

## MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

### Act 58 of 1998

#### CHAPTER 3

#### **436.1301 Wine tax; levy and collection; rate; sacramental wines; tax on mixed spirit drink; payment; incorporation of farm mutual cooperative wineries; licensing; fee; certification of stockholders or members; payment of tax by wholesaler; rules.**

Sec. 301. (1) The commission shall levy and collect on all wine containing 16% or less of alcohol by volume sold in this state a tax at the rate of 13.5 cents per liter if sold in bulk and in a like ratio if sold in smaller quantities.

(2) The commission shall levy and collect on all wine containing more than 16% of alcohol by volume sold in this state a tax at the rate of 20 cents per liter if sold in bulk and in a like ratio if sold in smaller quantities.

(3) Sacramental wine is nontaxable when used by churches. A person may import sacramental wines. The commission shall not impose restrictions on importations of wine for sacramental purposes but may promulgate rules to prevent any abuses that result from the importations. A wholesaler or an outstate seller of wine may sell sacramental wine directly to a church for sacramental purposes.

(4) The commission shall levy and collect on all mixed spirit drink sold in this state a tax at the rate of 30 cents per liter if sold in bulk or a like ratio if sold in smaller quantities.

(5) After January 31, 2015, if the wine is manufactured in this state the tax must be paid by the wine maker who manufactured the wine or if the wine is manufactured outside this state the tax must be paid by the wholesaler assigned to distribute that wine.

(6) After January 31, 2015, if the mixed spirit drink is manufactured in this state the tax must be paid by the manufacturer of the mixed spirit drink or if the mixed spirit drink is manufactured outside this state the tax must be paid by the wholesaler assigned to distribute that mixed spirit drink.

(7) On approval by the commission, the department of licensing and regulatory affairs shall incorporate a limited number of farm mutual cooperative wineries as the commission determines to be beneficial to the Michigan grape and fruit industry. These wineries must be licensed under this act and the payment of 1 license fee annually by the corporation authorizes wine making on the premises of the corporation and also on the premises of the grape and fruit growing farmers who are members of or stockholders in the corporation. Upon incorporation of a farmers' cooperative corporation as provided for in this section, the members of or the stockholders in the corporation are certified to be Michigan grape and fruit growing farmers. Wine making by cooperative corporations on farm premises is allowed, but all sales of the wine must be made by the corporation and from the corporation premises.

(8) A wine maker or manufacturer of a mixed spirit drink may designate a wholesaler to pay the tax on behalf of the wine maker or manufacturer, respectively. If a wine maker or manufacturer designates a wholesaler to pay the tax on its behalf, that wine maker or manufacturer shall notify the commission of the designation and provide the commission with a copy of its report of wine premises operations that it filed with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury for each calendar year. A wholesaler that is responsible for the payment of the tax under this section or that is designated to pay the tax under this section on behalf of the wine maker or manufacturer of the mixed spirit drink is only required to pay the tax on the number of liters actually sold by the wholesaler to licensed retailers.

(9) The commission shall establish by rule a method for the collection of the tax levied in this section and reporting requirements for wholesalers, wine makers, outstate sellers of mixed spirit drink, and outstate sellers of wine to verify the remission of taxes to this state. Except as otherwise provided in this subsection, the commission shall not require that the tax be paid in less than monthly intervals. Beginning March 15, 2020, the commission shall not require that the tax be paid in less than quarterly intervals. The rules under this subsection must be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2014, Act 49, Imd. Eff. Mar. 25, 2014;—Am. 2020, Act 110, Imd. Eff. July 1, 2020;—Am. 2021, Act 19, Eff. Aug. 23, 2021.

**Administrative rules:** R 436.1001 et seq.; R 436.1701 et seq.; and R 436.1801 et seq. of the Michigan Administrative Code.

#### **436.1303 Grape and wine industry council; creation; to be known as Michigan craft beverage council; appointment, qualifications, and terms of members; chairperson; personnel; expenses; liability on contracts; compensation; books and records; disposition of money received; award and administration of grants; duties and powers of council; rules;**

**lobbying prohibited; exception; establishment of commodity committee; definitions.**

Sec. 303. (1) The grape and wine industry council created under Executive Reorganization Order No. 2014-2, MCL 333.26253, shall be housed within the department of agriculture and rural development. Beginning on the effective date of the 2018 amendatory act that amended this section, the council shall be known as the Michigan craft beverage council and shall consist of the following members:

(a) As a nonvoting member, the director of the department of agriculture and rural development or his or her designee.

