

the tax levied in this subsection. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

- (2) The tax levied in subsection (1) shall not be collected with respect to beer that is consumed on the premises of the manufacturer or is damaged in the process of brewing, packaging, and storage 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).
- (3) The tax levied under subsection (1) shall be rebated to the person who 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.
- (4) For the purposes of the tax levied under subsection (1), a barrel of beer contains 31 gallons.
- (5) 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 licensed wholesaler of beer in that state who may make application for the license; that prohibits licensed wholesalers of beer in that state from possessing or selling beer purchased in this state, unless the person from whom 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.
- (6) An eligible brewer may claim a credit 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

436.1411 Brewer not licensed as microbrewer producing under 200,000 barrels per year; sale of beer for on-premises consumption on licensed brewery premises.

Sec. 411.

A brewer that is not licensed as a micro brewer may sell its beer for on-premises consumption at not more than 1 location in this state that is on any of its licensed brewery premises.

History: Add. 2000, Act 395, Imd. Eff. Jan. 8, 2001; Am. 2011, Act. 298, Imd. Eff. Dec. 22, 2011

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

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

CHAPTER 5

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.

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

legislative body and the commission, the commission shall revoke the license of a licensee granted a license to sell alcoholic liquor for consumption on the premises or any permit held in conjunction with that license.

- (3) A local legislative body, by resolution, may request that the commission revoke the license of a licensee granted a license to sell alcoholic liquor for consumption off the premises whose place of business is located within the local legislative body's jurisdiction and that has been determined in commission violation hearings to have sold or furnished alcoholic liquor, on at least 3 separate occasions in a consecutive 12-month period, to a minor if those violations did not involve the use of falsified or fraudulent identification by the minor. If the commission verifies that the licensee who is the subject of the resolution has been found to have committed the violations as prescribed in this subsection, the commission may suspend or revoke the licensee's license and any permit held in conjunction with that license.
- (4) This act does not prohibit a hotel that is or was the holder of a license authorizing the retail sale of alcoholic liquor for consumption on the premises from applying for and receiving under this act any other and different type of license authorizing the retail sale of alcoholic liquor for consumption on the premises, and the application for the license shall not be considered a new application for a license if the total number of public licenses for consumption on the premises does not exceed the authorized total established in this act and the sale of alcoholic liquor is approved by the electors. The commission may divide the state into 3 zones and establish for each zone an anniversary date for renewal of full-year retail licenses in the licensing year. The commission shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the effective administration of the renewal of licenses.
- (5) The commission, with the written approval of the department of agriculture and rural development for the Michigan state fairgrounds and the Upper Peninsula state fairgrounds, may issue without regard to the quota provision of section 531 a tavern license to a person as concessionaire leasing or renting a portion of either the Upper Peninsula state fairgrounds or the state fairgrounds, or both, to service the licensed area in use for recreational or exhibition purposes other than at the time of the annual Upper Peninsula state fair under section 2 of 1927 PA 89, MCL 285.142. A license issued under this subsection is not transferable.
- (6) The application for initial licensure or for a transfer of a license shall contain a notice in substantial compliance with the following:

When purchasing a license, a buyer can be held liable for tax debts incurred by the previous owner. Prior to committing to the purchase of any license or establishment, the buyer should request a tax clearance certificate from the seller that indicates that all taxes have been paid up to the date of issuance. Obtaining sound professional assistance from an attorney or accountant can be helpful to identify and avoid any pitfalls and hidden liabilities when buying even a portion of a business. Sellers can make a request for the tax clearance certificate through the Michigan department of treasury.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998 ;-- Am. 2000, Act 431, Imd. Eff. Jan. 9, 2001 ;-- Am. 2006, Act 547, Imd. Eff. Dec. 29, 2006 -- Am.2012, Act 82, Imd. Eff. Apr.11, 2012

436.1503 Licenses; proximity of contemplated location to church or school building; measurement of distance; exceptions; waiver; objection; hearing; transfer to location farther from church or school.

Sec. 503.

