufacturer~~, warehouse, wholesaler,  
 3 outstate seller of beer, **or** outstate seller of wine. ~~, or outstate~~  
 4 ~~seller of mixed spirit drink.~~ For purposes of this subdivision, a  
 5 licensing agreement that authorizes use of a brand logo is not a  
 6 direct or indirect affiliation.

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

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

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

27 (f) "Salesperson" means, for purposes of this subsection only,  
 28 a person who is employed by a vendor of spirits or a broker and who  
 29 is licensed by the commission to sell, deliver, or promote, or

1 otherwise assist in the sale of, spirits in this state.

2 Enacting section 1 This amendatory act does not take effect  
3 unless both of the following bills of the 100th Legislature are  
4 enacted into law:

5 (a) Senate Bill No. 1139.

6

7 (b) Senate Bill No. 1138.

8