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Alcoholic Beverage Consumption and Sampling in Unlicensed Premises

Recently, the Michigan Liquor Control Commission ("Commission") has received numerous inquiries regarding the legality of non-licensed businesses allowing consumers to consume alcoholic beverages in their establishments, and numerous inquiries regarding non-licensed businesses offering free samples of alcoholic beverages to consumers.

The Liquor Control Code of 1998 generally prohibits alcoholic beverage consumption in non-licensed establishments pursuant to MCL 436.1913 and MCL 436.2027. However, since the participating establishments do not hold liquor licenses, the Commission does not have jurisdiction over them and is powerless to take enforcement action against these unlicensed businesses. **Therefore, the ultimate determination of whether a violation has occurred rests with the local law enforcement agency and the local prosecutor. Any suspected violations of persons allowing the consumption of alcoholic beverages for consideration or conducting alcoholic beverage samplings and tastings for monetary gain should be referred to the local law enforcement agency for enforcement action.**

Consumption:

MCL 436.1913 of the Liquor Control Code prohibits the consumption of alcoholic liquor (beer, wine or spirits) on any premises or place for "consideration" unless the premises are licensed by the Michigan Liquor Control Commission to allow consumption on the premises. Basically, alcoholic beverage consumption for consideration is limited to licensed bars, taverns, restaurants, clubs, hotels or places holding a Special License issued to a non-profit organization by the Michigan Liquor Control Commission. The term "consideration" is defined to include, "any fee, cover charge, ticket purchase, the storage of alcoholic liquor, the sale of food, ice, mixers, or other liquids used with alcoholic liquor drinks, or the purchasing of any service or item, or combination of service and item; or includes the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food."

MCL 436.1913 prohibits "blind pigs" or other commercial establishments that charge an entry fee or sell food, ice, mixer or other liquids to consumers and allow consumers to bring in their own alcoholic beverages. The statute would also prohibit any other non-licensed business from serving or allowing the consumption of alcoholic beverages as part of their business when the consumer has paid for some other service, such as barbershop, hair salon, tanning salon, limousine service, etc. If consumers are paying any cover charge, entry fee, donation, or any other fee for any goods or services, or are purchasing food, ice, mixers or other liquids, the law prohibits allowing the consumption of alcoholic beverages unless the establishment is properly licensed through the Michigan Liquor Control Commission. This law would not prohibit a wedding reception, retirement party, open house, or other similar event that is not open to the public in a non-licensed facility whereby the attendees were guests and were not charged any fee whatsoever.

Note that the prohibition is for the consumption of any alcoholic beverage product and doesn't matter who is providing the alcohol or whether the person is bringing in his own alcohol. If there is any "consideration" involved, as defined by MCL 436.1913, the consumption of alcoholic beverages in an unlicensed establishment is a violation of MCL 436.1913 and the person providing the place is guilty of a felony pursuant to MCL 436.1909.

Sampling & Tasting:

MCL 436.2027 of the Liquor Control Code prohibits samplings or tastings of alcoholic liquor for “commercial purposes” unless the sampling or tasting is done at premises that are licensed by the Michigan Liquor Control Commission for the sale of alcoholic liquor for consumption on the premises. The term “commercial purposes” is further defined as, “means a purpose for which monetary gain or other remuneration could reasonably be expected.” The “monetary gain” could be direct such as receiving orders for wine purchases as a result of a sample or tasting, or a more indirect monetary gain such as increased business as a result of advertising free alcoholic beverage samples.

As with the ‘consumption for consideration’ prohibition as previously described, alcoholic beverage sampling and tasting is limited to licensed bars, taverns, restaurants, clubs, hotels or places holding a Special License issued to a non-profit organization by the Michigan Liquor Control Commission. There are also allowances under MCL 436.1537(5) of the Liquor Control Code for certain types of liquor licensees to conduct beer and wine sampling at licensed take-out locations with a sampling permit under certain restrictions. Also, under MCL 436.2027(4) and (5) of the Liquor Control Code, licensed suppliers can conduct spirit sampling with a sampling permit under certain restrictions at licensed take-out spirit locations. Lastly, licensed alcohol manufacturers can offer samples of the products they manufacture at their manufacturing locations and other MLCC approved locations (MCL 436.1537(3), (4), and (9), and MCL 436.2025 (1)).