- (1) A new application for a license to sell alcoholic beverages at retail, or a request to transfer location of an existing license, shall be denied if the contemplated location is within 500 feet of a church or a school building. The distance between the church or school building and the contemplated location shall be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the church or school building nearest to the contemplated location and from the part of the contemplated location nearest to the church or school building.

- (2) This section does not apply to specially designated merchants not in conjunction with on the premise licenses.
- (3) This section does not apply to an outstanding license issued before March 1, 1949, for a location within the aforesaid distance or to the renewal or transfer of the outstanding license at that location, or to a resort license in effect during the 1948-1949 licensing year, or to the renewal or transfer of the resort at that location or to an application for a license at that location which has been approved by the commission before March 1, 1949, and licenses so issued, renewed, transferred, or approved shall be conclusively presumed to be valid for purposes of this section only.
- (4) The commission may waive this section in the case of other classes of licenses. If an objection is not filed by the church or school, the commission may issue the license pursuant to this act. If an objection is filed, the commission shall hold a hearing pursuant to rules established by the commission before making a decision on the issuance of the license.
- (5) This section shall not be construed to prevent the transfer of a license to a location farther from a church or school, if the license to be transferred is within the 500-foot radius.

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

Admin Rule: R 436.1951 et seq. and R 436.1963 of the Michigan Administrative Code.

436.1505 Class "C" or class "B" hotel license; state-owned airport; nontransferable.

Sec. 505.

Notwithstanding section 501, the commission, with the approval of the bureau of aeronautics, may issue without regard to the quota provision of section 531, not more than 1 class C or class B hotel license for each state-owned airport serviced by scheduled commercial passenger airlines. Such license shall not be transferable.

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

436.1507 Liquor licenses; publicly owned airports; issuance.

Sec. 507.

The commission may issue, without regard to the quota provisions of section 531, licenses to the owner or lessee, or both, to sell alcoholic beverages for consumption on the premises of buildings in the passenger terminal complex of each publicly owned airport that is served by scheduled commercial passenger airlines certificated to enplane and deplane passengers on a scheduled basis by the federal aviation agency or the civil aeronautics board. A license issued under this section is not transferable.

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

436.1509 Liquor licenses; municipal civic center or civic auditorium; conditions and limitations.

Sec. 509.

The commission may issue, without regard to the quota provisions of section 531, licenses to a commission, board, or authority, governing or operating any municipal civic center or civic auditorium or to 1 or more of its concessionaires, or to both, if the center or auditorium is within a city or township having a population of not less than 9,500, if the center or auditorium is owned and operated as a municipal enterprise and if the legislative body of the municipality first authorizes the operating authority of the civic center or civic auditorium or its concessionaire to apply to the commission for a license. Licenses issued under this section shall not be transferable, shall not be issued to an educational institution or for a facility operated in connection with an educational institution, and shall authorize the sale of alcoholic liquor only in connection with a scheduled event at the licensed premises.

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

- of a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a person less than 21 years of age possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.
- (4) If the enforcing agency involved in the violation is the state police or a local police agency, a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless all of the following occur, if applicable:
- (a) Enforcement action is taken against the minor who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.
 - (b) Enforcement action is taken under this section against the person 21 years of age or older who is not the retail licensee or the retail licensee's clerk, agent, or employee who sold or furnished the alcoholic liquor to the minor.
 - (c) Enforcement action under this section is taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the minor.
- (5) If the enforcing agency is the commission and an appearance ticket or civil infraction citation has not been issued, then the commission shall recommend to a local law enforcement agency that enforcement action be taken against a violator of this section or section 703 who is not a licensee. However, subsection (4) does not apply if the minor against whom enforcement action is taken under section 703, the clerk, agent, or employee of the licensee who directly sold or furnished alcoholic liquor to the minor, or the person 21 years of age or older who sold or furnished alcoholic liquor to the minor is not alive or is not present in this state at the time the licensee is charged. Subsection (4)(a) does not apply under either of the following circumstances:
- (a) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - (b) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action.
- (6) Any initial or contemporaneous purchase or receipt of alcoholic liquor by the minor under subsection (5)(a) or (b) must have been under the direction of the state police, the commission, or the local police agency and must have been part of the undercover operation.
- (7) If a minor participates in an undercover operation in which the minor is to purchase or receive alcoholic liquor under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if that person is less than 18 years of age.
- (8) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a minor, a motor vehicle operator's or chauffeur's license, a military identification card, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.
- (9) The commission shall provide, on an annual basis, a written report to the department of state police as to the number of actions heard by the commission involving violations of this section and section 801(2). The report shall include the disposition of each action and contain figures representing the following categories:
- (a) Decoy operations.
 - (b) Off-premises violations.
 - (c) On-premises violations.
 - (d) Repeat offenses within the 3 years preceding the date of that report.
- (10) As used in this section:
- (a) "Corrective action" means action taken by a licensee or a clerk, agent, or employee of a licensee designed to prevent a minor from further possessing or consuming alcoholic liquor on the licensed premises. Corrective action includes, but is not limited to, contacting a law enforcement agency and ejecting the minor and any other person suspected of aiding and abetting the minor.

