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space in a building, of an extent and character as in the judgment of the commission may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, but does not include an association organized for a commercial or business purpose.

- (6) "Commission" means the liquor control commission provided for and created in section 209.
- (7) "Church" means an entire house or structure set apart primarily for use for purposes of public worship, and which is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure of which is kept for that use and not put to any other use inconsistent with that use.
- (8) "Distiller" means any person licensed to manufacture and sell spirits or alcohol, or both, of any kind.
- (9) "Hotel" means a building or group of buildings located on the same or adjoining pieces of real property, which provide lodging to travelers and temporary residents and which may also provide food service and other goods and services to registered guests and to the public.
- (10) "Class A hotel" means a hotel licensed by the commission to sell beer and wine for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.
- (11) "Class B hotel" means a hotel licensed by the commission to sell beer, wine, mixed spirit drink, and spirits for consumption on the premises only, which provides for the rental of, and maintains the availability for rental of, not less than 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or not less than 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.
- (12) "License" means a contract between the commission and the licensee granting authority to that licensee to manufacture and sell, or sell, or warehouse alcoholic liquor in the manner provided by this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2001, Act 223, Eff. Mar. 22, 2002

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## **436.1109 Definitions; M to O.**

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### Sec. 109.

- (1) "Manufacturer" means a person engaged in the manufacture of alcoholic liquor, including, but not limited to, a distiller, a rectifier, a wine maker, and a brewer.
- (2) "Master distributor" means a wholesaler that acts in the same or similar capacity as a brewer, wine maker, outstate seller of wine, or outstate seller of beer for a brand or brands of beer or wine to other wholesalers on a regular basis in the normal course of business.
- (3) "Micro brewer" means a brewer that produces in total less than 60,000 barrels of beer per year and that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises and to retailers as provided in section 203. In determining the 60,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.
- (4) "Minor" means an individual less than 21 years of age..
- (5) "Mixed spirit drink" means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink that contains 10% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that may also contain 1 or more of the following:
  - (a) Water.
  - (b) Fruit juices.
  - (c) Fruit adjuncts.
  - (d) Sugar.
  - (e) Carbon dioxide.
  - (f) Preservatives.

- (6) "Mixed spirit drink manufacturer" means any person licensed under this act to manufacture mixed spirit drink in this state and to sell mixed spirit drink to a wholesaler. For purposes of rules promulgated by the commission, a mixed spirit drink manufacturer shall be treated as a wine manufacturer but is subject to the rules applicable to spirits for manufacturing and labeling.
- (7) "Mixed wine drink" means a drink or similar product marketed as a wine cooler that contains less than 7% alcohol by volume, consists of wine and plain, sparkling, or carbonated water, and contains any 1 or more of the following:
  - (a) Nonalcoholic beverages.
  - (b) Flavoring.
  - (c) Coloring materials.
  - (d) Fruit juices.
  - (e) Fruit adjuncts.
  - (f) Sugar.
  - (g) Carbon dioxide.
  - (h) Preservatives.
- (8) "Outstate seller of beer" means a person licensed by the commission to sell beer that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission.
- (9) "Outstate seller of mixed spirit drink" means a person licensed by the commission to sell mixed spirit drink that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission. For purposes of rules promulgated by the commission, an outstate seller of mixed spirit drink shall be treated as an outstate seller of wine but is subject to the rules applicable to spirits for manufacturing and labeling.
- (10) "Outstate seller of wine" means a person licensed by the commission to sell wine that has not been manufactured in this state to a wholesaler in this state in accordance with rules promulgated by the commission and to sell sacramental wine as provided in section 301.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010 ;-- Am. 2014, Act 42, Imd. Eff. Mar. 25, 2014

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## **436.1111      Definitions; P to S.**

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### Sec. 111.

- (1) "Person" means an individual, firm, partnership, limited partnership, association, limited liability company, or corporation.
- (2) "Primary source of supply" means, in the case of domestic spirits, the distiller, producer, owner of the commodity at the time it becomes a marketable product, or bottler, or the exclusive agent of any such person and, in the case of spirits imported into the United States, either the foreign distiller, producer, owner of the bottler, or the prime importer for, or the exclusive agent in the United States of, the foreign distiller, producer, owner, or the bottler.
- (3) "Professional account" means an account established for a person by a class C licensee or tavern licensee whose major business is the sale of food, by which the licensee extends credit to the person for not more than 30 days.
- (4) "Residence" means the premises in which a person resides permanently.
- (5) "Retailer" means a person licensed by the commission who sells to the consumer in accordance with rules promulgated by the commission. Retailer includes a brewpub but does not include a manufacturer or supplier, as defined in section 603, that is allowed as a condition of its license to sell to consumers in this state.
- (6) "Sacramental wine" means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.
- (7) "Sale" includes the exchange, barter, traffic, furnishing, or giving away of alcoholic liquor. In the case of a sale in which a shipment or delivery of alcoholic liquor is made by a common or other carrier, the

- (4) A wholesale licensee or an applicant for a wholesale license, if a corporation, shall be licensed only if the corporation is authorized to do business under the laws of this state and if all stockholders of the corporation have resided in this state for not less than 1 year immediately preceding the date of issuance of the license. A corporation that holds a wholesale license shall not issue shares of the corporation's stock to a person who has not resided in this state for at least 1 year immediately preceding the date on which the corporate stock was acquired by the person.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1603 Interest in business of other vendor prohibited; placing stock in portfolio under arrangement, trust agreement, or investment trust agreement; issuance and sale of participating shares within state; prohibitions; sale of brandy and spirits by manufacturer or small distiller; conditions; sale by small distiller; interest of brewpub in other locations; interest in business of other supplier; approval pursuant to R 436.1023(3); interest of manufacturer in wholesaler prohibited; delivery of wine by wine maker to retail licensees prohibited; tiers; interpretation of subsection (13); definitions.**

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Sec. 603.

- (1) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouse, or wholesaler shall not have any direct or indirect financial interest in the establishment, maintenance, operation, or promotion of the business of any other vendor.
- (2) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouse, or wholesaler or a stockholder of a supplier, warehouse, or wholesaler shall not have any direct or indirect interest by ownership in fee, leasehold, mortgage, or otherwise in the establishment, maintenance, operation, or promotion of the business of any other vendor.
- (3) Except as provided in subsections (6) to (14) and section 605, a supplier, warehouse, or wholesaler shall not have any direct or indirect interest by interlocking directors in a corporation or by interlocking stock ownership in a corporation in the establishment, maintenance, operation, or promotion of the business of any other vendor.
- (4) Except as provided in subsections (6) to (14) and section 605, a person shall not buy the stocks of a supplier, warehouse, or wholesaler and place the stock in any portfolio under an arrangement, written trust agreement, or form of investment trust agreement, issue participating shares based upon the portfolio, trust agreement, or investment trust agreement, and sell the participating shares within this state.
- (5) The commission may approve a brandy manufacturer or small distiller to sell brandy and spirits made by that brandy manufacturer or small distiller in a restaurant for consumption on or off the premises if the restaurant is owned by the brandy manufacturer or small distiller or operated by another person under an agreement approved by the commission and is located on premises where the brandy manufacturer or small distiller is licensed. Brandy and spirits sold for consumption off the premises under this subsection shall be sold at the uniform price established by the commission.
- (6) The commission shall allow a small distiller to sell brands of spirits it manufactures for consumption on the licensed premises at that distillery.
- (7) A brewpub may have an interest in up to 5 other brewpubs if the combined production of all the locations in which the brewpub has an interest does not exceed 18,000 barrels of beer per calendar year.
- (8) This section does not prohibit a supplier from having any direct or indirect interest in any other supplier.
- (9) The commission may approve the following under R 436.1023(3) of the Michigan administrative code, subject to the written approval of the United States department of treasury, bureau of alcohol and tobacco tax and trade:

