



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

In the matter of)
PROGRAM TO BUY BACK SPIRITS FROM)
ON-PREMISES LICENSEES AFFECTED BY)
THE COVID-19 EXECUTIVE ORDERS)

At the April 14, 2020 meeting of the Michigan Liquor Control Commission in
Lansing, Michigan.

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

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

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

On March 16, 2020, Governor Whitmer issued Executive Order 2020-9, directing all places of public accommodation to close, including “bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption.” On March 22, 2020, that order was rescinded and replaced with Executive Order 2020-20, which extended the closing of places of public accommodation for on-premises consumption until April 13, 2020. On April 1, 2020, the

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

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

Under the authority granted in Executive Order 2020-46, the Commission finds that the financial effects of the closures ordered in some of the COVID-19 Executive Orders on Michigan’s on-premises licensees and the effects on their ongoing financial viability will jeopardize the Commission’s ability to maintain liquor stock for sale throughout Michigan and maintain orderly markets for spirits in Michigan. Furthermore, the Commission finds that that it is necessary to issue this order to mitigate the effects of the COVID-19 Executive Orders and to implement Executive Order 2020-46.

Therefore, the Commission orders the following:

1. Beginning today, the Commission will offer a cash buyback for any unopened and saleable spirits a licensee ordered from the Commission and received and accepted from an Authorized Distribution Agent before March 16, 2020, that are still

in the licensee's inventory. Only licensees holding one of the following license types are eligible: Class C, B-Hotel, G-1, Club, Continuing Care Retirement Center, Aircraft, Watercraft, and Train License.

2. The Commission will pay the licensee 100% of the purchase price the licensee paid for those spirits. The Commission will own and hold legal title to all unopened and saleable spirits that the Commission buys back from the licensee. However, the Commission will not take physical possession of any such spirits from licensees any earlier than 90 days after the end of the declared states of emergency and disaster.

3. No licensee will be eligible for this program who has had a payment for spirits to the Commission returned for insufficient funds that remains unpaid, according to Commission records. Further, no licensee will be eligible for this program if the license was being held in escrow as of March 10, 2020, the first date cases of COVID-19 were identified in Michigan.

4. Any licensee that requests a cash buyback must attest to the purchase price of the unopened and saleable spirits in its inventory as of 11:59 p.m. on March 15, 2020, and submit an inventory list with its request that details the price the licensee paid for each item on the list. The Commission may conduct inspections to determine the validity of the attestations. Any licensee that misrepresents its inventory of unopened and saleable spirits, the purchase price, or any other information in its request is subject to disciplinary action against its license for violating MCL 436.2003, among other relevant laws, and may face penalties up to and including license revocation.

5. Each licensee desiring a cash buyback must submit its completed request on the Commission's website by 5:00 p.m. on April 17, 2020. No requests may be submitted after that time.

6. Any licensee that requests a cash buyback may, at any time until the Commission is authorized to take physical possession of spirits it bought back, repurchase the full amount of spirits bought by the Commission for the price the Commission paid. Upon repayment of the full buyback amount, the licensee will again hold title to the spirits in its possession.

7. The Commission is authorized to seize any unopened and saleable spirits held by a licensee that the licensee has not repurchased from the Commission within 90 days after the end of the declared states of emergency and disaster. A licensee will not be permitted to purchase additional spirits from the Commission until it has either repurchased the spirits bought back by the Commission or the Commission seizes those spirits.

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

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

MICHIGAN LIQUOR CONTROL COMMISSION



Pat Gagliardi, Chair



Dennis Olshove, Commissioner



GERALYN A. LASHER, Commissioner