



# 2019 Michigan Liquor Control Laws and Rules

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# 2019 Michigan Liquor Control Laws and Rules

## AID AND ASSISTANCE

Michigan's Aid and Assistance Law (MCL 436.1609) is one of the key components of the three-tier system. Under the law, distributors and suppliers are prohibited from providing anything of value to another licensee. This means no giving, selling, leasing, or loaning any goods or services to a licensee. It does not matter how nominal the value of the good or service is.

There are limited exceptions to this prohibition, which are outlined in the list below. Unless the item or service is listed below, you CANNOT provide it to a licensee in any manner.

Items or services a distributor or supplier may provide:

- Price brand advertising, including special event related pricing
- Alcohol liquor recipe literature
- Calendars and matchbooks
- Removable tap markers
- Table tents
- Shelf talkers
- Bottle-neckers
- Cooler Stickers
- Buttons, blinking and non-blinking
- Menu clip-ons
- Mirrors
- Napkin holders (not napkins)
- Spirits cold shot tap machines
- Alcoholic liquor drink menus (only items you sell, cannot name retailer)
- Dispensing/cooling equipment (special licensees only)
- Tents (special licensees only)
- Temporary bin displays (off-premises)
- Mark prices on your product (off-premises)
- Rotate your brands (off-premises)
- Place your product on shelves (off-premises)
- Trade spending
- Sports and entertainment tickets
- Samples
- Coil cleaning service (only in areas where a third party is not available)
- Sale of carbon dioxide (only in areas where a third party is not available)
- Product returns/refunds
- Supplier assistance for painting trucks
- Supplier may use name of distributor in advertising
- Brand logoed merchandise for display purposes only with a value that does not exceed \$200.00
- On-premises brand promotions
- Keg couplers
- Cooler door attachments

- Tear pad holders
- Suction cups
- VAP (off-premises only)

Additionally, retailers are prohibited from possessing and using brand logoed items (items of secondary use and value) except for the following items. These items MUST be obtained from an independent 3<sup>rd</sup> party, NOT a distributor or supplier:

- Trays
- Coasters
- Napkins
- Shirts
- Hats
- Pitchers
- Drinkware that is intended to be reused
- Bar mats
- Buckets
- Bottle openers
- Stir rods
- Patio umbrellas
- Packaging used to hold and deliver alcoholic liquor purchased by the retailer
- Illuminated Signs (per AG opinion)

## **GENERAL ADVERTISING AND PROMOTION**

### Cooperative Advertising

Sec. 610d. (1) There must not be cooperative advertising:

(a) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a retailer.

(b) Between a wholesaler and a retailer.

(c) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a wholesaler.

(3) The name of a retailer must not appear in the advertising of a manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler.

(5) As used in this section, “cooperative advertising” means a jointly funded effort between licensees or between vendors of spirits.

### Signs

Sec. 610a. (1) Subject to subsection (2), a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of mixed spirit drink, or vendor of spirits may provide to a retailer signs that promote the brands and prices of alcoholic liquor, including special event pricing.

(2) All of the following apply to a sign allowed under subsection (1):

(a) The sign must not be illuminated.

(b) The sign must not have any use beyond the actual advertising of brands, prices, and events related to the alcoholic liquor.

(c) The sign must not include the name of the retailer.

(d) For a sign that is located inside the retailer's licensed premises, the sign must not be more than 3,500 square inches in dimension.

(3) A retailer may use an illuminated sign to promote the brand but not the price of alcoholic liquor. 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 provide to a retailer a sign described in this subsection.

#### Gambling Devices

R436.1321

(4) All gambling devices, including punch boards and games of any description used for advertising purposes, are prohibited.

#### Naming a Retailer and Payment for Advertising Space

R 436.1315

A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall not sell or in any manner furnish to a retail licensee, and a retail licensee shall not accept, either of the following:

(a) Advertising which has the name of the retail licensee on the advertising.

(b) Money or other valuable consideration for advertising space in or upon the premises of the retail licensee.