- (a) A wine maker participating with 1 or more wine makers in an alternating proprietor operation in accordance with 27 CFR 24.136.
  - (b) A brewer participating with 1 or more brewers in an alternating proprietor operation in accordance with 27 CFR 25.52.
- (10) A manufacturer shall not have any direct or indirect interest in a wholesaler.
- (11) A wine maker shall not collectively deliver wine, with any other wine maker, to retail licensees.
- (12) Except in the case of a licensed warehouse, all licensees in this state shall be separated into 3 distinct and independent tiers composed of the following:
- (a) Supplier tier, comprising suppliers.
  - (b) Wholesaler tier, comprising wholesalers.
  - (c) Retailer tier, comprising retailers.
- (13) Except as otherwise provided in subsection (14), beginning April 30, 2011, the commission shall not allow any of the following:
- (a) A retailer to hold, directly or indirectly, a license in the wholesaler or supplier tier.
  - (b) A wholesaler to hold, directly or indirectly, a license in the retailer or supplier tier.
  - (c) A supplier to hold, directly or indirectly, a license in the wholesaler or retailer tier.
- (14) Subsection (13) shall not be interpreted in a manner that would prohibit a class C, tavern, class A hotel, or class B hotel licensee from receiving a brewpub license or that would prohibit a micro brewer or brewer from having an on-site restaurant.
- (15) As used in this section:
- (a) "Manufacturer" means, notwithstanding section 109(1), a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, distiller, small distiller, brandy manufacturer, mixed spirit drink manufacturer, direct shipper, or a person licensed by the commission to perform substantially similar functions.
  - (b) "Supplier" means a manufacturer, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, and vendor of spirits or a person licensed by the commission to perform substantially similar functions but does not include a master distributor.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008 ;-- Am. 2009, Act 2, Imd. Eff. Mar. 27, 2009 ;-- Am. 2010, Act 213, Imd. Eff. Nov. 17, 2010 ;-- Am. 2011, Act 298, Imd. Eff. Dec. 22, 2011 ;-- Am. 2014, Act 43, Imd. Eff. Mar. 25, 2014

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**436.1605 Acquisition, development, sale, lease, financing, maintenance, operation, or promotion by brewer of real property occupied or to be occupied by another vendor; conditions; denial or approval of arrangement or contract; review; denial, revocation, or suspension of license; wholesaler as party to arrangement or contract prohibited; acquisition, development, sale, lease, financing, maintenance, operation, or promotion of condominium project or unit; exception.**

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Sec. 605.

- (1) A brewer, or the parent company, a subsidiary or an affiliate of a brewer which parent company, subsidiary, or affiliate is located in this state may acquire, develop, sell, lease, finance, maintain, operate, or promote real property occupied or to be occupied by another vendor, except a wholesaler, if all of the following exist:
  - (a) The brewer has received written approval of the commission before entering into any arrangement or contract between the parties regarding the real property.
  - (b) The legislative body of the city, village, or township where the property is located certifies to the commission that the real property is in an urban, commercial, or community redevelopment area and is designated as such by a state or federal agency.
  - (c) Any arrangement or contract entered into between the brewer, its parent company, subsidiary, or affiliate and another vendor shall not directly or indirectly influence or control the brand of alcoholic liquor sold or to be sold by the vendor and shall only be concerned with real property.

- (d) The brewer, wine maker, distiller, brandy manufacturer, its parent company, subsidiary, or affiliate has not acquired, developed, sold, leased, financed, or maintained, operated, or promoted more than 7 real properties that are occupied or to be occupied by another vendor, except a wholesaler.
- (2) The commission may deny or approve an arrangement or contract to be entered into under this section. In denying or approving an arrangement or contract, the commission shall consider all of the following:
    - (a) That the arrangement or contract to be entered into is concerned only with real property.
    - (b) That the certification required under subsection (1)(b) has been received by the commission.
    - (c) That the arrangement or contract does not violate this act or the rules promulgated under this act.
  - (3) The commission may review any arrangement or contract under this section at the time that 1 of the parties to the arrangement or contract applies for or renews a license. The commission may deny, revoke, or suspend the license of a party to the arrangement or contract if the commission finds that the party to the arrangement or contract has violated this act or the rules promulgated under this act.
  - (4) Except as otherwise provided in subsection (5), a wholesaler shall not be a party to, directly or indirectly, an arrangement or contract under this section.
  - (5) A manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, authorized distribution agent, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may acquire, develop, sell, lease, finance, maintain, operate, or promote a condominium project or own a condominium unit as its sole property, under the condominium act, 1978 PA 59, MCL 559.101 to 559.276, if that condominium unit is not the licensed premises owned separately by a retailer and if all of the following apply:
    - (a) Condominium assessments in the condominium project are based on the proportional area each condominium unit has to the total area.
    - (b) A condominium unit operating as a licensed premises operates under a separate name from the condominium project except that cooperative advertising shall be permitted among owners of condominium units for the purpose of promoting the condominium project if the name of a brand or brands of an alcoholic liquor is not mentioned in the advertising.
    - (c) Ownership of a condominium unit and participation in a condominium association under this section is not considered a financial interest, interest by ownership, or interest by interlocking directors on stock ownership prohibited by section 603.
    - (d) A retailer separately owning a separate condominium unit as sole property does not directly purchase alcoholic liquor from the manufacturer, warehouse, wholesaler, outstate seller of mixed spirit drink, or vendor of spirits who owns, leases, maintains, finances, or operates the condominium project.
    - (e) A wholesaler that has a direct or indirect interest in a condominium unit in which a retailer is located does not sell alcoholic liquor to any licensed retail business in which that retailer, or any person having an ownership interest in that retailer, has an ownership interest; and, a retail licensed business in which that retailer, or any person having an ownership interest in that retailer, has an ownership interest does not purchase alcoholic liquor from a wholesaler that has a direct or indirect interest in a condominium or condominium unit in which that retailer is located.
    - (f) A retailer acquiring a separate condominium unit as sole property pays the fair market value for the unit.
  - (6) Subsection (5) does not apply to a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, authorized distribution agent, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits with a direct or indirect interest in a license under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226. Subsection (5) does not prohibit a direct physical connection between a condominium unit that is the licensed premises and a condominium unit that is not the licensed premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2014, Act 45, Imd. Eff. Mar. 25, 2014

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**436.1607 Eligibility for license as specially designated merchant or specially designated distributor; prohibitions; small distiller; wine maker and small wine maker; brewer as specially designated merchant; brewery hospitality room; sales or deliveries by wholesaler.**

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Sec. 607.

