



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN LIQUOR CONTROL COMMISSION
ANDREW DELONEY
CHAIRPERSON

STEVEN H. HILFINGER
DIRECTOR

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Dear Subscriber:

Enclosed, please find your April 2011 edition of the *Michigan Liquor Control Code, Administrative Rules and Related Laws*. This new edition includes all statutory changes since your last quarterly mailing and replaces the January 2006 edition completely. Your first quarterly mailing of updates to the April 2011 edition will begin in July, 2011. You may also wish to visit our website for an up-to-date electronic copy of the publication complete with a hyperlinked table of contents. You can locate the online version under the Quick Links section on the upper right-hand corner of our website at www.michigan.gov/lcc.

The following provides a review of the numerous statutory amendments that have occurred since your last quarterly update in May, 2010:

- P.A. 279 of 2010
 - Effective 12/16/2010
 - Amends Sections 518 and 525 of the Liquor Control Code to:
 - Extends the motorsports event license to allow for the sale for on-premises consumption of spirits and mixed-spirit drinks in addition to beer and wine.
 - The act specifies that, for the purpose of determining the amount of the license fee, individual concession stands selling alcohol located within the complex would not be considered to be an additional bar requiring an additional fee.
 - The act specifies that the license fee for selling beer and wine only would be \$250 (Representing no change in fee amount for beer and wine sales only), while the license fee for selling beer, wine, mixed spirit drinks, and spirits would be \$600.
 - The act also contains amendments to Section 525, adding a \$600 license fee for nonpublic continuing care facilities.
- P.A. 344 of 2010
 - Effective 12/21/2010
 - Adds Section 1030 to the Liquor Control Code to:
 - Require retailers selling beer in a keg to: attach an identification tag to the keg, require the purchaser to sign a receipt, and refuse to return the keg deposit if the tag is not

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attached when the keg is returned. -- Require the Liquor Control Commission (LCC) to make ID tags available to retailers selling beer in a keg.

- Prescribe information that must be on a receipt, and require retailers to retain receipts for at least 30 days after the date the keg is returned.
- Set an administrative fine for retailers who commit certain violations.
 - A retailer, who has failed to apply an identification tag on a keg, intentionally failed to complete the receipt as prescribed by the commission, or failed to obtain the purchaser's signature on the receipt is liable for an administrative fine of not more than \$50.00.
- Prescribe a misdemeanor penalty for people who are not retailers or wholesalers for certain violations.
 - A person who is not a retailer or a wholesaler licensed by the commission is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both, for any of the following:
 - Removing an identification tag from a keg containing beer.
 - Allowing the removal of an identification tag from a keg of beer purchased by that individual.
 - Providing false information in the purchase of beer in a keg.

- P.A. 266 of 2010

- Effective 06/30/2011

- Amends Section 701 of the **Liquor Control Code** to:

- For a second or subsequent offense of selling or furnishing alcohol to a minor, the secretary of state shall suspend the operator's or chauffeur's license of an individual who is not a retail licensee or retail licensee's clerk, agent, or employee.

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- P.A. 267 of 2010

- Effective 06/30/2011

- Amends Section 319 of the **Vehicle Code** to:

- Allow a court to order the Secretary of State to suspend a person's driver license for 180 days for selling or furnishing alcohol to a minor, if the person were not a retail licensee or a retail licensee's clerk, agent, or employee.

- P.A. 369 of 2010
 - Effective 12/22/2010
 - Amends Section 521a of the Liquor Control Code to:
 - Reduce the required minimum seating capacity from 50 to 25 for a business that obtains a liquor license in a city redevelopment project area or development district.

- P.A. 213 of 2010
 - Effective 11/17/2010
 - Amends Sections 109, 111, 113, 113a, 205, 307, 525, 537, 543, 603, 1025, 1027, 1111, 1113, 1114, and 1115 of the Liquor Control Code and adds Section 545 to:
 - **NONPUBLIC CONTINUING CARE CENTERS**
 - Amends the Michigan Liquor Control Code to include a "nonpublic continuing care retirement center" in the classes of vendors that may sell alcoholic liquor at retail, and allow a licensed center to sell beer, wine, and spirits for on-premises consumption. The license fee for a nonpublic continuing care retirement center license would be \$600. The act would require the Liquor Control Commission (LCC) to grant a nonpublic continuing care retirement center license to an applicant that complied with the act's requirements, subject to an overall limit of 20 such licenses issued.
 - The license would allow a nonpublic continuing care retirement center to serve beer, wine, mixed spirit drink, mixed wine drink, and spirits on the licensed premises to residents and their guests only for consumption on the licensed premises.
 - **DUALING AMONG WINE WHOLESALERS**
 - The new act amends two sections of the Liquor Control Code to eliminate dualing and, instead, require wine suppliers to select only one wholesaler of their product in a specified region with some exceptions for existing agreements.
 - **Multiple Wine Wholesalers per Brand - Section 307**
 - The new act provides that, beginning June 1, 2010, a wine supplier (i.e. a manufacturer, outstate seller of wine, or master distributor) would be prohibited from granting the right to sell a specified brand of wine in a sales territory to more than one wine wholesaler. Similarly, a master distributor could not itself distribute a brand in the same sales territory where the distributor granted the right to distribute a

brand in that sales territory to another wine wholesaler.