#### Trade Spending

MCL 436.1609b

Sec 609b. (1) A vendor representative and salesperson of a vendor of spirits, manufacturer of beer, manufacturer of wine, outstate seller of beer, outstate seller of wine, or wholesaler shall maintain accurate records of expenditures for each call on a retail licensee. The records must be maintained for 4 years and must be made available for commission inspection.

(2) A vendor representative or salesperson of a spirits or wine, for promotional purposes, may purchase 1 drink for each customer of an on-premises licensee. A drink purchased under this subsection must be of the brand represented by the vendor representative or salesperson.

(3) A vendor representative or salesperson of a manufacturer of beer, a wholesaler of beer, or an outstate seller of beer, for promotional purposes, may purchase 1 drink for each customer of an on-premises retail licensee subject to a total spending limit of \$100.00 per day. A drink purchased under this subsection must be of the brand represented by the vendor representative or salesperson.

(4) A vendor representative or salesperson of a manufacturer of beer, a wholesaler of beer, or an outstate seller of beer shall not purchase a drink under subsection (3) more than twice per month at the same on-premises retail licensed location.

(5) A licensee employed to deliver alcoholic liquor shall not purchase a drink of alcoholic liquor for a retail licensee while on duty or in the course of employment.

#### Brand Logoed Displays

MCL 436.1609

(6) A manufacturer, outstate seller, or vender of spirits may provide brand logoed merchandise to an on-premises retailer and off-premises retailer to promote the brand and price of its products under R 436.1321(1) to (3) of the Michigan Administrative Code if all of the following conditions are complied with:

(a) Brand logoed merchandise must be used for display purposed only.

(b) Brand logoed merchandise may only provide brand advertising when used in a display.

(c) Brand logoed merchandise must be returned to the alcoholic beverage supplier or wholesaler on completion of the display.

(d) Brand logoed merchandise shall not be given to the retail licensee or the retail licensee's staff or any other person for their personal use.

(e) The value of the brand logoed merchandise on display may not exceed \$200.00 per item.

(f) Brand logoed merchandise that a licensee could use in the daily operation of the licensee's business is prohibited.

(g) Brand logoed merchandise must be unilluminated.

(h) Brand logoed merchandise may not be more than 3,500 square inches in dimension.

(i) Brand logoed merchandise must be owned by the manufacturer or supplier. The ownership of the brand logoed merchandise may not be transferred to the retail licensee, the retail licensee's employer, or any other person.

(j) A wholesaler may deliver and install a display using brand logoed merchandise provided without charge by a manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed drink.

#### On-Premises Brand Promotions

Pursuant to Commission Order dated October 27, 1999, licensed suppliers and wholesalers may conduct on-premises brand promotion events under the provisions of administrative rule R436.1321(1,2,3) with the proviso that all of the following conditions are complied with:

1) The Commission must be notified in writing a minimum of five (5) working days prior to the event of the date, time and location of the event.

2) On-premises promotional events shall be limited to three (3) per retail licensee within a calendar month.

3) The supplier or wholesaler conducting the promotion must have a licensed representative present at the on-premises establishment to set up the promotion and to remove any specially approved items upon completion of the promotion. A licensed representative must be present during the hours of the

promotion when brand logoed merchandise is to be given away to consumers. Also, a licensed spirit representative must be present during all hours of a “keep the glass” promotion.

4) Suppliers, wholesalers and licensed representatives are prohibited from furnishing any alcoholic liquor to participating retail licensees.

5) Licensed representatives may distribute merchandise to consumers 21 years of age or older during on-premises promotion events. The maximum total value of all merchandise distributed to consumers on any given day, including prizes awarded pursuant to provision #6, is \$100.00. No alcoholic beverage purchase or consumption may be the basis for distributing merchandise to consumers, with the exception of spirit brand logoed glassware pursuant to “keep the glass” promotion as described in provision #8. All merchandise furnished to consumers must be distributed by a licensed representative of the sponsoring vendor, not by the retail licensee.