- (1) Except as provided in section 537(2), a warehouse, mixed spirit drink manufacturer, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits shall not be licensed as a specially designated merchant or a specially designated distributor. A person licensed as a small distiller is not considered to be a specially designated distributor. Beginning December 23, 2007 and in addition to the persons described in this subsection, a wine maker and a small wine maker shall also not be licensed as a specially designated merchant or a specially designated distributor. Any wine maker or small wine maker holding a specially designated merchant or specially designated distributor license on December 23, 2007 may continue to hold a specially designated merchant or specially designated distributor license.
- (2) A specially designated distributor or specially designated merchant or any other retailer shall not hold a mixed spirit drink manufacturer, wholesale, warehouse, outstate seller of beer, outstate seller of mixed spirit drink, or outstate seller of wine license. Beginning December 23, 2007, a specially designated distributor or specially designated merchant shall not hold a wine maker or small wine maker license in addition to being prohibited from holding any other license described in this subsection. Any specially designated distributor or specially designated merchant holding a wine maker or small wine maker license on December 23, 2007 may continue to hold a wine maker or small wine maker license.
- (3) A brewer, warehouse, or wholesaler shall not be licensed as a specially designated merchant. This subsection does not affect the operation of a brewery hospitality room.
- (4) A wholesaler may sell or deliver beer and alcoholic liquor to hospitals, military establishments, governments of federal Indian reservations, and churches requiring sacramental wines and may sell to the wholesaler's own employees to a limit of 2 cases of 24 12-ounce units or its equivalent of malt beverage per week, or 1 case of 12 1-liter units or its equivalent of wine or mixed spirit drink per week.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 269, Imd. Eff. Dec. 16, 2005 ;-- Am. 2008, Act 218, Imd. Eff. July 16, 2008

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**436.1609 Aiding or assisting other vendor prohibited; exception; refunding amount of price reductions; providing licensee with advertising items; providing licensee with goods and services; approval by commission; possession and use of brand logoed barware; unauthorized providing or selling of barware; fine; on-premises brand promotional event; removal of merchandise; purchase and sale of brand logoed inventory by retailer holding off-premises license; adding or removing item by rule; definitions.**

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Sec. 609.

- (1) Except as provided in this section and sections 605 and 1029, 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 shall not aid or assist any other vendor by gift, loan of money or 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 advertising items that promote the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink; or distributed by the wholesaler. Except as otherwise provided under subsection (3)

- or (4), the advertising items shall 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 pursuant to rules or orders adopted prior to January 1, 2014 and the following advertising items:
- (a) Alcoholic liquor recipes literature.
  - (b) Calendars and matchbooks.
  - (c) Removable tap markers or signs.
  - (d) Table tents.
  - (e) Shelf talkers.
  - (f) Bottle neckers.
  - (g) Cooler stickers.
  - (h) Buttons, blinking and nonblinking.
  - (i) Menu clip-ons.
  - (j) Mirrors.
  - (k) Napkin holders.
  - (l) Spirits cold shot tap machines.
  - (m) Alcoholic liquor drink menus.
- (4) A retailer shall not use or possess, at its licensed premises, advertising items that have a use or value beyond the actual advertising of brands and prices of alcoholic liquor except for those allowed in subsection (3) or as otherwise provided in this subsection. A retailer may possess and use brand logoed barware that advertises spirits as long as those items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer. A retailer may possess and use brand logoed barware that advertises beer or wine as long as those items are purchased from a barware retailer. A retailer shall maintain the receipts of all purchased brand logoed barware for at 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.
- (5) In addition to the penalties provided under section 903, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink that provides or sells barware and is not authorized to provide or sell barware is subject to a fine in an amount of up to \$2,500.00 as determined by the commission. Multiple violations resulting from the same incident may be treated as a single violation for purposes of issuance of any penalty imposed under this act.
- (6) An on-premises retailer that hosts an on-premises brand promotional event conducted by a wholesaler or supplier has 14 days after the event to remove from the premises any brand logoed merchandise from the event to maintain compliance with this section.
- (7) This act and rules promulgated under this act do not prevent a retailer that holds an off-premises license only from purchasing brand logoed inventory and selling that inventory to its customers.
- (8) Not sooner than 18 months after the effective date of the amendatory act that added this subsection, the commission may, by rule, add an item to or remove an item from the definition of 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.
- (9) 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 pursuant to subsection (8).
- (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 directly or indirectly affiliated with, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, 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 does not constitute 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 any goods, services, or intangible goods that are given, loaned, leased, or sold to another licensee that have value regardless of whether the value is nominal and includes, but is not limited to, goods, services, or intangible goods that provided any 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, the outstate seller of wine, or the outstate seller of mixed spirit drink, or distributed by the wholesaler, except those goods, services, or intangible goods approved by rule or order of the commission prior to January 1, 2014.
- (f) "Salesperson" means 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.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2010, Act 175, Imd. Eff. Sept. 30, 2010 ;-- Am. 2014, Act 47, Imd. Eff. Mar. 25, 2014

- (c) The chief law enforcement officer of the jurisdiction within which the premises are located or the entity contractually designated to enforce the law in that jurisdiction.
- (11) The following activities are allowed without the granting of a permit under this section:
  - (a) The performance or playing of an orchestra, piano, or other types of musical instruments, or singing.
  - (b) Any publicly broadcast television transmission from a federally licensed station.
- (12) In the case of a licensee granted an entertainment or dance permit under R 436.1407 of the Michigan administrative code who, after January 1, 1998, extended the activities conducted under that permit to regular or full-time topless activity, that licensee shall apply to the commission for a topless activity permit under this section within 60 days after April 14, 1998 in order to continue topless activity. Except as otherwise provided for in this subsection, this section applies only to entertainment or dance permits issued after April 14, 1998.
- (13) The fees imposed by the commission for a permit under this section remain the same as the fees imposed under a permit issued under R 436.1407 of the Michigan administrative code.
- (14) Except as otherwise provided, this section does not change the renewal or application process for a license under section 501 or the renewal process for permits issued under R 436.1407 of the Michigan administrative code.
- (15) As used in this section:
  - (a) "Nudity" means exposure to public view of the whole or part of the pubic region; the whole or part of the anus; the whole or part of the buttocks; the whole or part of the genitals; or the breast area including the nipple or more than 1/2 of the area of the breast.
  - (b) "Topless activity" means activity that includes, but is not limited to, entertainment or work-related activity performed by any of the following persons on the licensed premises in which the female breast area, including the nipple, or more than 1/2 of the area of the breast, is directly exposed or exposed by means of see-through clothing or a body stocking:
    - (i) A licensee.
    - (ii) An employee, agent, or contractor of the licensee.
    - (iii) A person acting under the control of or with the permission of the licensee.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2005, Act 259, Imd. Eff. Dec. 16, 2005

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#### **436.1917 Liability of vendor.**

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##### Sec. 917.

- (1) A person who engages in the business of selling or keeping for sale alcoholic liquor in violation of this act, whether as owner, clerk, agent, servant, or employee, is equally liable, as principal, both civilly and criminally, for the violation of this act.
- (2) A person or principal is liable, both civilly and criminally, for the acts of his or her clerk, servant, agent, or employee, in violating this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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#### **436.1919 Forging documents, labels, or stamps; prohibited conduct; penalty.**

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##### Sec. 919.