(b) Subject to subsection (2), the following voting members, appointed by the governor:

(i) A representative of retail food establishments that hold a specially designated merchant license and sell Michigan wines or beer.

(ii) A representative of restaurants that hold a class C license and serve Michigan wines, beer, or spirits.

(iii) Two representatives of wine makers.

(iv) A representative of wine makers that primarily manufacture cider.

(v) A representative of large brewers.

(vi) One of the following:

(A) A representative of micro brewers.

(B) A representative of brewpub license holders.

(vii) A representative of small distillers.

(viii) A representative of distillers that manufacture more than 60,000 gallons of spirits per year.

(2) The following apply to a member of the council appointed under subsection (1)(b):

(a) The member's principal place of business must be located in this state.

(b) The member must not be a lobbyist or a lobbyist agent as those terms are defined in section 5 of 1978 PA 472, MCL 4.415.

(3) Voting members of the council appointed by the governor under subsection (1) shall serve for terms of 3 years or until a successor is appointed, whichever is later, except that of the voting members first appointed, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years. A voting member shall not serve more than 2 consecutive terms. A vacancy on the board shall be filled in the same manner as the original appointment. The director of the department of agriculture and rural development is the chairperson of the council.

(4) The council may employ personnel and incur expenses that are necessary to carry out the responsibilities of the council under this act. A member of the council or an employee or agent of the council is not personally liable on the contracts of the council.

(5) A nongovernmental member of the council may receive \$50.00 per day for each day spent in actual attendance at meetings of the council and traveling expenses while on council business in accordance with standard travel regulations of the department of technology, management, and budget.

(6) The council shall maintain accurate books and records, and all money received by the council shall be used to implement and enforce this section. The council may accept money from any source for the purpose of carrying out this section. All money received by the council shall be forwarded to the state treasurer for deposit into the Michigan craft beverage council fund created in section 303a.

(7) Subject to an appropriation, the council shall direct the department of agriculture and rural development to award grants for the following:

(a) Research into both of the following:

(i) Fruits used in winemaking and wines, including, but not limited to, methods of planting, growing, controlling insects and diseases, charting microclimates and locations for growing desirable varieties of fruits used in winemaking and wines, marketing, processing, distribution, advertising, sales production, and product development.

(ii) Hops, barley, beer, and spirits, including, but not limited to, methods of planting, growing, controlling insects and diseases, marketing, processing, distribution, advertising, sales production, and product development.

(b) Projects that do 1 or more of the following:

(i) Provide the wine industry, including growers, wineries, distributors, and retailers, with information relative to proper methods of handling and selling fruits used in winemaking and wines.

(ii) Provide the brewing and distilling industries, including growers, brewers, distillers, distributors, and retailers, with information relative to proper methods of handling and selling hops, barley, beer, spirits, and mixed spirit drinks.

(iii) Provide for market surveys and analyses for purposes of expanding existing markets and creating new and larger markets for Michigan agricultural products such as fruits, hops, and barley, that are used in the

production of wine, cider, beer, spirits, and mixed spirit drinks.

(iv) Provide for the promotion of the sale of Michigan agricultural products such as fruits, hops, and barley, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.

(v) Develop and administer financial aid programs to growers of fruits used in winemaking to encourage the increased planting in this state of desirable fruit varieties in microclimates determined to provide the best conditions for producing quality wines.

(vi) Develop and administer financial aid programs to hops growers to encourage increased planting in this state of desirable hops varieties in microclimates determined to provide the best conditions for producing quality beer.

(vii) Develop and administer financial aid programs to barley growers to encourage increased planting in this state of desirable barley varieties in microclimates determined to provide the best conditions for producing quality beer.

(viii) Establish educational partnerships to benefit the beer, wine, cider, spirits, and mixed spirit drink industries.