- (b) "Diligent inquiry" means a diligent good faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification which establishes the identity and age of the person.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002 ; Am. 2006, Act 682, Imd. Eff. Jan. 10, 2007; Am. 2010, Act 266, Imd. Eff. Dec. 14, 2010.

436.1703 Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; screening and assessment; chemical breath analysis; notice to parent, custodian, or guardian; construction of section; exceptions; "any bodily alcohol content" defined.

Sec. 703.

- (1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions and is not subject to the penalties prescribed in section 909:
- (a) For the first violation by a fine of not more than \$100.00. A court may order a minor under this subdivision to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, and may order that minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).
 - (b) For a second violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 30 days but only if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).
 - (c) For a third or subsequent violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60 days but only if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$500.00, or both. A court may order a minor under this subdivision to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).
- (2) An individual who furnishes fraudulent identification to a minor, or notwithstanding subsection (1) a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.
- (3) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (1) or offers a plea of admission in

a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(a), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

- (a) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.
 - (b) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - (i) At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.
 - (ii) The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.
- (4) A violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior violation for the purposes of subsection (1)(b) and (c).
 - (5) A court may order an individual convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, in order to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (1) to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a minor under 18 years of age not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.
 - (6) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (1) or (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.
 - (7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require that individual to submit to a preliminary chemical breath analysis. A peace officer may arrest an individual based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

- (8) A law enforcement agency, upon determining that an individual less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The law enforcement agency may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.
- (9) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.
- (10) The following individuals are not considered to be in violation of subsection (1):
- (a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.
 - (b) A minor who accompanies an individual who meets both of the following criteria:
 - (i) Has consumed alcoholic liquor.
 - (ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.
 - (c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.
- (11) If a minor under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.
- (12) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.
- (13) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.
- (14) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.
- (15) Subsection (1) does not apply to a minor who participates in either or both of the following:
- (a) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - (b) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.
- (16) The state police, the commission, or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (1), section 701(1), or section 801(2).

(17) In a criminal prosecution for the violation of subsection (1) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.

(18) As used in this section:

- (a) "Any bodily alcohol content" means either of the following:
 - (i) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - (ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.
- (b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
- (c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 353, Eff. Oct. 1, 1999 ;-- Am. 1999, Act 53, Eff. Oct. 1, 1999 ;-- Am. 2004, Act 63, Eff. Sept. 1, 2004 ;-- Am. 2006, Act 443, Imd. Eff. Nov. 27, 2006; --Am. 2012, Act 125, Eff. June 1, 2012.

436.1705 Power of peace officer or law enforcement officer witnessing violation to stop and detain person; issuance of appearance ticket.

Sec. 705.

A peace officer or law enforcement officer described under section 201 or an inspector of the commission who witnesses a violation of section 701(1) or 703, or a local ordinance corresponding to section 701(1) or 703, may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor,

OFF-PREMISE LICENSES

(By authority conferred on the liquor control commission by section 215(1) of Act No. 58 of the Public Acts of 1998, as amended, being §436.1215(1) of the Michigan Compiled Laws)

R 436.1501 Definitions.