A person who falsely or fraudulently makes, simulates, forges, alters, or counterfeits a document, label, or stamp prescribed by the commission under this act or rules promulgated under this act, or who causes or procures to be falsely or fraudulently made, simulated, forged, altered, or counterfeited any such document, label, or stamp, who knowingly and willfully utters, publishes, passes, or tenders as true, any such false, altered, forged, or counterfeited document, label, or stamp, or who uses more than once any label or stamp prescribed by the commission pursuant to this act or the rules promulgated under this act is guilty of a felony punishable by imprisonment for not more than 1 year or by a fine of not more than \$1,000.00, or both.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1921 Sale or exchange of ceramic commemorative bottles.**

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Sec. 921.

Notwithstanding section 203, a collector, who is 21 years of age or older, of ceramic commemorative bottles containing alcoholic liquor and bearing an unbroken federal tax stamp or seal may sell or trade the bottles to other such collectors of those bottles without obtaining a license under this act. All sales conducted under this subsection shall be for the purpose of exchanging ceramic commemorative bottles between private collectors of those bottles and shall not be for the purpose of selling alcoholic liquor for personal consumption. A sale or exchange conducted under this subsection shall not occur in any of the following ways:

- (a) In connection with the business of a holder of an alcoholic liquor license.
- (b) In connection with any other business.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1923 Warehouse receipts for alcoholic liquor; authority of commission.**

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Sec. 923.

The commission has complete power to regulate, limit, and control the sale, transfer, barter, or exchange in this state of warehouse receipts for alcoholic liquor wherever alcoholic liquor is situated.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1925 Construction of act; severability.**

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Sec. 925.

- (1) This act shall be construed to effect the intent and purposes set forth in this act and to protect the public health, safety, and welfare of the citizens of this state.
- (2) If any provision of this act is found to be unconstitutional by a court of competent jurisdiction and all rights of appeal have expired or been exhausted, the offending provision shall be severed and shall not affect the remaining portions of the act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2014, Act 46, Imd. Eff. Mar. 25, 2014

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**CHAPTER 10**

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**436.2001 Armories, air bases, naval installations and state military reservation.**

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Sec. 1001.

The commanding general of the Michigan national guard may publish by general order such regulations and restrictions as to the transportation, possession, sale, and use of alcoholic liquor in armories, air bases, and naval installations owned or leased by the state or provided by the federal government by lease, license, or use permit and used by outside parties of a nonmilitary or state governmental nature and on the state military reservation during the field training periods of the Michigan national guard, either in state or federal service, as he or she determines are for the best interests of the military service.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

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**436.2003 False or fraudulent statements.**

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Sec. 1003.

A person who makes a false or fraudulent statement to the commission, orally or in writing, for the purpose of inducing the commission to act or refrain from taking action or for the purpose of enabling or assisting a person to evade the provisions of this act is guilty of a violation of this act and is punishable in the manner provided for in section 909.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

rules promulgated under this act, which shall guarantee the return of such property, or payment of money received for the sale of that property, to the owner unless the owner is charged and convicted of the alleged offense or offenses in connection with which the search and seizure was made.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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## **CHAPTER 3**

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### **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.**

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#### Sec. 301.

- (1) The commission shall levy and collect on all wines 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 wines 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) All sacramental wines are nontaxable when used by churches. Sacramental wines may be imported. 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 48 cents per liter if sold in bulk or a like ratio if sold in smaller quantities.
- (5) Beginning on and after February 1, 2015, if the wine is manufactured in this state the tax shall be paid by the wine maker who manufactured the wine or if the wine is manufactured outside this state the tax shall be paid by the wholesaler assigned to distribute that wine.
- (6) Beginning on and after February 1, 2015, if the mixed spirit drink is manufactured in this state the tax shall be paid by the manufacturer of the mixed spirit drink or if the mixed spirit drink is manufactured outside this state the tax shall 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 shall be licensed under this act and the payment of 1 license fee annually by the corporation shall authorize 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 shall be 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 shall 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. The commission shall not require that the tax be paid in less than monthly intervals. The rules shall 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  
Admin Rule: R 436.1001 et seq.; R 436.1701 et seq.; and R 436.1801 et seq. of the Michigan Administrative Code.

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**436.1303 Grape and wine industry council; creation; appointment, qualifications, and terms of members; chairperson; personnel; expenses; liability on contracts; compensation; books and records; duties of council; rules; "council" defined.**

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Sec. 303.

- (1) The grape and wine industry council is created in the department of agriculture. The council shall consist of all of the following:
  - (a) Three wine makers.
  - (b) A wine grape grower.
  - (c) The director of consumer and industry services or his or her designee.
  - (d) The director of the department of agriculture or his or her designee.
  - (e) A staff member of Michigan state university appointed by, and serving at the pleasure of, the dean of the college of agriculture and natural resources of Michigan state university.
  - (f) The chairperson of the commission or his or her designee, as an ex officio member.
  - (g) A person who operates a retail food establishment that holds a specially designated merchant license and sells Michigan wines or a person who operates a restaurant that holds a class C license and serves Michigan wines.
  - (h) A beer and wine wholesaler who markets Michigan wine.
  - (i) Not more than 2 additional members appointed as prescribed in subsection (3).
- (2) The members of the council described in subsection (1)(a), (b), (g), and (h) shall be appointed by the governor. The council members appointed under subsection (1)(g) and (h) shall be appointed for 2-year terms beginning on October 1, 1991. Of the council members appointed for terms beginning October 1, 1991, 1 shall be appointed for a 1-year term, and 3 shall be appointed for terms of 2 years each. All appointments for terms beginning on or after October 1, 1992 shall be for 2 years each. A member shall continue to serve until a qualified successor has been appointed. A 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 shall act as chairperson of the council.
- (3) The governor may appoint not more than 2 additional members to the council who shall assist the council in performing its duties, but who shall not have the power to vote. The persons appointed under this subsection shall not be members of the classified state civil service, shall serve at the pleasure of the governor, and shall receive salaries and benefits determined and paid by the department of agriculture.
- (4) The council may employ personnel and incur such expenses as are necessary to carry out the purposes of the council under this act. All such expenses shall be paid from fees credited to the wine industry council under section 543(2). A member of the council or an employee or agent of the council shall not be personally liable on the contracts of the council.
- (5) A nongovernmental member of the council shall 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 management and budget.
- (6) The council shall maintain accurate books and records, and all funds received by the council shall be used to implement and enforce this section.
- (7) The council shall do all of the following:
  - (a) Provide for research on wine grapes and wines, including, but not limited to, methods of planting, growing, controlling insects and diseases, charting microclimates and locations for growing desirable varieties of wine grapes, marketing, processing, distribution, advertising, sales production, and product development.
  - (b) Provide the wine industry, including growers, wineries, distributors, and retailers, with information relative to proper methods of handling and selling wine grapes and wines.
  - (c) Provide for market surveys and analyses for purposes of expanding existing markets and creating new and larger markets for wine grapes and wines.
  - (d) Provide for the promotion of the sale of Michigan wine grapes and wines for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.