MCL 436.2027 therefore prohibits in-home wine tasting parties conducted by alcoholic beverage suppliers, wholesalers and retailers, or any person directly or indirectly associated with them, who take orders for wine from attendees, but would also prohibit any tasting or sampling in unlicensed premises that results in a monetary gain as a result of an alcoholic beverage sampling or tasting.

If alcoholic beverage samplings or tastings are occurring on non-licensed premises for monetary gain, the person conducting the tasting may be guilty of a misdemeanor or a felony, depending on the circumstances, pursuant to MCL 436.1909.

Again, the Michigan Liquor Control Commission does not have jurisdiction over non-licensed premises. Because of that, the ultimate determination of whether a violation has occurred rests with the local law enforcement agency and local prosecutor. Therefore, any suspected violations of persons allowing the consumption of alcoholic beverages for consideration or conducting alcoholic beverages samplings and tastings for monetary gain should be referred to the local law enforcement agency.

If you have any questions on this matter, please don't hesitate to contact the Commission's Enforcement Division at (517) 322-1370, although again please be advised that the Commission does not have jurisdiction over unlicensed premises.

Copies of MCL 436.1913 and MCL 436.2027

MCL 436.1913 Unlicensed premises or place; unlawful consumption of alcoholic liquor; exceptions; construction of section; "consideration" defined.

Sec. 913.

(1) A person shall not do either of the following:

(a) Maintain, operate, or lease, or otherwise furnish to any person, any premises or place that is not licensed under this act within which the other person may engage in the drinking of alcoholic liquor for consideration.

(b) Obtain by way of lease or rental agreement, and furnish or provide to any other person, any premises or place that is not licensed under this act within which any other person may engage in the drinking of alcoholic liquor for consideration.

(2) A person shall not consume alcoholic liquor in a commercial establishment selling food if the commercial establishment is not licensed under this act. A person owning, operating, or leasing a commercial establishment selling food which is not licensed under this act shall not allow the consumption of alcoholic liquor on its premises.

(3) This section shall not apply to any hotel or any licensee under this act.

(4) This section shall not be construed to repeal or amend section 1019.

(5) As used in this section, "consideration" includes any fee, cover charge, ticket purchase, the storage of alcoholic liquor, the sale of food, ice, mixers, or other liquids used with alcoholic liquor drinks, or the purchasing of any service or item, or combination of service and item; or includes the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food.

436.2027 Samplings or tastings of alcoholic liquor; consumption on premises; holding of consumer sampling event; violation; rule or order; sampling for other than commercial purpose; written agreement; definitions.

Sec. 1027.

(1) Unless otherwise provided by rule of the commission, a person shall not conduct samplings or tastings of any alcoholic liquor for a commercial purpose except at premises that are licensed by the commission for the sale and consumption of alcoholic liquor on the premises.

(2) Notwithstanding section 1025(1) or (2), a retailer licensed by the commission for consumption on the premises may allow customers to sample beer, wine, and spirits if the retailer does not charge for the samples provided to customers. Sample serving sizes shall not exceed 3 ounces for beer, 2 ounces for wine, and 1/2 ounce for spirits. A customer shall not be provided more than 2 samples within a 24-hour period per licensed premises.

(3) This section does not prohibit any of the following:

(a) A vendor of spirits, brewer, wine maker, mixed spirit drink manufacturer, small wine maker, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink, or a bona fide market research organization retained by 1 of the persons named in this subsection, from conducting samplings or tastings of an alcoholic liquor product before it is approved for sale in this state if the sampling or tasting is conducted pursuant to prior written approval of the commission.

(b) An on-premises licensee from giving a sampling or tasting of alcoholic liquor to an employee of the licensee during the legal hours for consumption for the purpose of educating the employee regarding 1 or more types of alcoholic liquor if the employee is at least 21 years of age.

(c) A small distiller licensee from giving a sampling or tasting of brands it manufactures on the licensed premises or an off-site tasting facility operated by that small distiller.