(8) The department of agriculture and rural development shall administer the grants awarded under subsection (7).

(9) The council shall do all of the following:

(a) Apply for and accept grants or contributions from the federal government or any of its agencies, the state, or other public or private agencies to be used for any of the purposes of this section and to do any and all things within its express or implied powers necessary or desirable to secure that financial or other aid or cooperation in the carrying out of any of the purposes of this section.

(b) Invite the chief executive officer of the Michigan economic development corporation or his or her designee to attend at least 1 council meeting annually to inform the council about partnership activities and opportunities related to the marketing and promotion of Michigan agricultural products such as fruits, hops, and barley, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.

(c) Invite the director of the department of licensing and regulatory affairs to attend at least 1 council meeting annually to inform the council about funding activities affecting the council.

(d) Prepare and adopt an annual budget.

(10) Based on the information provided to the council under subsection (9)(b) and (c), the council may do either or both of the following:

(a) Take actions that will enhance the marketing and promotion of Michigan agricultural products, such as fruits, hops, and barley, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.

(b) Annually review and adopt strategies for marketing and promotion of Michigan agricultural products, such as fruits, hops, and barley, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.

(11) The council may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the purposes of implementing and enforcing this section. However, the council shall not promulgate a rule that conflicts with a rule promulgated by the commission under section 215.

(12) Except as otherwise provided in this subsection, the council shall not engage in lobbying. This subsection does not prohibit the council or a council member or council employee from providing technical information to the legislature or to the department of agriculture and rural development, regardless of whether the council, council member, or council employee is appearing before an officially convened legislative committee or department of agriculture and rural development hearing panel, if the technical information is related to the council's duties under this section.

(13) This section does not prevent the council from establishing a commodity committee under the agriculture commodities marketing act, 1965 PA 232, MCL 290.651 to 290.674.

(14) As used in this section:

(a) "Cider" means an alcoholic beverage made from the fermentation of juice from primarily apples or pears, or both, which contains not less than 1/2 of 1% and not more than 8.5% of alcohol by volume. Cider may be still or carbonated and may contain other fruits, spices, botanicals, or other flavors.

(b) "Council" means the Michigan craft beverage council described in subsection (1).

(c) "Large brewer" means a brewer that produces in total at least 60,000 barrels of beer and not more than 1,000,000 barrels of beer per year. In determining the barrel threshold under this subdivision, all brands and labels of a brewer, whether brewed in this state or outside this state, must be combined and all facilities for the production of beer that are owned or controlled by the same person are treated as a single facility.

(d) "Lobbying" means that term as defined in section 5 of 1978 PA 472, MCL 4.415.

(e) "Technical information" means that term as defined in section 5 of 1978 PA 472, MCL 4.415.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2018, Act 154, Eff. Oct. 1, 2018.

**Compiler's note:** For transfer of powers and duties of the grape and wine industry council to the new grape and wine industry council, and abolishment of grape and wine industry council, see E.R.O. No. 2014-2, compiled at MCL 333.26253.

**436.1303a Michigan craft beverage council fund; creation; receipt of money or other assets; deposit; investment; interest and earnings; money remaining at close of fiscal year; expenditure; "Michigan craft beverage council" defined.**

Sec. 303a. (1) The Michigan craft beverage council fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the Michigan craft beverage council fund. The state treasurer shall direct the investment of the Michigan craft beverage council fund. The state treasurer shall credit to the Michigan craft beverage council fund interest and earnings from fund investments.

(3) Money in the Michigan craft beverage council fund at the close of the fiscal year must remain in the fund and must not lapse to the general fund. However, for the fiscal year ending September 30, 2020, \$476,500.00 of the money in the Michigan craft beverage council fund is transferred to and must be deposited into the general fund.

(4) Subject to subsection (5), money from the Michigan craft beverage council fund must be expended annually, on appropriation, for the following:

(a) Not more than \$80,000.00 may be used by the department of agriculture and rural development to administer the grants program under section 303.

(b) Not less than 50% of the money that is expended after the expenditure under subdivision (a) may be used for grants under section 303(7)(a).

(c) For grants under section 303(7)(b).

(d) For the Michigan craft beverage council to carry out its responsibilities under this act.