6) Licensed representatives may award merchandise to consumers through customer participation contests. Any contest awarding merchandise must be done in accordance with commission rules, including issuance of the necessary entertainment permit to participating retailers. Random drawings awarding logoed prizes are required to be open to any person 21 years of age or older wishing to participate. Winners of random drawings need not be present to win.

7) Logoed wearing apparel may be worn by employees of the retail licensee during the hours of the on-premises promotion. All logoed wearing apparel must be removed from the retailer’s premises by the close of business on the day of the promotion.

8) Spirit brand logoed glassware may be distributed to consumers through a keep the glass promotion, whereby consumers may purchase a drink in a spirit brand logoed container and may keep the container, during the hours of the on-premises promotion. Glassware distributed to consumers through keep the glass promotions shall not be considered part of the \$100.00 limit of merchandise distributed to consumers. Brand logoed glassware may not contain the name of the retail licensee. The sponsoring vendor of spirits must have a licensed representative present during all hours of a keep the glass promotion. Brand logoed glassware must be removed from the retailer’s premises by the close of business on the day of the promotion. Brand logoed glassware may only be distributed to consumers through spirit keep the glass promotions. Brand logoed glassware may not be distributed to consumers in any other manner.

9) A maximum of two (2) spirit brand logoed glasses may be sold to an individual consumer through a keep the glass promotion during any given promotion.

10) Logoed coasters, napkins, stir rods, placemats, tubs and buckets may be used during the on-premises promotion. All such specially approved logoed items must be removed from the retailer’s premises by the close of business on the day of the promotion.

11) There may be no advertising of the on-premises promotion event by any party off the licensed premises, through banners, flyers, radio advertising or by any other means. The lone exception to this prohibition is social media advertising in the manner described on page 8.

12) Participating retail licensees may not receive any fee or other valuable consideration for participating in any on-premises promotion.

13) All persons attending the on-premises promotion events on behalf of the sponsoring vendor and promoting alcoholic beverages in any manner must hold a valid Salesperson or Vendor Representative license.



14) Participating retailers must comply with all Michigan Liquor Control statutes and rules.

15) Inside point of sale material may be utilized, provided that it is unilluminated and no more than 3,500 square inches in dimension.

#### College Campuses

R436.1861

(1) A brewer, a vendor of spirits, a wine maker, an outstate seller of beer, an outstate seller of wine, or a licensed wholesaler of beer or wine shall not do either of the following:

(a) Participate in or conduct any event, contest, activity, or undertaking on the campus of any 2- or 4-year college or university located in this state which is designed to promote the sale or consumption of any alcoholic liquor.

(b) Participate in or conduct any event, contest, activity, or undertaking off the campus of any 2- or 4-year college or university located in this state if the event, contest, activity, or undertaking is organized or sponsored by any student group which has a majority of members who are under the legal age for consumption of alcoholic liquor.

(2) Notwithstanding the provisions of subrule (1) of this rule, a brewer, a vendor of spirits, a wine maker, an outstate seller of beer, an outstate seller of wine, or a licensed wholesaler of beer or wine may do any of the following:

(a) Advertise in any newspaper or periodical published or circulated on the campus of a 2- or 4-year college or university located in this state if such advertising is done in accordance with the provisions of R 436.1301 to R 436.1339.

(b) Make a philanthropic gift to the governing body of a 2- or 4-year college or university located in this state if such gift does not include alcoholic liquor and is not contingent upon the promotion or advertising of any brand of alcoholic liquor.

(c) Participate in a course offered by any 2- or 4-year college or university located in this state if the course is offered in an academic building of the 2- or 4-year college or university and is under the supervision of a faculty member.

(d) Participate in, sponsor, contribute to, or promote any organization or program having as its purpose the dissemination of information concerning alcohol awareness or responsible consumption of alcoholic liquor or which is involved in either research or treatment related to the use or abuse of alcoholic liquor if such participation has the prior approval of both the commission and the governing body, or its designee, of the 2- or 4-year college or university located in this state at which the participation is to take place.