- (e) Develop and administer financial aid programs to wine grape growers to encourage the increased planting in this state of desirable grape varieties in microclimates determined to provide the best conditions for producing quality wines.
- (8) 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, a rule shall not be promulgated that conflicts with a rule promulgated by the commission pursuant to section 215.
- (9) As used in this section, "council" means the grape and wine industry council created in subsection (1).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998



## CHAPTER 2

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**436.1201      Alcoholic liquor; manufacture, sale, possession, or transportation lawful; terms, conditions, limitations, and restrictions; right, power, and duty of commission to control alcoholic beverage traffic and traffic in other alcoholic liquor; unreasonable discrimination against Michigan manufacturers prohibited; enforcement of act and rules; willful neglect or refusal of officer to perform duties as misdemeanor; penalty.**

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Sec. 201.

- (1) On and after December 15, 1933, it shall be lawful to manufacture for sale, sell, offer for sale, keep for sale, possess, or transport any alcoholic liquor, as defined in this act, including alcoholic liquor used for medicinal, mechanical, chemical, or scientific purposes and wine used for sacramental purposes, subject to the terms, conditions, limitations, and restrictions contained in this act, and only as provided for in this act.
- (2) Except as otherwise provided in this act, the commission shall have 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.
- (3) A rule, regulation, or order made by the commission shall not unreasonably discriminate against Michigan manufacturers of alcoholic liquor.
- (4) A peace officer or law enforcement officer of this state or a county, township, city, village, state university, or community college or an inspector of the commission is authorized, and it is the duty of each of them, to enforce the provisions of this act and the rules promulgated by the commission within his or her respective jurisdiction. It is the special duty of an officer described in this section to use his or her utmost efforts to repress and prevent crime and the violation of any of the provisions of this act. An officer described in this section who willfully neglects or refuses to perform the duties imposed upon him or her by this section is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.00 or imprisoned in the county jail not more than 90 days, or both.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1203      Sale, delivery, or importation of alcoholic liquor or wine; duties of direct shipper of wine; verification that individual accepting delivery is of legal age; original purchase and importation into state of spirits for sale, use, storage, or distribution; requirements; exceptions; direct shipper license required; qualifications; fee; violation; delivery of beer and wine to home or designated location of consumer; holder of specially designated merchant license, out-of-state retailer holding equivalent license, or brewpub or microbrewer; definitions.**

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Sec. 203.

- (1) Except as provided in this section and section 301, a person shall not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, in this state unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent approved by order of the commission, a person licensed by the commission, or by prior written order of the commission.
- (2) Notwithstanding R 436.1011(7)(b) and R 436.1527 of the Michigan administrative code and except as provided in subsection (11), a retailer shall not deliver alcoholic liquor to a consumer in this state at the home or business of the consumer or at any location away from the licensed premises of the retailer. The purpose of this subsection is to exercise the state of Michigan's authority under section 2 of amendment XXI of the constitution of the United States, to maintain the inherent police powers to regulate the transportation and delivery of alcoholic liquor, and to promote a transparent system for the transportation and delivery of alcoholic liquor. The regulation described in this subsection is considered necessary for both of the following reasons:
  - (a) To promote the public health, safety, and welfare.

- (b) To maintain strong, stable, and effective regulation by having beer and wine sold by retailers to consumers in this state by passing through the 3-tier distribution system established under this act.
- (3) For purposes of subsection (1), a direct shipper may sell, deliver, or import wine, to consumers in this state by means of any mail order, internet, telephone, computer, device, or other electronic means, or sell directly to a consumer on the winery premises. A direct shipper that sells, delivers, or imports wine to a consumer under this subsection shall comply with all of the following:
  - (a) Hold a direct shipper license.
  - (b) Pay any applicable taxes to the commission and pay any applicable taxes to the department of treasury as directed by the department of treasury. Upon the request of the department of treasury, a direct shipper shall furnish an affidavit to verify payment.
  - (c) Comply with all prohibitions of the laws of this state, including, but not limited to, sales to minors.
  - (d) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by utilizing an identification verification service. The person receiving and accepting the order on behalf of the direct shipper shall record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the commission and provide a duplicate to the commission.
  - (e) Upon request of the commission, make available to the commission any document used to verify the age of the individual ordering or receiving the wine from the direct shipper.
  - (f) Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older." The recipient at the time of the delivery shall provide photo identification verifying his or her age along with a signature.
  - (g) Place a label on the top panel of the shipping container containing the direct shipper license number, the order number, the name and address of the individual placing the order, and the name of the designated recipient if different from the name of the individual placing the order.
  - (h) Direct ship not more than 1,500 9-liter cases, or 13,500 liters in total, of wine in a calendar year to consumers in this state. If a direct shipper, whether located in this state or outside this state, owns, in whole or in part, or commonly manages 1 or more direct shippers, it shall not in combination ship to consumers in this state more than 13,500 liters of wine in the aggregate.
  - (i) Pay wine taxes quarterly and report to the commission quarterly the total amount of wine, by type, brand, and price, shipped to consumers in this state during the preceding calendar quarter, and the order numbers.
  - (j) Authorize and allow the commission and the department of treasury to conduct an audit of the direct shipper's records.
  - (k) Consent and submit to the jurisdiction of the commission, the department of treasury, and the courts of this state concerning enforcement of this section and any related laws, rules, and regulations.
- (4) Notwithstanding subsection (3), in the case of a sale, delivery, or importation of alcoholic liquor occurring by any means described in subsection (3), a person taking the order on behalf of the direct shipper shall comply with subsection (3)(c) through (g).
- (5) A person that delivers the wine for a direct shipper under this section shall verify that the individual accepting delivery is 21 years of age or older and is the individual who placed the order or the designated recipient, is an individual 21 years of age or older currently occupying or present at the address, or is an individual otherwise authorized through a rule promulgated under this act by the commission to receive alcoholic liquor under this section. If the delivery person, after a diligent inquiry, determines that the purchaser or designated recipient is not 21 years of age or older, the delivery person shall return the wine to the direct shipper. A delivery person who returns wine to the direct shipper because the purchaser or designated recipient is not 21 years of age or older is not liable for any damages suffered by the purchaser or direct shipper.
- (6) All spirits for sale, use, storage, or distribution in this state, shall originally be purchased by and imported into the state by the commission, or by prior written authority of the commission.
- (7) This section does not apply to alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by an individual 21 years of age or older at the time of reentry into this state from without the territorial limits of the United States if the individual has been outside the