(5) Notwithstanding subsection (4), if the Michigan craft beverage council receives money under section 303(9)(a), the money may be expended for the purposes and subject to the conditions for which it was received.

(6) As used in this section, "Michigan craft beverage council" means the Michigan craft beverage council created in section 303.

**History:** Add. 2018, Act 155, Eff. Oct. 1, 2018;—Am. 2020, Act 200, Imd. Eff. Oct. 15, 2020.

**436.1305 Wine and mixed spirit drink industry; purpose of section; reasons for regulation; definitions; prohibited conduct; servicing impacted sales territory; termination, cancellation, nonrenewal, or discontinuance of agreement; burden; notice; test marketing; sales and distribution; transfer of wholesaler's business; compensation for diminished value of wholesaler's business; arbitration; costs; default; waiver; good faith dispute settlement; agreement binding on successor to supplier; agreements to which section applicable; civil action for actual damages; liability; action for declaratory judgment; exemplary damages; injunctive relief; procedure for resolving violations.**

Sec. 305. (1) The purpose of this section is to provide a structure for the business relations between a wholesaler of wine or mixed spirit drink and a supplier of wine or mixed spirit drink. Regulation in this area is considered necessary for the following reasons:

(a) To maintain stability and healthy competition in the wine and mixed spirit drink industry in this state.

(b) To promote and maintain a sound, stable, and viable 3-tier distribution system of wine and mixed spirit drink to the public.

(c) To recognize the marketing distinctions between beer, wine, and mixed spirit drink.

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

(2) As used in this section, unless the context requires otherwise:

(a) "Agreement" means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to offer and sell a brand or brands of wine or mixed spirit drink sold by a supplier.

(b) "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler the primary purpose of which is directly related to the transporting, storing, or marketing of the brand or brands of wine or mixed spirit drink of a supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler that recycles empty returnable beverage containers.

(c) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a wholesaler, who is entitled to inherit the deceased individual's ownership interest in the wholesaler under the terms of the deceased individual's will, or who has otherwise been designated in writing by the deceased individual to succeed the deceased individual in the wholesaler's business, or is entitled to inherit that ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a wholesaler, the term means the person appointed by a court as the conservator of that individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined and interpreted under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

(e) "Master distributor" means a wholesaler that acts in the same or similar capacity as a wine maker, mixed spirit drink manufacturer, an outstate seller of wine, or an outstate seller of mixed spirit drink for a brand or brands of wine or mixed spirit drink to other wholesalers on a regular basis in the normal course of business.

(f) "Reasonable qualifications" means the average standard of the criteria used by the respective supplier for wholesalers that entered into or renewed an agreement with the suppliers during a period of 24 months before the proposed transfer of the wholesaler's business.

(g) "Retaliatory action" means action that includes, but is not limited to, the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

(h) "Sales territory" means an area of sales responsibility for the brand or brands of wine or mixed spirit drink sold by a supplier as designated by an agreement.

(i) "Successor" means a supplier that obtains, in any manner from any person, including a person that is not a supplier, the distribution rights of 1 or more brands of wine or mixed spirit drink that a licensed Michigan wholesaler has distributed in this state under an agreement with another supplier, that previously had the distribution rights for the brand or brands.

(j) "Supplier" means a wine maker, mixed spirit drink manufacturer, an outstate seller of wine, an outstate seller of mixed spirit drink, or a master distributor.

(k) "Transfer of a wholesaler's business" means the voluntary sale, assignment, or other transfer of the business or control of the business of the wholesaler, including the sale or other transfer of stock or assets by merger, consolidation, or dissolution.

(3) A supplier shall not do any of the following:

(a) Coerce, or attempt to coerce, a wholesaler to accept delivery of any wine, mixed spirit drink, or other commodity that has not been ordered by the wholesaler. However, a supplier may impose reasonable inventory requirements on a wholesaler if the requirements are made in good faith and are generally applied to other wholesalers having an agreement with the supplier.

(b) Coerce, or attempt to coerce, a wholesaler to accept delivery of any wine, mixed spirit drink, or other commodity ordered by a wholesaler if the order was properly canceled by the wholesaler in accordance with the procedures agreed on by the supplier and wholesaler.