(e) Provide financial assistance to a group or organization conducting an event, contest, activity, or undertaking held entirely or in part on the campus of any 2- or 4-year college or university located in this state if such financial assistance has the prior approval of both the commission and the governing body, or its designee, of the college or university on whose campus the event, contest, activity, or undertaking is to take place. A group or organization which receives financial assistance may acknowledge the source of the financial assistance.

(3) A brewer, a vendor of spirits, a wine maker, an outstate seller of beer, an outstate seller of wine, or a licensed wholesaler of beer or wine shall not hire, or cause to be hired, any person whose duty or

responsibility it is to promote, market, or encourage the use, sale, or consumption of alcoholic liquor on the campus of, or by the students of, any 2- or 4-year college or university located in this state.

However, a brewer, a vendor of spirits, a wine maker, an outstate seller of beer, or an outstate seller of wine may hire a person, who shall be licensed by the commission, for the purpose of representing that brewer, vendor of spirits, wine maker, outstate seller of beer, or outstate seller of wine in its dealings with any group or organization affiliated with and recognized by a 2- or 4- year college or university or with the governing body, or its designee, to make the arrangements necessary to accomplish those activities permitted by subrule (2) of this rule.

(4) This rule shall not prohibit a licensed wholesaler of beer or wine from making a sale or delivery of beer or wine to a licensee located on the campus of a 2- or 4-year college or university.

### Samples

R436.1863

(1) A sample of alcoholic liquor shall have affixed on a separate label or on the commercial label the word "Sample" at least ½ inch high.

(2) Only 1 open sample bottle or can of alcoholic liquor may be given to a retail licensee for his personal sampling.

(3) A vendor of spirits, manufacturer of beer, manufacturer of wine, outstate seller of wine, outstate seller of beer, vendor representative, salesman or other licensees shall not assist in the violation of the liquor control act or commission rules.

Note that wholesalers CANNOT participate in consumer sampling for both on-premises or off-premises. Wholesalers are limited to purchasing drinks for consumers as outlined in the trade spending guidelines.

### Temporary Bin Displays

Sec. 610b (1) A manufacturer, vendor of spirits, outstate seller of beer, outstate seller of wine, or a wholesaler shall not sell or in any manner furnish or install, and a retailer shall not accept, a permanent display in the licensed premises of the retailer.

(2) A manufacturer, vendor of spirits, outstate seller of beer, or outstate seller of wine may furnish and install a temporary bin display that has a capacity of up to 25 cases of 24 12-ounce or 0.375-liter containers or the equivalent in other sizes of beer, wine, or spirits on the premises of a retailer that is licensed for off-premises sales only.

(3) Notwithstanding section 609, a wholesaler may install, on the premises of a retailer that is licensed for off-premises sales only, a temporary bin display that has been provided without charge by the manufacturer, outstate seller of beer, or outstate seller of wine.

(4) A retailer shall ensure that a temporary bin display installed on the retailer's premises clearly indicates by a tag, stamp, label, or other method that is securely affixed to the temporary bin display the date on which the temporary bin display was installed.

(5) The 3,500-square-inch limit on an inside retail advertising sign under section 609 does not apply to advertising on a temporary bin display described in subsection (2) or (3).

(6) As used in this section, "temporary bin display" means a freestanding device that is constructed of a material that is used for the exhibition of beer, wine, or spirits on the premises of a retailer that is

licensed for off-premises sales only and that must be removed from the retail licensed premises not later than 120 days after installation.

### Social Media Advertising

A wholesaler, manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, vendor of spirits, broker, or retailer may use unpaid (no boosting posts or paid ads) social media or your website to advertise any of the following:

- An on-premises brand promotion.
- Off-premises tastings.
- Product locators or product listings. Note that all retailers in the territory where the product is available must be listed.