- The new act grandfathers existing dualing agreements of wine suppliers that were in effect on June 1, 2010, and allows such agreements to be continued or renewed. Additionally, the act would permit wine wholesalers to sell or transfer their distribution rights for a brand to another wine wholesaler if the selling/transferring wholesaler (or a predecessor) had the right to distribute that brand and was actively selling that brand as of June 1, 2010, or if the selling/transferring wholesaler was acting as a master distributor as of June 1, 2010. (For the purposes of this section, the act would define a "master distributor" to mean a wholesaler that acts in the same or similar capacity as a wine maker, wine manufacturer, or outstate seller of wine for a brand to other wholesalers on a regular basis in the normal course of business.)
- **Authorized Distribution Agents as Wine Wholesalers - Section 205(3)**
 - The new act deletes a provision in this subsection which prohibits an authorized distribution agent (ADA) who becomes a wine wholesaler from selling or distributing a brand of wine to retailers within a region in which another wholesaler has already been assigned or authorized to sell or distribute that brand of wine by the wine supplier.
- **WINE TASTING**
 - The new act amends the Liquor Control Code to allow wine makers to sell wine provided to consumers on the premises where the wine maker is licensed to manufacture wine. Currently, wine makers may only offer free samples to consumers from the winery premises. The act would permit the wine maker to charge for those samples from the winery premises.
 - Additionally, the Code permits wine makers to sell wine for off-premises consumption at separately licensed tasting rooms. The new act would allow the wine maker to charge for wine samples provided at licensed tasting rooms.
- **OFF-PREMISES BEER/WINE TASTING**

- The new act allows outstate sellers of beer, outstate sellers of wine, brewers, microbrewers, specially designated distributors (SDD), specially designated merchants (SDM) to conduct beer and wine tastings if they don't hold a license allowing on-premises consumption at the same licensed premises. The tastings would be at the site of a SDD or SDM (off-premises licensees, such as grocery stores and convenience food stores). To conduct a beer or wine tasting, an entity would have to (1) obtain an "annual beer and wine tasting permit" (with no annual fee) from the LCC; (2) not charge for the samples; (3) limit samples to not exceed 3 servings of up to 3 ounces per serving of beer, or 3 servings of up to 2 ounces of wine within a 24-hour period; (4) notify the Commission in writing of the date, time and location 10 days before the event; (5) use only beer or wine from the SDM's inventory for the event, and remove or store all open bottles on the licensed premises on the same business day; (6) conduct the tasting during the legal hours for sale of alcoholic liquor by the licensee.
- A wholesaler is prohibited from conducting or participating in beer and wine tastings.
- **BRANDY MANUFACTURER/SMALL DISTILLER TASTING**
 - The new act allows a brandy manufacturer or small distiller to conduct tastings and sell their product for off-premises consumption at tasting rooms located off the licensed premises where their product is manufactured. There would be a \$100 license fee. The tasting rooms would be considered "licensed premises" for licensing and inspection purposes, and tastings and sales would be limited to legal hours.

- **SUNDAY SALES OF BEER AND WINE**
 - The new act moves up the start of the legal hours of the sale of beer and wine on Sunday (unless prohibited by the local government) from 12 noon to 7 a.m. The new law requires remittance of \$160.00 license fee upon any licensee selling alcoholic liquor between the hours of 7 a.m. on Sunday and 12 noon on Sunday, and allocates that revenue to the general fund. The act also allows local governments to prohibit Sunday sales by a vote of its legislative body. If that body fails to act on this issue, it could be placed before the voters directly.
- **SUNDAY SALES OF SPIRITS**
 - The act provides that the sale of spirits is allowed between 7 a.m. Sunday and 2 a.m. Monday unless prohibited by the county board of commissioners or county voters. The act also allows local governments to prohibit Sunday sales by a vote of its legislative body. If that body fails to act on this issue, it could be placed before the voters directly.
 - Also, counties previously had to specifically authorize the sale of spirits. Under the new act, spirit sales are authorized unless prohibited by the county.
- **SUNDAY SALES AT MIS**
 - The new act provides that Sunday sales from 7:00 a.m. to 2:00 a.m. at a "motorsports entertainment complex" located in more than one county shall not be prohibited if one county prohibits sales and the other one allows sales. A "motorsports entertainment complex" is one (including the grounds) that has at least 70,000 fixed seats for race events, has at least 4 scheduled days of motorsports events, serves food and beverages at the complex during motorsports events staffed by nonprofit organizations, engages in tourism promotion, and has permanent exhibitions on display at the complex.
- **CHRISTMAS SALES**
 - The new act allows sales through 11:59 p.m. December 24th, and beginning at 12 noon on Christmas Day, with normal legal hours on December 26th.
- **THREE-TIERED SYSTEM**
 - The act specifies that, except for licensed warehousemen, all liquor licenses in the state are to be separated into three distinct tiers: (1) Supplier Tier: Comprising manufacturers and suppliers; (2) Wholesaler Tier:

Comprising wholesalers; (3) Retailer Tier: Comprising retailers.