(c) Coerce, or attempt to coerce, a wholesaler to do any illegal act by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler.

(d) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of wine or mixed spirit drink of any other supplier anywhere in this state unless the acquisition of the brand or brands of another supplier would materially impair the quality of service of the brand or brands of the supplier presently being sold by the wholesaler.

(e) Require a wholesaler to purchase 1 or more brands of wine or mixed spirit drink in order for the wholesaler to purchase another brand or brands of wine or mixed spirit drink for any reason. However, a wholesaler that has agreed to distribute a brand or brands before June 26, 1984 shall continue to distribute the brand or brands in conformance with this section.

(f) Request a wholesaler to submit profit and loss statements, balance sheets, or financial records as a requirement for renewing or retaining an agreement.

(g) Withhold delivery of wine or mixed spirit drink ordered by a wholesaler, or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith.

(h) Require a wholesaler by any means to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier.

(i) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement that contains

in total the supplier's agreement with each wholesaler, and designates a specific sales territory.

(j) Fix, maintain, or establish the price at which a wholesaler shall sell any wine or mixed spirit drink.

(k) Take any retaliatory action against a wholesaler that files a complaint regarding an alleged violation by the supplier of state or federal law or an administrative rule.

(l) Require or prohibit any change in the manager or successor manager of any wholesaler that has been approved by the supplier as of June 26, 1984. If, after June 26, 1984, a supplier requires a manager or successor manager be appointed, or if a wholesaler changes an approved manager or successor manager, a supplier shall not interfere with or prohibit the appointment unless the person fails to meet the reasonable written standards for Michigan wholesalers of the supplier that have been provided to the wholesaler.

(m) Require by a provision of any agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with that agreement be determined through the application of any other state's laws. Any supplier or wholesaler aggrieved by any dispute arising out of or in connection with an agreement governed by this act has the right to file an appropriate action consistent with this act in any court in this state having venue.

(4) A wholesaler shall not sell or deliver wine or mixed spirit drink to a retail licensee located outside the sales territory designated by the supplier of a particular brand or brands of wine or mixed spirit drink. However, during periods of temporary service interruptions impacting a particular sales territory, a wholesaler that normally services the impacted sales territory shall file with the commission a written notice designating the specific wholesaler or wholesalers that will service the sales territory during the period of temporary service interruption and the approximate length of time of the service interruption. When the temporary service interruption is over, the wholesaler that normally services the sales territory shall notify in writing the commission and the wholesaler, or wholesalers, which is servicing the sales territory on a temporary basis of this fact and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of the notice. A wholesaler that is designated to service the impacted sales territory during the period of temporary service is not in violation of this subsection. A wholesaler that has been designated to service the impacted sales territory during the period of temporary service interruption does not have any of the rights provided under subsections (6) to (12).

(5) A supplier or wholesaler shall not directly or indirectly restrict or inhibit the right of free association among suppliers or wholesalers for any lawful purpose.

(6) Notwithstanding the terms, provisions, or conditions of any agreement, a supplier shall not amend any agreement unless the supplier is acting in good faith in making the amendment.

(7) Notwithstanding any agreement and except as otherwise provided for in this section, a supplier shall not cause a wholesaler to resign from an agreement; or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the supplier has complied with all of the following:

(a) Has satisfied the applicable notice requirements of subsection (10).

(b) Has acted in good faith.

(c) Has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.

(8) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (7)(c) when all of the following occur:

(a) The wholesaler fails to comply with a provision of the agreement that is both reasonable and of material significance to the business relationship between the wholesaler and the supplier.

(b) The supplier first acquired knowledge of the failure described in subdivision (a) not more than 2 years before the date notification was given under subsection (7).

(c) The wholesaler was given written notice by the supplier of failure to comply with the agreement.

(d) The wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits as provided for in subdivision (e).

(e) The wholesaler has been afforded 25 days in which to submit a plan of corrective action to comply with the agreement and an additional 75 days to cure the noncompliance in accordance with the plan.

(9) A supplier or wholesaler who terminates, cancels, nonrenews, or discontinues an agreement has the burden of showing that it has acted in good faith, complied with the applicable notice requirements under this section, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.