### ANTI-TIED HOUSE PROVISION

The Anti-tied House Law is a core component of Michigan's three-tier system. It prevents any entity in one-tier (supplier, wholesaler, or retailer) from owning or controlling an entity in another tier. These laws ensure the independence of each tier, and promote transparency and competition in the marketplace. For example, this law prevents a supplier from dictating to a wholesaler or retailer what products they can sell or how they operate their respective business. This law has helped foster the growth of small breweries and wineries because it prevents large multi-national brewers from taking punitive action against distributors for also selling smaller competing brands.

MCL 436.1603

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 operating 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.

Exception – MCL 436.1605

Sec. 605. (1) A brewer, wine maker, distiller, brandy manufacturer, or the parent company, a subsidiary or an affiliate of a brewer, wine maker, distiller, or brandy manufacturer 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, wine maker, distiller, or brandy manufacturer 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.

(c) Any arrangement or contract entered into between the brewer, wine maker, distiller, brandy manufacturer, 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.

### **CASH LAW**

MCL 436.2013 requires that all sales of alcoholic liquor between licensees be for cash only. Licensees are prohibited from selling to another licensee on credit.

The Michigan Liquor Control Commission has authorized Electronic Fund Transfers pursuant to the following requirements:

IT IS THE ORDER OF THE COMMISSION THAT ELECTRONIC FUND TRANSFERS BETWEEN RETAIL LICENSEES AND WHOLESALE LICENSEES IS APPROVED PURSUANT TO MCL 436.16(3).

IT TO THE FURTHER ORDER OF THE COMMISSION THAT ELECTRONIC FUND TRANSFERS BETWEEN LICENSED RETAILERS AND WHOLESALERS MUST COMPLY WITH THE FOLLOWING PROVISIONS:

- 1) THE WHOLESALER SHALL INITIATE THE ELECTRONIC FUND TRANSFER TRANSMITTAL.
- 2) PARTICIPATION BY RETAIL LICENSEES SHALL BE VOLUNTARY.

- 3) THE ELECTRONIC FUND TRANSFER TRANSMITTAL TO THE BANKING INSTITUTION SHALL OCCUR NO LATER THAN THE NEXT BANKING BUSINESS DAY FROM THE DATE OF DELIVERY.
- 4) EACH PARTICIPATING RETAIL LICENSEE AND WHOLESALER LICENSEE SHALL MAINTAIN ACCURATE RECORDS PURSUANT TO THE COMMISSION'S ADMINISTRATIVE RULES.
- 5) ELECTRONIC FUND TRANSFER TO A WHOLESALER MAKING DELIVERY TO MULTIPLE LOCATIONS OF A CHAIN RETAILER ON THE SAME BUSINESS DAY MAY BE TRANSMITTED TO THE WHOLESALER AS A SINGLE ELECTRONIC FUND TRANSFER. IN ALL INSTANCES, RETAILERS AND WHOLESALERS MUST MAINTAIN STORE-BY-STORE, LINE-BY-LINE FULL DETAIL RECORDS SO THAT INDIVIDUAL DELIVERY INVOICES MAY BE TRACED TO THE ELECTRONIC FUND TRANSFER.
- 6) NON-SUFFICIENT FUND ELECTRONIC FUND TRANSFERS SHALL BE TREATED SIMILAR TO NON-SUFFICIENT FUND CHECKS. THAT IS, UPON RECEIPT OF INFORMATION THAT A RETAIL LICENSEE HAS NON-SUFFICIENT FUNDS TO COVER THE ELECTRONIC FUND TRANSFER, THE WHOLESALER SHALL IMMEDIATELY CEASE ANY FURTHER SALES/DELIVERY OF ALCOHOLIC LIQUOR TO THE RETAIL LICENSEES UNTIL SUCH TIME THAT THE NON-SUFFICIENT FUND EFT HAS BEEN MADE GOOD.

## **DELIVERIES**

### **No Sunday Deliveries**

R436.1635

A brewer or wholesaler shall not offer for sale or deliver beer to a retail licensee between 12 midnight on Saturday and 12 midnight on Sunday, except to a holder of a special license issued by the commission.