- territorial limits of the United States for more than 48 hours and has not brought alcoholic liquor into the United States during the preceding 30 days.
- (8) An individual 21 years of age or older may do either of the following in relation to alcoholic liquor that contains less than 21% alcohol by volume:
- (a) Personally transport from another state, once in a 24-hour period, not more than 312 ounces of alcoholic liquor for that individual's personal use, notwithstanding subsection (1).
  - (b) Ship or import from another state alcoholic liquor for that individual's personal use if that personal importation is done in compliance with subsection (1).
- (9) A direct shipper shall not sell, deliver, or import wine to a consumer unless it applies for and is granted a direct shipper license from the commission. This subsection does not prohibit wine tasting or the selling at retail by a wine maker of wines he or she produced and bottled or wine manufactured for that wine maker by another wine maker, if done in compliance with this act. Only the following persons qualify for the issuance of a direct shipper license:
- (a) A wine maker.
  - (b) A wine producer and bottler located inside this country but outside of this state holding both a federal basic permit issued by the alcohol and tobacco tax and trade bureau and a license to manufacture wine in its state of domicile.
- (10) An applicant for a direct shipper license shall submit an application to the commission in a written or electronic format provided by the commission and accompanied by an application and initial license fee of \$100.00. The application shall be accompanied by a copy or other evidence of the existing federal basic permit or license, or both, held by the applicant. The direct shipper may renew its license annually by submission of a license renewal fee of \$100.00 and a completed renewal application. The commission shall use the fees collected under this section to conduct investigations and audits of direct shippers. The failure to renew, or the revocation or suspension of, the applicant's existing Michigan license, federal basic permit, or license to manufacture wine in its state of domicile is grounds for revocation or denial of the direct shipper license. If a direct shipper is found guilty of violating this act or a rule promulgated by the commission, the commission shall notify both the alcoholic liquor control agency in the direct shipper's state of domicile and the alcohol and tobacco tax and trade bureau of the United States department of treasury of the violation.
- (11) Except as otherwise provided under subsection (12), a retailer that holds a specially designated merchant license in this state; an out-of-state retailer that holds its state's substantial equivalent license; or a brewpub, micro brewer, or an out-of-state entity that is the substantial equivalent of a brewpub or micro brewer may deliver beer and wine to the home or other designated location of a consumer in this state if all of the following conditions are met:
- (a) The beer or wine, or both, is delivered by the retailer's, brewpub's, or micro brewer's employee and not by an agent or by a third party delivery service.
  - (b) The retailer, brewpub, or micro brewer or its employee who delivers the beer or wine, or both, verifies that the individual accepting delivery is at least 21 years of age.
  - (c) If the retailer, brewpub, or micro brewer or its employee intends to provide service to consumers, the retailer, brewpub, or micro brewer or its employee providing the service has received alcohol server training through a server training program approved by the commission.
- (12) A retailer that holds a specially designated merchant license in this state or an out-of-state retailer that holds its state's substantial equivalent license may utilize a third party that provides delivery service to municipalities in this state that are surrounded by water and inaccessible by motor vehicle to deliver beer and wine to the home or other designated location of that consumer if the delivery service is approved by the commission and agrees to verify that the individual accepting delivery of the beer and wine is at least 21 years of age.
- (13) For purposes of subsection (1), a qualified micro brewer or an out-of-state entity that is the substantial equivalent of a qualified micro brewer may sell and deliver beer to a retailer in this state if all of the following conditions are met:
- (a) The retailer is not located in a sales territory for which the qualified micro brewer has granted exclusive sales rights to a wholesaler pursuant to sections 401 and 403 for the sale of any brand or brands of beer produced by that micro brewer.
  - (b) The beer is sold and delivered by an employee of the qualified micro brewer, not an agent, and is transported and delivered utilizing a vehicle owned by the qualified micro brewer, not by a third party delivery service.

- (c) The qualified micro brewer is in compliance with applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act including, but not limited to, those requirements related to each of the following:
    - (i) Employees that sell and deliver beer to retailers.
    - (ii) Vehicles used to deliver beer to retailers
    - (iii) Price schedules and temporary price reductions.
- (14) As used in this section:
- (a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.
  - (b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.
  - (c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.
  - (d) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.
  - (e) "Consumer" means an individual who purchases wine for personal consumption and not for resale.
  - (f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.
  - (g) "Diligent inquiry" means a diligent good faith effort to determine the age of an individual, that includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, or any other bona fide picture identification that establishes the identity and age of the individual.
  - (h) "Direct shipper" means a person who sells, delivers, or imports wine, to consumers in this state, that he or she produces and bottles or wine that is manufactured by a wine maker for another wine maker and that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.
  - (i) "Identification verification service" means any internet-based service approved by the commission specializing in age and identity verification.
  - (j) "Qualified micro brewer" means a micro brewer that produces in total less than 1,000 barrels of beer per year. In determining the 1,000-barrel threshold, all brands and labels of a micro brewer, whether brewed in this state or outside this state, shall be combined.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2000, Act 289, Imd. Eff. July 10, 2000 ;-- Am. 2005, Act 268, Imd. Eff. Dec. 16, 2005 ;-- Am. 2008, Act 474, Eff. Mar. 31, 2009 ;-- Am. 2014, Act 50, Imd. Eff. Mar. 25, 2014

Compiler's Notes: Enacting section 2 of Act 268 of 2005 provides: "Enacting section 2. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler."

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**436.1205      Privatization of warehousing and delivery of spirits; authorized distribution agents.**

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Sec. 205.

- (1) The commission shall, as provided in section 203(1), by order appoint authorized distribution agents to engage in the warehousing and delivery of spirits in this state so as to ensure that all retail licensees continue to be properly serviced with spirits. An authorized distribution agent is subject to uniform requirements, including business operating procedures, that the commission may prescribe by rule, subject to this section.

- (2) A person is eligible for appointment by the commission as an authorized distribution agent if the following circumstances exist:
- (a) The person satisfies all applicable commission rules prescribing qualifications for licensure promulgated under section 215.
  - (b) The person has entered into a written agreement or contract with a supplier of spirits for the purposes of warehousing and delivering a brand or brands of spirits of that supplier of spirits.



- (25) A wholesaler shall not waive any of the rights granted in any provision of this section. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.
- (26) A successor to a supplier that continues in business as a brewer, an outstate seller of beer, or a master distributor shall be 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 shall apply 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 any provision of 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 any provision of 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 pursuant to this section.
- (31) Except as otherwise provided in this section, if a court finds that a supplier has not acted in good faith in effecting an amendment, termination, cancellation, or nonrenewal of any agreement; or has unreasonably withheld its consent to any assignment, transfer, or sale of a wholesaler's business, it may award exemplary damages, as well as actual damages, court costs, and reasonable attorney fees to the wholesaler who has been damaged by the action of the supplier.
- (32) Upon proper application to the 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 shall not be 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) shall be 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), shall 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

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## **436.1405 Brewpub license; requirements for issuance.**

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### Sec. 405.

- (1) Subject to section 407, the commission shall issue a brewpub license to a person who is licensed as a food service establishment under part 129 of the public health code, 1978 PA 368, MCL 333.12901 to 333.12922, and who at the time of application for the brewpub license is licensed and continues to be licensed as 1 or more of the following:
- (a) Class C.
  - (b) Tavern.
  - (c) Class A hotel.
  - (d) Class B hotel.
- (2) A brewpub shall possess the necessary equipment for a satisfactory operation which shall be maintained in good working order and in a sanitary condition.
- (3) Agricultural products processed by a manufacturer shall comply with state law and with rules of the department of agriculture.
- (4) A brewpub shall not sell beer in this state unless it provides for each brand or type of beer sold a label that truthfully describes the content of each container and provides proof that a valid "application for and certification/exemption of label/bottle approval" has been obtained and is unrevoked under the federal malt beverage labeling requirements as published in title 27, part 7, subpart C, C.F.R. 1935, which are hereby adopted by reference.