(10) Notwithstanding any agreement and except as otherwise provided in this section, a supplier shall furnish written notice of a termination, cancellation, nonrenewal, or discontinuance of an agreement to the wholesaler not less than 15 days before the effective date of the termination, cancellation, nonrenewal, or discontinuance. The notice must be by certified mail and must contain all of the following:

(a) A statement of intention to terminate, cancel, not renew, or discontinue the agreement.

(b) A statement of the reason for the termination, cancellation, nonrenewal, or discontinuance.

(c) The effective date of the termination, cancellation, nonrenewal, or discontinuance.

(11) Notwithstanding subsections (7) and (10), a supplier may immediately terminate, cancel, not renew, or discontinue an agreement on written notice given in the manner and containing the information required by subsection (10) if any of the following occur:

(a) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler that materially affects the wholesaler's ability to remain in business.

(b) The commission revokes the wholesaler's license whereby the wholesaler cannot service the wholesaler's sales territory for more than 60 days.

(c) The wholesaler, or an individual who owns more than 10% of the stock of a corporate wholesaler, is convicted of a felony. However, an existing approved stockholder has the right to purchase the stock of the offending stockholder before the conviction of the offending stockholder, and if the sale is completed before conviction, this subdivision does not apply. As used in this subdivision, "felony" means a felony under the United States code or the Michigan Compiled Laws.

(12) Notwithstanding subsections (7), (10), and (11), on not less than 15 days' prior written notice given in the manner and containing the information required by subsection (10), a supplier may terminate, cancel, not renew, or discontinue an agreement if any of the following events occur:

(a) There was fraudulent conduct on the part of the wholesaler in dealings with the supplier.

(b) The wholesaler failed to confine its sales of a brand or brands to the assigned sales territory. This subdivision does not apply if there is a dispute between 2 or more wholesalers as to the boundaries of the assigned territory, and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers.

(c) The sale by the wholesaler of any brand or brands sold by the supplier to the wholesaler that the wholesaler knew were ineligible for sale before the actual sale to the retailer. The supplier shall repurchase the ineligible product from the wholesaler when the ineligibility is caused by the supplier. The supplier must give the wholesaler written notice specifying the ineligible product.

(13) Notwithstanding subsections (7), (10), (11), and (12), a supplier may terminate, cancel, not renew, or discontinue an agreement upon not less than 30 days' prior written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler. Nothing in this section prohibits a supplier upon not less than 30 days' notice to discontinue the distribution of any particular brand or package of wine or mixed spirit drink. This subsection does not prohibit a supplier from conducting test marketing of a new brand of wine or mixed spirit drink or from conducting the test marketing of a brand of wine or mixed spirit drink that is not currently being sold in this state if the supplier has notified the commission in writing of its plans to test market. The notice must describe the market area in which the test must be conducted; the name or names of the wholesaler or wholesalers who will be selling the wine or mixed spirit drink; the name or names of the brand of wine or mixed spirit drink being tested; and the period of time during which the testing will take place. A market testing period must not exceed 18 months.

(14) A wholesaler shall devote reasonable efforts and resources to sales and distribution of all the supplier's products that the wholesaler has been granted the right to sell and distribute and shall maintain reasonable sales levels.

(15) A supplier shall not withhold consent to any transfer of a wholesaler's business if the proposed transferee meets the material and reasonable qualifications and standards required by the supplier. A wholesaler shall give the supplier written notice of intent to transfer the wholesaler's business. A supplier shall not unreasonably delay a response to a request for a proposed transfer of a wholesaler's business. However, a transfer of a wholesaler's business that is not approved by the supplier is void. A supplier shall not interfere with, or prevent, the transfer of the wholesaler's business if the proposed transferee is a designated member.

(16) A supplier as part of the written agreement required by this section may, subject to the provisions of subsection (3)(l), require a wholesaler to designate a successor manager who shall be subject to prior approval by the supplier. If the designated successor manager fails to assume the role of approved manager or for any reason does not continue to manage the wholesaler's business, after assuming that responsibility, then any successor shall be subject to the prior approval of the supplier, subject to the provisions of subsection (3)(l), notwithstanding the transferee's interest as a designated member.