### **Special Licensee Deliveries**

Beer and wine may be delivered to a special licensee when the special license has been issued and is in their possession. You are no longer required to wait until the effective date on the license to deliver the beer or wine.

### **Non-Licensed Vehicle**

- (1) A vendor representative, salesperson, or driver helper shall not:
  - (c) Deliver beer or wine to retail licensees in vehicles not approved by the commission.

## **DEPOSITS**

### **Bottle Bill**

Wholesalers are required to collect a 10 cent deposit on all containers they sell to retailers, and are required to return a 10 cent deposit on containers presented to them by retailers that are the kind, type, and size sold by the wholesalers to the retailer and that are clearly marked as Michigan containers. The following beverage types are subject to the deposit law:

A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink.

## Keg Deposits

R 436.1631

(1) A manufacturer, an outstate seller of beer, or a wholesaler of beer shall collect a container deposit of a minimum of \$30.00 for all refillable containers of beer with a capacity of over 5 gallons. The deposit collected by a wholesaler from a retail licensee for a refillable container of over 5 gallons shall be equal to the deposit collected by the manufacturer or outstate seller of beer from the wholesaler of beer.

(2) A cash refund which equals the container deposit collected pursuant to subrule (1) of this rule for all refillable containers of beer with a capacity of over 5 gallons shall be made to a licensee who has made the deposit and returned the containers for refund.

Note that a supplier must not charge a wholesaler any additional fee beyond the deposit required in the aforementioned rule.

## **SALESPERSON LICENSING**

MCL 436.1502

Employees of suppliers, wholesalers, and brokers who sell, deliver, promote, or otherwise assist in the sale of alcoholic liquor must obtain a salesperson license. Individuals who are employed solely as drivers or merchandisers are not required to obtain a salesperson license.

As a prerequisite for salesperson licensure, an individual must complete a MLCC approved salesperson accreditation program. The Michigan Beer & Wine Wholesalers association offers a salesperson accreditation program that can be found at <https://mbwwasaleslicense.org/>. This accreditation must also be obtained every three years upon renewal of the salesperson license. The MLCC application for a salesperson license can be found at:

[https://www.michigan.gov/documents/lara/Salesperson\\_License\\_Application\\_LCC-153\\_-\\_April\\_15\\_2018\\_Forward\\_619142\\_7.pdf](https://www.michigan.gov/documents/lara/Salesperson_License_Application_LCC-153_-_April_15_2018_Forward_619142_7.pdf)

## **SALESPERSON REGULATIONS**

R436.1859

(1) A vendor representative, salesperson, or driver helper shall not do any of the following:

(a) Grant, allow, pay, or rebate cash or any other thing of value to a licensee or an agent, clerk, or employee of a licensee, except upon written order of the commission.

(b) Purchase or deliver spirits to retail licensees, except for a salesperson or driver helper who delivers spirits in the normal course of his or her duties for an authorized distribution agent.

(c) Deliver beer or wine to retail licensees in vehicles not approved by the commission.

(d) Be employed by a retail licensee on a paid or any other basis.

(e) Furnish entertainment or a gratuity of any kind to commission employees. The word "entertainment" does not include normal business meals.

(2) A licensee employed to deliver alcoholic liquor shall not consume alcoholic liquor while on duty or in the course of employment.



(3) A vendor representative or salesperson shall not advise a licensee on commission rules or the liquor control code, being Act No. 58 of the Public Acts of 1998, as amended, being §436.1101 et seq. of the Michigan Compiled Laws.

R436.1011

(1) The clerk, servant, agent, or employee of a licensee shall not engage in an illegal occupation or illegal act on the licensed premises. A certified copy of a conviction is prima facie evidence of a violation.

(4) A licensee, or the clerk, servant, agent, or employee of the licensee, shall not threaten, hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of making an investigation or inspection of the premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer or a commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules.

