



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

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In the matter of )  
**REQUESTS BY RETAILERS TO SELL** )  
**BEER AND WINE FOR LESS THAN THE** )  
**COST TO THE RETAILER LICENSEE** )  
**PURSUANT TO ADMINISTRATIVE RULE R** )  
**436.1055 AND RESCISSION OF** )  
**ADMINISTRATIVE ORDER OF DECEMBER** )  
**11, 2007** )

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At the January 19, 2018 meeting of the Michigan Liquor Control Commission in Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman  
Teri L. Quimby, Commissioner  
Dennis Olshove, Commissioner

**ADMINISTRATIVE ORDER NO. 2018-02**  
**REQUESTS BY RETAILERS TO SELL BEER AND WINE FOR LESS THAN THE COST**  
**TO THE RETAILER LICENSEE PURSUANT TO ADMINISTRATIVE RULE R 436.1055**  
**AND RESCISSION OF ADMINISTRATIVE ORDER OF DECEMBER 11, 2007**

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

Administrative rule R 436.1055 provides that a retailer licensee shall not sell alcoholic liquor to a customer for less than the cost of the alcoholic liquor to the retailer

licensee, except upon written prior Commission order. On December 11, 2007 the Commission issued an administrative order that established requirements for Specially Designated Merchant licensees to request to sell wine below cost under administrative rule R 436.1055. Public Act 130 of 2017, which went into effect on January 15, 2018 as a new statutory section, MCL 436.1609c, allows, but does not require, a wholesaler or manufacturer licensee to refund to a retailer licensee the amount the retailer paid for beer or wine or to replace that beer or wine for a number of specific reasons.

Administrative rule R 436.1055 does not state what a retailer licensee must do to obtain a prior written Commission order to allow it to sell beer or wine for less than the cost to the licensee. The Commission finds that the Administrative Order of December 11, 2007, while providing a mechanism for a retailer licensee to request approval for wine price discounts, does not enumerate the acceptable reasons for a retailer to request such an approval. The Commission also finds that price discounts for beer products should also be included in this process as administrative rule R 436.1055 refers to alcoholic liquor, which includes beer, wine, and spirit products. The Commission already has an established policy in place for retailer licensees to request reductions in the price of a spirit product sold by the Commission through Authorized Distribution Agents under Administrative Order 2012-07.

The Commission finds that while MCL 436.1609c does not specifically address retailer requests to sell beer or wine below cost, a number of the reasons the Legislature codified for a refund or replacement of beer or wine in this section stand as satisfactory bases for a request by a retailer licensee under administrative rule R 436.1055 to sell beer or wine for less than the cost to that licensee, specifically:

1. The termination of the retailer's business.
2. The formula, proof, label, or container of the beer or wine has changed.
3. The beer or wine is discontinued.
4. The retailer is only open a portion of the year and the beer or wine is likely to spoil during the off-season.

After review and discussion of the issues at the meeting, the Commission finds that the Administrative Order of December 11, 2007 should be rescinded and new provisions for a retailer licensee to request approval to sell beer or wine for less than the cost to the licensee pursuant to administrative rule R 436.1055 should be approved, subject to the provisions in the Michigan Liquor Control Code, the administrative rules, and as provided in this Administrative Order.

THEREFORE, IT IS ORDERED that:

- A. A retailer licensee may request approval to sell beer or wine for less than the cost of the beer or wine to the retailer licensee pursuant to administrative rule R 436.1055, subject to the following:
1. The retailer licensee must demonstrate in writing at least one of the following reasons for its request:
    - a. The termination of the retailer's business.
    - b. The formula, proof, label, or container of the beer or wine has changed.
    - c. The beer or wine is discontinued.
    - d. The retailer is only open a portion of the year and the beer or wine is likely to spoil during the off-season.
  2. The retailer licensee must provide a list of the specific beer or wine products for each licensed location at which it is requesting to sell discounted beer or wine.
  3. The list of beer or wine to be discounted must indicate the brand, the size of the container, the quantity of containers to be discounted, the proposed discounted selling price for each item, and name of the wholesaler or manufacturer (qualified Micro Brewer or Small Wine Maker) licensee from which the beer or wine was purchased.
  4. The retailer licensee shall not discount beer or wine more than 50% of the cost of the beer or wine that the retailer licensee paid to the wholesaler or

manufacturer (qualified Micro Brewer or Small Wine Maker) licensee for the beer or wine.

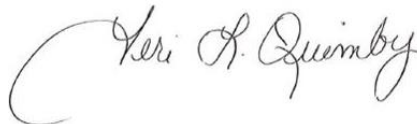
- B. The Administrative Order of December 11, 2007 is RESCINDED, effective immediately.
- C. Any orders, bulletins, policies, directives, memoranda, or other communications regarding requests by retailer licensees to sell beer or wine for less than the cost to the licensee shall be RESCINDED, effective immediately.

MICHIGAN LIQUOR CONTROL COMMISSION



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Andrew J. Deloney, Chairman



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Teri L. Quimby, Commissioner



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Dennis Olshove, Commissioner