(17) A supplier that has amended, canceled, terminated, or refused to renew any agreement; has caused a wholesaler to resign from an agreement; or has withheld consent to any assignment or transfer of a wholesaler's business, except as provided for in this section, shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business or of any ancillary business which has been negatively affected by the act of the supplier, or both. The value of the wholesaler's business or ancillary business must include, but not be limited to, its goodwill.

(18) A supplier or wholesaler may, at any time, determine that mutual agreement on the amount of reasonable compensation cannot be reached. If such a determination is made, the supplier or the wholesaler shall send written notice to the other party declaring their intention to proceed with arbitration. Arbitration may proceed only by mutual agreement of both parties.

(19) The supplier and wholesaler may, by agreement, submit the matter of determining the amount of compensation under arbitration to a 5-member arbitration panel consisting of 2 representatives selected by the supplier but unassociated with the affected supplier, 2 wholesaler representatives selected by the wholesaler but unassociated with the wholesaler, and an impartial arbitrator.

(20) Not more than 10 days after the notice to enter into arbitration has been sent, the supplier and wholesaler shall request, in writing, a list of 5 arbitrators from the American arbitration association. Not more than 10 days after the supplier and wholesaler receive of the list of 5 choices, the wholesaler arbitrators and the supplier arbitrators may strike and disqualify up to 2 names each from the list. If the supplier or wholesaler fails to respond within the 10 days or if more than 1 name remains, the American arbitration association shall select the impartial arbitrator.

(21) Not more than 30 days after the supplier and wholesaler receive the list of arbitrators, the wholesaler and supplier shall exchange in writing the names of their respective arbitration panel representatives.

(22) Not more than 30 days after the final selection of the arbitration panel is made, the arbitration panel shall convene to decide the dispute. The panel shall render a decision by majority vote of the participants within 20 days after the arbitration concludes.

(23) The cost of the impartial arbitrator, the stenographer, and the meeting site must be equally divided between the wholesaler and the supplier. All other costs must be paid by the party incurring them. The award of the arbitration panel is final and binding on the parties.

(24) If the supplier or wholesaler fails to abide by the time limitations as prescribed in subsections (20), (21), and (22), or fails or refuses to select any arbitrators, or fails to participate in the arbitration hearings, the other party shall make the selection of their arbitrators and proceed to arbitration. The party who has failed or refused to comply as prescribed in this subsection is considered to be in default. Any party considered to be in default under this subsection waives any rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitration panel.

(25) A wholesaler shall not waive any of the rights granted in this section. This section does not limit or prohibit a good faith dispute settlement voluntarily entered into by the parties.

(26) A successor to a supplier that continues in business as a wine maker, mixed spirit drink manufacturer, an outstate seller of wine, outstate seller of mixed spirit drink, or master distributor is bound by all terms and conditions of each agreement of the supplier with a wholesaler licensed in this state that were in effect on the date on which the successor received the distribution rights of the previous supplier.

(27) This section applies to agreements in existence on June 26, 1984, as well as agreements entered into or renewed after that date.

(28) If a supplier engages in conduct prohibited under this section, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under this section, a supplier with which the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.

(29) A supplier that violates this section is liable for all actual damages and all court costs and reasonable attorney fees incurred by a wholesaler as a result of that violation. A wholesaler that violates this section is liable for all actual damages and all court costs and reasonable attorney fees incurred by the supplier as a result of that violation.

(30) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this section.

(31) Except as otherwise provided in this section, if a court finds that a supplier has not acted in good faith in amending, terminating, canceling, or not renewing any agreement; or has unreasonably withheld its consent to any assignment, transfer, or sale of a wholesaler's business, the court may award exemplary damages, as well as actual damages, court costs, and reasonable attorney fees to the wholesaler that has been damaged by the action of the supplier.

(32) On proper application to a court, a supplier or wholesaler may obtain injunctive relief against any violation of this section. If the court grants injunctive relief or issues a temporary restraining order, bond is not required to be posted.