(5) A licensee, or the clerk, servant, agent, or employee of a licensee, shall not impersonate a commission employee, a commission investigator, or a law enforcement officer empowered to enforce the act or commission rules.

### **PRICE SCHEDULES/BAN ON QUANTITY DISCOUNTS**

#### **Beer**

MCL 436.1609a

(1) A manufacturer or wholesaler shall file with the commission a schedule of net cash prices to the retail licensee for all brands of case and keg beer for its market area.

(2) A manufacturer or wholesaler shall file with the commission a beer package price reduction for its market area. The manufacturer or wholesaler shall file the price reduction before its effective date. A price reduction under this subsection must continue for at least 90 days after the effective date.

(3) The beer package price for a market area may be increased during the 90-day period described in subsection (2) for any of the following reasons:

(a) To reflect a tax increase in the market area.

(b) To reflect a general industry price increase in the market area.

(4) The beer package price for a market area may be decreased during the 90-day period described in subsection (2) if both the following conditions are met:

(a) The price reduction is not greater on a cents-per-case basis than the price reduction filed by the competition.

(b) The price reduction continues for the balance of the 90 days filed by the competition

(5) A manufacturer or wholesaler shall not sell beer at a quantity discount.

## Wine

436.1726

(1) A manufacturer or wholesaler shall file with the commission in Lansing, before January 1, April 1, July 1, and October 1 of each year, a schedule of the net cash prices to retail licensees for all wine by kind, type, size, and brand.

(2) The prices filed shall not be changed during a quarterly period, unless approved by a written order of the commission. Approval for a price change shall not be granted for periods of less than 14 consecutive calendar days in duration.

(3) A manufacturer or wholesaler shall not charge a retail licensee any fee in addition to the net cash prices filed in sub rule (1) except for a split case fee. If a manufacturer or wholesaler charges a split case fee to a retail licensee, such a fee shall be at the same per unit rate, shall be nondiscriminatory, and shall not be based on a sliding scale.

(4) A manufacturer or wholesaler shall not sell wine at a quantity discount.

### **PRODUCT RETURNS/REFUNDS**

(1) A manufacturer that sells direct to a retailer as provided under section 203(19) or a wholesaler may refund to a retailer the amount the retailer paid for beer or wine, as applicable, or a manufacturer that sells direct to a retailer as provided under section 203(19) or a wholesaler may replace that beer or wine for any of the following reasons:

(a) The beer or wine is outdated.

(b) The beer or wine is defective.

(c) An error in the beer or wine delivered.

(d) The beer or wine may no longer be lawfully sold.

(e) The termination of the retailer's business.

(f) The formula, proof, label, or container of the beer or wine is changed.

(g) The beer or wine is discontinued.

(h) The retailer is only open a portion of the year and the beer or wine is likely to spoil during the offseason.

(2) If beer is within 30 days of its out-of-date code, a manufacturer that sells direct to a retailer as provided under section 203(19) or a wholesaler may refund to a retailer the amount the retailer paid for the beer.

(3) A manufacturer that sells direct to a retailer as provided under section 203(19) or a wholesaler may only issue a refund or replacement under this section for beer or wine that the manufacturer or wholesaler sold to the retailer.

## **RECORDS**

### **Maintenance**

R436.1007

- (1) A licensee shall maintain accurate records of alcoholic liquor purchases and sales.
- (2) A licensee shall maintain records sufficient to determine ownership of the licensed business and to whom the profits or losses of the business accrue.
- (3) The records required by this rule shall be maintained for a 4-year period of time.

### **Beer**

R436.1641

- (1) Each Michigan licensed brewer, Michigan licensed micro brewer, and Michigan licensed brewpub shall maintain records of its transactions, including the distribution of beer. The records shall be maintained in order for 4 years, after which deletions may be made, but a 4-year record shall always be maintained.
- (2) Each Michigan licensed wholesaler shall maintain records of its transactions, including the distribution of beer. The records shall be maintained for 4 years, after which deletions may be made, but a 4-year record shall always be maintained.
- (3) Each Michigan licensed brewer, Michigan licensed micro brewer, Michigan licensed brewpub, or Michigan licensed wholesaler shall maintain complete records of expenses and compensation of salespersons and representatives for 4 years.