(d) A micro brewer, brewpub, or on-premises licensee from allowing the sampling and consumption on the licensed premises of beer, wine, mead, honey-based beer, or cider produced by 1 or more home brewers at a meeting of home brewers, or a club composed primarily of home brewers, under the following circumstances:

(i) The sampling or consumption is for the purpose of exhibitions or competitions involving home brewers.

(ii) The beer, honey-based beer, or cider is served in portions that do not exceed 3 ounces. The wine or mead is served in portions that do not exceed 2 ounces.

(iii) The beer, wine, mead, honey-based beer, or cider produced by the home brewer is only consumed by the home brewer, the home brewer's family, a club member, a judge, or a guest speaker and is not sold to members of the general public.

(iv) The participants in the sampling or consumption otherwise comply with applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act.

(v) The participants in the sampling or consumption are not charged for the sampling or consumption of the beer, wine, mead, honey-based beer, or cider.

(4) A vendor of spirits or a manufacturer may conduct a consumer sampling event on the premises of a holder of a specially designated distributor license upon submission of a completed application to the commission.

(5) The holder of a consumer sampling event license shall comply with the following:

(a) The commission must be notified in writing a minimum of 10 working days before the event with the date, time, and location of the event.

(b) The consumer sampling event is limited to 3 events per vendor of spirits or manufacturer per specially designated distributor license per month.

(c) The vendor of spirits or manufacturer conducting the consumer sampling event must have a licensed representative present at the specially designated distributor's establishment.

(d) Licensed representatives or an authorized representative may distribute merchandise, not to exceed \$100.00 in value, to consumers 21 years of age or older during the event.

(e) Participating specially designated distributor licensees do not receive any fee or other valuable consideration for participating in the event.

(f) Each consumer is limited to 3 samples, which total no more than 1/3 ounce of spirits per serving.

(g) The consumer is not charged for and does not purchase any sample.

(h) The alcoholic liquor used in the consumer sampling event is provided by the vendor of spirits or manufacturer, and purchased at the minimum retail selling price fixed by the commission from the specially

designated distributor on whose premises the event is located. The vendor of spirits or manufacturer shall remove any unfinished product from the premises at which the event is held upon completion of the event.

(i) A consumer sampling event shall not be allowed if the sale of alcoholic liquor is otherwise prohibited on the premises at which the event is conducted.

(j) Samples are not to be offered to, or allowed to be consumed by, any person under the legal age for consuming alcoholic liquor.

(k) A consumer sampling event may be advertised in any type of media and the advertisements may include the date, time, location, and other information regarding the event.

(l) The participating vendor of spirits or manufacturer and specially designated distributor licensees must comply with this act and commission rules.

(m) The vendor of spirits or manufacturer must demonstrate that the individual actually conducting the sampling has successfully completed the server training program in the manner provided for in section 906 and rules promulgated by the commission.

(6) Violation of this section subjects the vendor of spirits or manufacturer to the sanctions and penalties as provided for under this act.

(7) The commission, by rule or issuance of an order, may further define eligibility for licensure and processes for conducting consumer sampling events.

(8) A sampling or tasting of any alcoholic liquor in a home or domicile for other than a commercial purpose is not subject to this section.

(9) Before a micro brewer, brewpub, or on-premises licensee allows an event to be held under subsection (3)(d), the micro brewer, brewpub, or on-premises licensee shall enter into a written agreement with the home brewers or home brewers club stating all of the following:

(a) The date and time the event will be held.

(b) The location of the event.

(c) Either of the following:

(i) A statement that the micro brewer, brewpub, or on-premises licensee acknowledges that it is not in control of an unregulated alcoholic beverage at its establishment and agrees to assume liability under section 801(3) for the event.

(ii) Proof that the home brewers or home brewers club has obtained a bond or liability insurance equal to that required under section 803(1).

(10) As used in this section:

(a) "Commercial purpose" means a purpose for which monetary gain or other remuneration could reasonably be expected.

(b) "Home brewer" means an individual who manufactures beer, wine, mead, honey-based beer, or cider at his or her dwelling.