(33) The procedure for resolving any violation of subsection (3)(a), (b), (c), (e), (f), (h), (i), (j), (k), (l), or (4) is the procedure prescribed by this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Any other violation of or dispute regarding this section, unless the dispute is resolved

pursuant to subsections (18) to (24), must only be resolved by a civil action in court as provided in this section and not by the commission.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2021, Act 19, Eff. Aug. 23, 2021.

#### **436.1307 Sales territory; master distributor defined.**

Sec. 307. (1) A manufacturer, an outstate seller of wine, and a master distributor shall grant to each of its wholesalers a sales territory within which the wholesaler is a distributor of the specified brand or brands of the manufacturer, outstate seller of wine, or master distributor under an agreement as required under this act. The territory is the territory agreed on between the wholesaler and manufacturer, outstate seller of wine, or master distributor. Except as provided for in subsection (9) and beginning June 1, 2010, a manufacturer, outstate seller of wine, or master distributor shall not grant the right to sell a specified brand or brands of wine in a sales territory to more than 1 wine wholesaler. A master distributor shall not itself distribute a specified brand or brands of wine in the same sales territory where that master distributor has granted the right to distribute that specified brand or brands of wine in that sales territory to another wine wholesaler.

(2) Notwithstanding subsection (1), a brand extension is not a new or different brand. A manufacturer or outstate seller of wine shall assign a brand extension to the wholesaler that was granted the sales territory for the brand from which the brand extension resulted.

(3) Subsection (2) does not apply if, before January 1, 1994, a manufacturer or outstate seller of wine had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.

(4) Subsection (2) does not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller of wine had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the extension was made.

(5) A manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink shall grant to each of its wholesalers an exclusive sales territory in which the wholesaler is a distributor of the specified brand or brands of the manufacturer or outstate seller. The territory is the territory agreed on between the wholesaler and the manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of mixed wine drinks, or outstate seller of mixed spirit drink.

(6) Notwithstanding subsection (5), a brand extension is not a new or different brand. A manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink shall assign a brand extension to the wholesaler that was granted the exclusive sales territory for the brand from which the brand extension resulted.

(7) Subsection (6) does not apply if, before January 1, 1994, a manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.

(8) Subsection (6) does not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller of mixed wine drink or mixed spirit drink had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.

(9) Subsection (1) does not prohibit any of the following:

(a) A manufacturer of wine, an outstate seller of wine, mixed spirit drink manufacturer, outstate seller of mixed spirit drink, or a master distributor from continuing or renewing an agreement under this act with a wholesaler for a specified brand or brands for any county or part of a county where more than 1 wholesaler has an agreement with the manufacturer of wine, outstate seller of wine, mixed spirit drink manufacturer, outstate seller of mixed spirit drink, or master distributor in effect on June 1, 2010 if the wholesaler had an agreement to distribute that specified brand or brands in that county or that part of a county and was a master distributor or was actively selling that brand or brands of wine or mixed spirit drink to a retailer in that county or that part of a county on June 1, 2010.

(b) A wholesaler from selling or transferring the wholesaler's distribution rights or a manufacturer of wine, outstate seller of wine, mixed spirit drink manufacturer, outstate seller of mixed spirit drink, or master distributor from approving the sale or transfer of a wholesaler's distribution rights to a specified brand or brands of wine or mixed spirit drink for any county or part of a county to another wholesaler if the selling or transferring wholesaler, or any of its predecessors, had the right to distribute that brand or brands of wine or mixed spirit drink in that county or part of that county and was actively selling that brand or brands to a retailer in that county or that part of a county on June 1, 2010 or was acting as a master distributor for that county or part of that county on June 1, 2010.

(10) As used in this section, "master distributor" means, notwithstanding section 109(4), a wholesaler that acts in the same or similar capacity as a wine maker, wine manufacturer, outstate seller of wine, mixed spirit

drink manufacturer, or outstate seller of mixed spirit drink for a brand or brands of wine or mixed spirit drink to other wholesalers on a regular basis in the normal course of business.

**History:** 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010;—Am. 2018, Act 406, Imd. Eff. Dec. 19, 2018;—Am. 2020, Act 114, Imd. Eff. July 1, 2020;—Am. 2021, Act 19, Eff. Aug. 23, 2021.