



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

In the matter of)
RESCINDING ADMINISTRATIVE ORDER)
2020-16 AND AUTHORIZING PROGRAM TO)
BUY BACK SPIRITS FROM ON-PREMISES)
LICENSEES AFFECTED BY THE COVID-19)
EXECUTIVE ORDERS)
_____)

At the April 15, 2020 meeting of the Michigan Liquor Control Commission in Lansing, Michigan.

PRESENT: Pat Gagliardi, Chair
Dennis Olshove, Commissioner
Geraldyn A. Lasher, Commissioner

Administrative Order 2020-17
Rescinding Administrative Order 2020-16 and Authorizing Program to Buy Back
Spirits from On-premises Licensees
Affected by the COVID-19 Executive Orders

Article IV, Section 40, of the Michigan Constitution (1963), permits the legislature to establish a Liquor Control Commission, which shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. MCL 436.1201(2) provides the Commission with the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof.

On March 16, 2020, Governor Whitmer issued Executive Order 2020-9, directing all places of public accommodation to close, including “bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption.” On March 22, 2020, that order was rescinded and replaced with

Executive Order 2020-20, which extended the closing of places of public accommodation for on-premises consumption until April 13, 2020. On April 1, 2020, the Governor issued Executive Order 2020-33, which declared both a state of emergency and a state of disaster across the State of Michigan. On April 9, 2020, the Governor issued Executive Order 2020-42, which prohibits most public and private gatherings and restricts travel and work activities. That order is in effect until April 30, 2020, and limits individuals to visiting restaurants only for take-out services. Additionally, on April 13, 2020, the Governor issued Executive Order 2020-43, rescinding Executive Order 2020-20 and extending the closing of places of public accommodation for on-premises consumption until April 30, 2020.

Furthermore, on April 13, 2020, Governor Whitmer issued Executive Order 2020-46, which authorized the Commission to buy back spirits purchased and received by affected on-premises licensees before March 16, 2020. The Governor granted the Commission this authority in order to mitigate the financial effects of Executive Order 2020-9, Executive Order 2020-20, Executive Order 2020-33, Executive Order 2020-42, and Executive Order 2020-43 (collectively, the “COVID-19 Executive Orders”) and authorized the Commission to issue orders and directives as necessary to implement Executive Order 2020-46.

Under the authority granted in Executive Order 2020-46, the Commission issued Administrative Order 2020-16 on April 14, 2020, finding that the financial effects of the closures ordered in some of the COVID-19 Executive Orders on Michigan’s on-premises licensees and the effects on their ongoing financial viability will jeopardize the Commission’s ability to maintain liquor stock for sale throughout Michigan and maintain orderly markets for spirits in Michigan. Furthermore, the Commission found that it was necessary to issue that order to mitigate the effects of the COVID-19 Executive Orders and to implement Executive Order 2020-46. Although the Commission continues to endorse those findings, the Commission finds that Administrative Order 2020-16 should be rescinded and replaced with this Order to further refine the buyback program authorized in Administrative Order 2020-16.

Therefore, the Commission orders the following:

1. Yesterday, the Commission authorized a cash buyback program in Administrative Order 2020-16. That Order is rescinded and replaced with this Administrative Order. This Order authorizes a cash buyback program for any unopened and saleable spirits a licensee ordered from the Commission and received and accepted from an Authorized Distribution Agent before March 16, 2020, that are still in the licensee's inventory. Expired products and delisted products are not considered part of saleable inventory and are ineligible for buyback. Only licensees holding one of the following license types are eligible: Class C, B-Hotel, G-1, Club, Continuing Care Retirement Center, Aircraft, Watercraft, and Train License.

2. The Commission will pay the licensee 100% of the purchase price the licensee paid for eligible spirits. The Commission will own and hold legal title to all unopened and saleable spirits that the Commission buys back from the licensee. However, the Commission will not take physical possession of any such spirits from licensees any earlier than 90 days after the end of the declared states of emergency and disaster. The spirits that the Commission buys back from the licensee must remain on the licensed premises until they are eventually sold to the consumer or seized by the Commission. The licensee will be responsible for the custody and care of the Commission's inventory.

3. No licensee will be eligible for this program who has had a payment for spirits to the Commission returned for insufficient funds that remains unpaid, according to Commission records. Further, a licensee will not be eligible for this program if the license was being held in escrow as of March 10, 2020, the first date that COVID-19 cases were identified in Michigan.

4. Any licensee that requests a cash buyback must attest to the purchase price of the eligible unopened and saleable spirits in its inventory as of 11:59 p.m. on March 15, 2020, and submit an inventory list pursuant to directions on the Commission's website that details the price the licensee paid for each item on the list. The Commission may conduct inspections to determine the validity of the attestations.

Any licensee that misrepresents its inventory of unopened and saleable spirits, the purchase price, or any other information in its request is subject to disciplinary action against its license for violating MCL 436.2003, among other relevant laws, and may face penalties up to and including license revocation.

5. Each licensee desiring a cash buyback must submit its completed request on the Commission's website by 5:00 p.m. on April 17, 2020. If necessary, a licensee may submit a request by First Class mail to the Commission's Lansing address, and any such request must be postmarked no later than April 17, 2020. No requests may be submitted by any method after that time. A request submitted by mail must contain all the information requested in the Commission's online submission form, including attestations.

6. Any request that was submitted on the Commission's website before this order issued or that was mailed and postmarked yesterday remains submitted, despite the rescission of Administrative Order 2020-16. Any such requests will be evaluated under the eligibility provisions of this order and are subject to this order's provisions going forward.

7. Any licensee that requests a cash buyback may, at any time until the Commission takes physical possession of spirits it bought back, repurchase the full amount or part of the amount of spirits bought by the Commission for the price the Commission paid the licensee when buying back the spirits. Upon repayment of the full buyback amount, the licensee will again hold title to the spirits the Commission purchased.

8. When the licensee is again permitted to sell spirits for consumption on the licensed premises, the licensee may sell the spirits owned by the Commission only if it pays the Commission for the repurchase of those spirits and reports that to the Commission.

9. The Commission is authorized to seize any unopened and saleable spirits held by a licensee that the licensee has not repurchased from the Commission within 90 days after the end of the declared states of emergency and disaster. After that 90-day period, a licensee will not be permitted to purchase additional spirits from the

Commission until it has either repurchased the spirits bought back by the Commission or the Commission has seized those spirits.

10. The cash buyback amount will be based on the information submitted by the licensee in its buyback request and is subject to the Commission's review. No licensee disputes of the buyback amount will be permitted.

11. This order is effective immediately and shall remain in effect until further order of the Commission or 30 days after all participating licensees have repurchased the spirits or the amount of cash paid has otherwise been satisfied by seizure of the liquor to which the Commission holds title, whichever is later.

MICHIGAN LIQUOR CONTROL COMMISSION



Pat Gagliardi, Chair



Dennis Olshove, Commissioner



GERALYN A. LASHER, Commissioner