- (5) Each location of a brewpub shall have a manufacturing operation on the licensed premises that complies with subsection (6). A brewpub shall apply for and obtain a license for each location of that brewpub. In determining the 5,000-barrel threshold, all brands and labels of the brewpub produced in this state shall be combined.
- (6) Beer shall be manufactured pursuant to federal malt beverage regulations published in title 27, part 25, C.F.R. 1935, which are hereby adopted by reference.
- (7) Each brewpub shall submit to the commission, on forms acceptable to the commission and postmarked not later than January 15, April 15, July 15, and October 15 of each year, a beer tax report of all beer sold under their brewpub license during the preceding quarter. Each brewpub shall also submit, with the beer tax report, the payment of the required beer excise tax due pursuant to section 409.
- (8) A brewpub shall be the holder of a "brewers notice" as issued by the United States department of treasury, bureau of alcohol, tobacco and firearms in accordance with title 27, part 25, subpart G, C.F.R. 1935.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1407 Brewpub license; additional requirements; renewal and revocation of license.**

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**Sec. 407.**

- (1) The commission shall grant a brewpub license to a person who, in addition to complying with section 405, does all of the following:
  - (a) Pays the fee as prescribed in section 525.
  - (b) Provides evidence to the commission that not less than 25% of the gross sales of the restaurant during the 1-year licensure period are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.
  - (c) Complies with section 405(3) through (8).
- (2) The commission shall renew a brewpub license of a person who does all of the following:
  - (a) Pays the fee as prescribed in section 525.
  - (b) Provides evidence to the commission that not less than 25% of the gross sales of the restaurant during the 1-year licensure period are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.
  - (c) Complies with section 405(3) through (8).
- (3) The commission shall revoke a brewpub license if, during the 1-year licensure period, less than 25% of the gross sales of the restaurant are derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

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**436.1409 Beer; taxation; payment of tax by wholesaler; designation; tax collection and reporting requirements by rule; exemptions; rebate; barrel as containing 31 gallons; rule prohibiting licensees from purchasing, receiving, possessing, or selling beer manufactured in designated states; judicial review; tax credit or refund; "eligible brewer" defined.**

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**Sec. 409.**

- (1) Except as provided in this section, the commission shall levy and collect a tax on all beer manufactured or sold in this state at the rate of \$6.30 per barrel if the beer is sold in bulk or in different quantities. Before February 1, 2015, the tax shall be paid by the brewer or brewpub if manufactured in this state or by the wholesaler or the person from whom purchased if manufactured outside this state, whichever is designated by the commission.
- (2) Beginning on and after February 1, 2015, the tax shall be paid by the brewer or brewpub if the beer is manufactured in this state or if the beer is manufactured outside this state the tax shall be paid by the wholesaler assigned to distribute that beer and the tax shall be levied and collected on the number of barrels the wholesaler actually sold to licensed retailers in this state. A brewer may designate a wholesaler to pay the tax on behalf of the brewer. If a brewer designates a wholesaler to pay the tax on its behalf, the brewer shall notify the commission of the designation and provide the commission with a copy of its brewer's report of operations that it filed with the alcohol and tobacco tax and trade bureau of the United States department of treasury for each calendar year.

- (3) The commission shall establish by rule a method for the collection of the tax levied under subsection (1) and reporting requirements for wholesalers, brewers, brewpubs, and outstate sellers of beer to verify the remission of taxes to this state. The commission shall not require that the tax be paid in less than monthly intervals. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (4) The tax levied in subsection (1) shall not be collected on beer that is consumed on the premises of the manufacturer or is damaged in the process of brewing, packaging, storage, and distribution and is not offered for sale, except that beer sold by a brewpub for consumption on the premises or beer produced and consumed on the premises of a micro brewer is subject to the tax levied under subsection (1).
- (5) The tax levied under subsection (1) shall be rebated to the person that paid the tax if that person provides satisfactory proof to the commission that the beer was shipped outside of this state for sale and consumption outside this state.
- (6) For the purposes of the tax levied under subsection (1), a barrel of beer contains 31 gallons.
- (7) The commission may promulgate a rule that designates the states or the laws or the rules of other states that require a licensed wholesaler of beer to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state; that denies the issuance of a license authorizing the importation of beer to any wholesaler of beer in that state who applies for the license; that prohibits wholesalers of beer in that state from possessing or selling beer purchased in this state, unless the person from whom the beer was purchased has secured a license and paid a fee in that state, if the seller does not transport the beer into the state and does not sell the beer in the state; or that imposes any higher taxes or inspection fees upon beer manufactured in this state when transporting the beer into or selling the beer in that state than taxes or fees imposed upon beer manufactured and sold within that state. A rule promulgated under this subsection shall prohibit all licensees from purchasing, receiving, possessing, or selling any beer manufactured in any state designated in the rule. A rule promulgated under this subsection becomes effective as provided in section 47 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.247. Any licensee or person adversely affected by a rule promulgated under this subsection is entitled to review by leave to a court of competent jurisdiction regarding the question as to whether the commission acted illegally or in excess of its authority in making its finding under this subsection with respect to any state.
- (8) Regardless of whether the tax was remitted to this state by the eligible brewer or a designated wholesaler, an eligible brewer may claim a credit or request a refund, in a manner as determined by the commission, against the tax levied under subsection (1) in the amount of \$2.00 per barrel for the first 30,000 barrels. As used in this subsection, "eligible brewer" means a brewer, whether or not located in this state, or brewpub that manufactures not more than 50,000 barrels of beer during the tax year for which the credit is claimed. In determining the number of barrels for purposes of the credit, all brands and labels of a brewer shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2000, Act 395, Imd. Eff. Jan. 8, 2001 ;-- Am. 2014, Act 48, Imd. Eff. Mar. 25, 2014

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**436.1411 Brewer not licensed as micro brewer; sale of beer for on-premises consumption on licensed brewery premises; limitations; "engages in the production of beer" defined.**

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Sec. 411.

- (1) A brewer that is not licensed as a micro brewer may sell its beer for on-premises consumption at not more than 2 locations in this state that are on any of its licensed brewery premises where the brewer engages in the production of beer. A licensed micro brewer that produces in total fewer than 30,000 barrels of beer per year may sell its beer for on-premises consumption at any location in this state that is on any of its licensed brewery premises where the micro brewer engages in the production of beer. A licensed micro brewer that produces in total 30,000 barrels of beer or more per year may sell its beer for on-premises consumption at not more than 3 locations in this state that are on any of its licensed brewery premises where the micro brewer engages in the production of beer.
- (2) Subject to the limitations in subsection (1), if a brewer or micro brewer has more than 1 licensed brewery premises, that brewer or micro brewer may sell for on-premises consumption beer that it has produced at 1 licensed brewery premises at any of its other licensed brewery premises.

- (3) As used in this section, "engages in the production of beer" means the full and complete brewing process and not just a portion of the brewing process.

History: Add. 2000, Act 395, Imd. Eff. Jan. 8, 2001 ;-- Am. 2011, Act 298, Imd. Eff. Dec. 22, 2011 ;-- Am. 2014, Act 44, Imd. Eff. Mar. 25, 2014

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**436.1413 Participation in beer festival; direct sale by licensed brewpub to holder of special license.**

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Sec. 413.