- The act further provides that beginning April 30, 2011, the LCC will not allow any of the following:
 - A retailer to hold (directly or indirectly) a license in the wholesaler or supplier tier.
 - A wholesaler to hold (directly or indirectly) a license in the retailer or supplier tier.
 - A supplier to hold (directly or indirectly) a license in the wholesaler or retailer tier.
- The above provision would not prohibit a Class C, tavern, Class A hotel, or Class B hotel license from receiving a brewpub license and would not prohibit a microbrewer or brewer producing less than 200,000 barrels per year from having an on-site restaurant.

- P.A. 176 of 2010

- Effective 9/30/2010

- Amends Section 159g of the **Penal Code** to:

- Adds the following to the definition of the term *racketeering*: committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain involving a felony violation (at least 80,000 ml) related to the illegal sale, delivery, importation of spirits.

- P.A. 175 of 2010

- Effective 9/30/2010

- Amends Sections 205, 525, 543, 609, 901, 903, 909 and 1027 of the Liquor Control Code and adds Sections 1029 and 1031 to:

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- Bootlegging: Prohibits a person, even if not licensed by the LCC, from selling, delivering, or importing spirits unless that sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent, a person licensed by the commission, or by prior written order of the LCC. The penalty for violating this provision would depend on the volume of spirits illegally sold, delivered, or imported. Additionally, a retail licensee who sells, offers to sell, accepts, furnishes, possesses, or allows the consumption of bootlegged spirits would be subject to an administrative fine of not more than \$2,500 per occurrence as well as additional license sanctions.
- Sampling: Allows consumer sampling of spirits to occur on the premises of specially designated distributors (SDD, off-premises retailers), conducted by suppliers of spirits (or their authorized representatives) upon obtaining a consumer sampling event license and creates penalties for suppliers or

authorized representatives who violate the sampling provisions.

- Value-Added Packaging: Allows manufacturers to package nonalcoholic carbonated beverages with spirits, as part of a marketing and sales promotion program approved by the LCC by promulgation of a rule, issuance of an order, and/or execution of a memorandum of understanding with the Michigan Department of Treassury.
 - Instant Rebates: Requires the LCC to develop an order or adoption of a rule allowing non-mail-in rebates or instant coupons on spirit sales, provided the discounts do not impact the profit margins provided to the LCC under the Code.
 - Wine Auctions: The act creates a new category of liquor license allowing sales of wine via an auction (e.g. a private wine collection sold as part of consignment or estate sales). Under a wine auction license, an owner (not otherwise licensed under the act) could sell a private wine collection through an auction, by a specially designated merchant (SDM) or other seller partnering with an SDM. The wine auction license would be issued to the SDM or their partner once the application is approved by the LCC. The annual wine auction license fee would be \$50,000. The license would be valid for one year, and would allow licensees to hold up to 12 auctions per "license year." Wine sold through an auction would need a tag affixed to it indicating that it was purchased from a private collection. Wine sold through an auction to entities licensed to sell wine at wholesale or retail could be resold in a manner consistent with their license, provided the tag remains affixed to the bottle. The wine auction licensee would be responsible for the delivery, storage, and warehousing of wine sold through the auction, and would also be responsible for paying any applicable sales or excise taxes. Wine auction licensees would be exempt from the registration requirements of Article 29 (Auctioneers) of the Occupational Code.
- P.A. 20 of 2011
 - Effective 04/20/2011
 - Adds Section 547 to the Liquor Control Code to:
 - Create a catering permit and allow the Liquor Control Commission (LCC) to issue a catering permit to an SDD, SDM or the holder of a public on-premises license for the sale of beer, wine, and spirits who is also licensed as a food service establishment or retail food establishment license. The catering permit would be a supplement to the SDD, SDM or on-premises license, and would allow the sale and delivery

of beer, wine, and spirits in the original sealed container at locations other than the licensed premises, as well as require the permit holder to serve beer, wine, and spirits at a private event where the alcoholic liquor was not resold to guests. The person delivering the alcohol under a catering permit would have to verify that the person accepting delivery was at least 21. A person serving alcohol would have to have successfully completed an LCC-approved service training program. The permit requires a \$70 processing fee and a \$100 annual permit fee.

Respectfully,

Tim Kovacik, Deputy Director
Executive Services
Michigan Liquor Control Commission

Enclosure: April 2011 edition of the *Michigan Liquor Control Code, Administrative Rules and Related Laws*.