Rule 1.

The terms defined in R 436.1001 have the same meaning when used in these rules.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1503 Hours and days of operation.

Rule 3.

An off-premise licensee shall not sell, give away, deliver, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day or between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, deliver, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1979 ACS 7, Eff. Aug. 8, 1981.

R 436.1505 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; -MR 10, Eff. May 30, 2003.

R 436.1507 Stock of liquor.

Rule 7.

An off-premise licensee who is licensed to sell spirits shall carry a representative stock of all types of alcoholic liquor sold by the commission, which may be set by written order of the commission, and shall maintain a dollar amount of inventory of spirits, which may be set by written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1509 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1984 MR 10, Eff. Nov. 14, 1984; 1991 MR 10, Eff. Nov. 8, 1991; Rescinded 2000 MR 3, Eff. March 20, 2000.

R 436.1511 Open containers on licensed premises prohibited; exception; consumption of liquor on licensed premises prohibited; exception.

Rule 11.

- (1) An off-premises licensee who is not licensed as an on-premises licensee shall not have any open containers of alcoholic liquor on the licensed premises, except for the following:
 - (a) A defective or sample bottle or can.
 - (b) A returnable container returned by a customer of the off-premises licensee for a refund of the deposit on the container.
 - (c) A bottle or can containing alcoholic liquor to be used in the preparation of bakery or deli items by the employees of the off-premises licensee who also holds a Michigan department of agriculture food establishment license, if all of the following conditions are met:
 - (i) The alcoholic liquor is used exclusively in the preparation of food products that are cooked or baked before consumption and, at the point of consumption, have an alcoholic content of less than 1/2 of 1%.
 - (ii) The bottle or can is resealed and stored in a locked, separate storage compartment within the food preparation area when the contents are not being used in food preparation.
 - (iii) The off-premises licensee maintains a clearly defined food preparation area on the licensed premises of not less than 500 square feet.

- (iv) The off-premises licensee has obtained the approval of the commission for the use of alcoholic liquor in the preparation of food on the licensed premises.
- (2) An off-premises licensee who is not licensed as an on-premises licensee shall not allow the consumption of alcoholic liquor on the licensed premises, except for the consumption of alcoholic liquor in sample bottles or cans. Only an off-premises licensee, or the clerk, servant, agent, or employee of the off-premises licensee, may consume the contents of a sample bottle or can on the licensed premises.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1513 Sample bottles or cans; removal.

Rule 13.

An off-premise licensee shall remove sample bottles or cans from the licensed premises within 24 hours of their receipt.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1515 Sale and delivery of alcoholic liquor.

Rule 15.

- (1) An off-premise licensee who is licensed to sell beer and wine shall not take orders for the sale of beer or wine and have the delivery of the beer or wine made to the retail customer by a wholesaler, manufacturer of beer or wine, an outstate seller of beer or wine, or their licensed representatives or salesperson, without the prior written approval of the commission.
- (2) An off-premise licensee who is licensed to sell spirits shall not knowingly allow the delivery of spirits to a retail customer by a licensed representative or salesperson, unless the licensed representative or salesperson is acting on behalf of the retail customer.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1517 Type of business; change; approval.

Rule 17.

An off-premise licensee shall not change the nature of business for which the license was issued by the commission without obtaining the prior written approval of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1519 Soliciting, accepting, or receiving rebates, refunds, or adjustments from a person other than the commission for broken or defective containers prohibited.

Rule 19.

An off-premise licensee who is licensed to sell spirits shall not solicit, accept, or receive rebates, refunds, or adjustments for any broken or defective spirit containers, or case of containers, from a person other than the commission or an agent or employee of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1521 Outdoor service prohibited; exception.

Rule 21.

An off-premise licensee shall not sell alcoholic liquor out-of-doors, except upon a written order of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1415 Dance floor; requirements.

Rule 15.