Notwithstanding any provision of this act or rule promulgated under this act, a licensed brewpub may directly sell to a holder of a special license issued under section 526, for the purpose of conducting a beer festival, a quantity of beer determined appropriate by the commission for the purpose of participating in a beer festival.

History: Add. 2008, Act 259, Imd. Eff. Aug. 4, 2008

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**436.1415 Issuance of farmer's market permit to qualified small wine maker.**

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Sec. 415.

- (1) Subject to the limitations provided under this section, the commission may issue a farmer's market permit to a qualified small wine maker. Regardless of the location of the qualified small wine maker, the commission shall only issue 1 farmer's market permit in a county where the farmer's market is located for each 1,500 of population or fraction of 1,500 in that county] as determined by the last federal decennial census, by a special census pursuant to section 6 of the home rule city act, 1909 PA 279, MCL 117.6, or section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, or by the latest census and corrections published by the United States department of commerce, bureau of the census, whichever is later. The holder of a farmer's market permit may conduct tastings and sell, at retail at a farmer's market, the wine produced by that qualified small wine maker.
- (2) The commission shall charge a fee for a farmer's market permit of \$25.00 for each farmer's market location. A farmer's market permit issued under this section is nontransferable. Notwithstanding the quota provision under subsection (1), the commission shall not limit the number of permits a qualified small wine maker obtains under this section, but an application for a farmer's market permit shall only contain up to 5 separate locations at 1 time. Section 503 does not apply to the application or issuance of a permit under this section or to the location of a farmer's market where the holder of a farmer's market permit intends to participate under this section.
- (3) The commission shall not issue a farmer's market permit under this section unless the applicant provides documentation, in a manner prescribed by the commission, that the local police agency where the farmer's market is located and the farmer's market manager at that location have approved the proposed activity.
- (4) The tastings and sales performed under a farmer's market permit shall be limited to an exclusive area [that is well defined and clearly marked], in a manner prescribed by the commission, that is under the control of the holder of the farmer's market permit, as verified by the farmer's market manager.
- (5) The tastings and sales performed under a farmer's market permit shall be conducted by employees of the holder of the farmer's market permit who have completed a server training program as provided for in section 906 and the rules promulgated by the commission.
- (6) The wine sold or used for tastings shall be furnished from the stock of the holder of the farmer's market permit and removed from the farmer's market premises immediately after the farmer's market has concluded.
- (7) Tasting samples provided to a customer shall not exceed 3 servings of not more than 2 ounces of wine in a 24-hour period of time.
- (8) The commission shall develop an application for an annual farmer's market permit allowing for licensed activities under this section. A farmer's market manager shall verify on the application that the location listed on the application qualifies as a farmer's market under this section.
- (9) A wholesaler shall not conduct or participate in any event allowed by this section.
- (10) A holder of a farmer's market permit is considered a manufacturer as provided under section 603(15)(a).
- (11) Two years after the enactment date of the amendatory act that added this section, the commission shall submit a report to the standing committees of the senate and house of representatives

concerned with issues involving liquor control and the house and senate fiscal agencies assessing the continued issuance of farmer's market permits to qualified small wine makers. The report shall include, at a minimum, all of the following:

- (a) The number of applications received each year for a farmer's market permit.
- (b) The number of farmer's market permit applications approved each year.
- (c) The number of farmer's market permit applications approved in each county.

(12)As used in this section:

- (a) "Farmer's market" means a group of farmers or their designees or a variety of vendors, as determined by the farmer's market manager or his or her designee, who assembles on a recurring basis at a defined community sponsored or municipally sponsored location for the purposes of selling, directly to a consumer, food and products produced by those farmers or their representatives.
- (b) "Farmer's market manager" means the person responsible for enforcing the market policy and for the daily operation and management of the farmer's market.
- (c) "Farmer's market permit" means an annual permit issued as part of an approved license to a qualified small wine maker allowing that person to conduct tastings and sell at retail, for consumption off the licensed premises, at a farmer's market, wine produced by the qualified small wine maker.
- (d) "Qualified small wine maker" means a small wine maker, or an out-of-state entity that is the substantial equivalent of a small wine maker, that manufactures or bottles not more than 5,000 gallons of wine in 1 calendar year.

History: Add. 2013, Act 100, Eff. August 31, 2013

## CHAPTER 5

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**436.1501 Licenses; issuance; fees; bonds or liability insurance; expiration of full-year license; license as contract; operation of establishment upon death of licensee; approval of receiver or trustee; part-year license; transfer of license; approval of application; request for revocation of license or permit by local legislative body; hotels; zones and anniversary dates for renewal of licenses; rules; nontransferable tavern licenses for concessionaires at state fairgrounds; notice contained in application.**

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Sec. 501.

- (1) The commission may issue licenses as provided in this act upon the payment of the fees provided in section 525 and the filing of the bonds required in section 801 or liability insurance as provided in section 803. The commission shall provide a notification of the ability of the purchaser or transferee to obtain a tax clearance certificate, as provided in subsection (6). Subject to section 906(2) and (3), the commission shall not issue a new on premises license or transfer more than 50% interest in an existing on premises license unless the applicant or transferee offers proof acceptable to the commission that he or she has employed or has present on the licensed premises, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served who have successfully completed a server training program described in section 906. The commission may consider an individual enrolled and actively participating in a server training program as having successfully completed the program for the time the individual is participating. The commission may allow an applicant or a conditionally approved licensee at least 180 days, or more upon a showing of good cause, to meet the minimum personnel training requirements of this subsection. The commission may suspend the license of a conditionally approved licensee if that licensee does not comply with this subsection. The commission may waive the server training requirements of this subsection on the basis of either of the following circumstances:
  - (a) The licensee's responsible operating experience or training.
  - (b) The person's demonstration of an acceptable level of responsible operation either as a licensee during the preceding 3 years or as a manager with substantial experience in serving alcoholic liquor.
- (2) A full-year license issued by the commission shall expire on April 30 following the date of issuance or the date fixed by the commission. A license issued under this act is a contract between the commission and the licensee and shall be signed by both parties. If a licensee dies, the commission may approve the operation of the establishment by a personal representative or independent personal representative duly appointed by a court of competent jurisdiction, pending the settlement of the estate of the deceased licensee. The commission may approve a receiver or trustee appointed by a court of competent jurisdiction to operate the licensed establishment of a licensee. The commission may grant a part-year license for a proportionate part of the license fee specified in section 525. In a resort area the commission shall grant a license for a period of time as short as 3 months. A license may be transferred with the consent of the commission. A class C or specially designated distributor license obtained in a manner other than by transfer shall not be transferred within 3 years after its issuance except under circumstances where the licensee clearly and convincingly demonstrates that unusual hardship will result if the transfer does not receive the consent of the commission. An application for a license to sell alcoholic liquor for consumption on the premises, except in a city having a population of 600,000 or more, shall be approved by the local legislative body in which the applicant's place of business is located before the license is granted by the commission, except that in the case of an application for renewal of an existing license, if an objection to a renewal has not been filed with the commission by the local legislative body not less than 30 days before the date of expiration of the license, the approval of the local legislative body is not required. The commission shall provide the local legislative body and the local chief of police with the name, home and business addresses, and home and business phone numbers to accomplish the local legislative reviews of new and transferred license applications required by this subsection. Upon request of the local legislative body after due notice and proper hearing by the local