An on-premise licensee who is the holder of a dance permit shall not allow dancing on the licensed premises, except on a dance floor that is not less than 100 square feet. The dance floor shall be well defined and clearly marked and shall be without tables, chairs, or other obstacles while customers are dancing.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1417 Employees serving food or liquor prohibited from eating, drinking, or mingling with customers; licensees, agents, and employees prohibited from soliciting customers; allowing customer to solicit liquor prohibited.

Rule 17.

- (1) An on-premise licensee shall not allow a person who is engaged in the serving of food or alcoholic liquor to eat, drink, or mingle with the customers.
- (2) An on-premise licensee, or the clerk, servant, agent, or employee of an on-premise licensee, shall not solicit a customer for the purchase of alcoholic liquor for himself or herself or for any other person.
- (3) An on-premise licensee, or the clerk, servant, agent, or employee of an on-premise licensee, shall not allow a customer to solicit alcoholic liquor for himself or herself or for any other person.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1419 Outdoor service without approval prohibited; requirements for outdoor service if approval is granted.

Rule 19.

- (1) An on-premises licensee shall not have outdoor service without the prior written approval of the commission.
- (2) If approval for outdoor service is granted, then the on-premises licensee shall ensure that the outdoor service area is well-defined and clearly marked and the on-premises licensee shall not sell, or allow the consumption of, alcoholic liquor outdoors, except in the defined area.
- (3) The commission may issue up to 12 daily temporary outdoor service permits to a licensee each calendar year upon written request of the licensee and approval of the chief law enforcement officer who has jurisdiction.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 2000 MR 3, Eff. March 20, 2000.

R 436.1421 Sample bottles or cans; sale prohibited; removal from premises.

Rule 21.

- (1) An on-premise licensee shall not sell or give away the contents of a sample bottle or can.
- (2) An on-premise licensee shall remove sample bottles or cans from the licensed premises within 24 hours of their receipt.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1423 Soliciting, accepting, or receiving rebates, refunds, or adjustments from a person other than the commission for broken or defective containers prohibited.

Rule 23.

An on-premise licensee who is licensed to sell spirits shall not solicit, accept, or receive rebates, refunds, or adjustments for any broken or defective spirit containers from a person other than the commission or an agent or employee of the commission.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1425 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1990 MR 1, Eff. Jan. 19, 1990; 2000 MR 3, Eff. March 20, 2000; 2012 MR 9, May10, 2012.

R 436.1427 Washing of drinking containers and draft beer equipment.

Rule 27.

- (1) An on-premise licensee shall wash, rinse, and sanitize all glasses, mugs, steins, and other reusable drinking containers which are used to serve alcoholic liquor to customers.
- (2) An on-premise licensee shall thoroughly cleanse, as often as may be necessary, all beer coils, lines, barrels, tubes, and any other draft beer equipment to keep them in a clean and sanitary condition. An on-premise licensee shall not draw beer through tubes with rubber inner linings.
- (3) An on-premise licensee shall pipe all air intakes on pressure pumps used in drawing draft beer in such a manner that only clean air will be used.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1429 Rescinded.

History: 1979 ACS 4, Eff. Feb. 3, 1981; 1999 MR 3, Eff. March 20, 2000.

R 436.1431 Serving of brand names.

Rule 31.

When a person orders a brand name alcoholic liquor sold by an on-premise licensee, the on-premise licensee shall serve and sell only the brand name ordered by that person.

History: 1979 ACS 4, Eff. Feb. 3, 1981.

R 436.1433 Food operation.

Rule 33.

- (1) An on-premise licensee shall not contract for the services of another person to operate the food portion of the licensed business without the prior written approval of the commission.
- (2) If a contract for the services of another person in the operation of the food portion of the licensed business is approved by the commission, the on-premise licensee shall comply with all of the following:
 - (a) Receive all profits from the sale of alcoholic liquor.
 - (b) Retain control over all portions of the licensed premises.
 - (c) Be responsible for the actions of the persons operating the food business.

History: 1979 ACS 4, Eff. Feb. 3, 1981.