### **Wine**

R436.1727

- (1) The production and sales records of the manufacturer shall be maintained in order and available for inspection for the 4 most recent years.
- (2) A wholesaler of wine shall maintain records of its purchases and sales of alcoholic liquor. The records shall be maintained and available for inspection for the 4 most recent years.
- (3) A manufacturer or wholesaler of wine shall maintain complete records of the expenses of their licensed salesmen and representatives and complete records of the total compensation paid to their licensed salesmen and representatives. These records shall be maintained and available for inspection for the 4 most recent years.

## **EXCISE TAX REPORTS**

### **Beer**

For beer tax reporting, if you choose to use the tax rate per ounce (0.0015877) that is listed on the tax report form instead of the different tax rates listed on the tax report form, you must still show the individual pack size, the amount sold of the pack size, and then the conversion to ounces. Then, use the ounce tax rate to calculate the tax for each pack size.

## Wine

For wine tax reporting, you must show a breakdown of the different pack sizes and calculate the total liters for each pack size.

## Mixed Spirit Drink

For mixed spirit drink tax reporting, you must show a breakdown of the different pack sizes and calculate the total liters for each pack size.

## All Reporting

- You **MUST** begin filing your forms from the effective date of your license, whether or not you have registered product with the MLCC.
- You **MUST** use the name under which your business is licensed on all tax reporting documents, not your DBA (Doing Business As) name.
- You **MUST** use your MLCC LICENSE number on all documents, not your Business ID (BID) number.
- You must submit sales reports that are legible and in a large enough font size to be easily readable. Please submit licensee sales reports that are sortable or that are already sorted by size. The sales reports **MUST** match your tax reports. Reports that we cannot use will be returned to you and **MUST** be revised and resubmitted. Excel spreadsheets are preferred for the sales reports.
- When submitting your sales reports, do **NOT** report beer, wine, and mixed spirit drink on the same spreadsheet. Each sales report **MUST** be sent separately to the correct mailbox. Failure to submit the sales reports separately will result in them being returned to you for you to separate the product types.
- Do **NOT** report sales from your purchases from Michigan Brewers, Micro Brewers, Michigan Wine Makers, Small Wine Makers, or Mixed Spirit Drink Manufacturers on your tax reports **UNLESS** you have been designated to pay the excise tax on the sales of the product that you have purchased from them.
- If you have been designated by a Michigan Brewer, Micro Brewer, Michigan Wine Maker, Small Wine Maker, or Mixed Spirit Drink Manufacturer to pay the excise tax, you will pay the excise tax on your SALES of these products. The MLCC and you, as the designated wholesaler, will receive notification of the designation before April 1 and the designation will be effective May 1. Changes to the designation request can be made by the Michigan Brewer, Micro Brewer, Michigan Wine Maker, Small Wine Maker, or Mixed Spirit Drink Manufacturer only once a year, by April 1.
- **FOR WINE** sales reports, you **MUST** separate the wine that is 16% or less alcohol by volume (ABV) from the wine over 16% ABV. Failure to do so will result in the report being sent back to you for you to separate the wine percentage categories.
- Your sales report must show the following: date of sale, invoice number, name and address of the customer, name and description of product, including the pack size and ABV (for wine), supplier name, bottle/case quantity, and price.
- When sending in your tax payments, send a copy of each tax report and a **SEPARATE** check for each tax payment.

- Tax reports, payments and documentation must be postmarked no later than the 15th of the month following the reporting period. If late, they will be subject to a \$25.00 late fee and 1% interest fee per month until paid.
- **CIDER and MEAD** are reported as **WINE**.
- **Malt based** products are reported as **BEER**.
- Do **NOT** report **BITTERS** on your tax report or other documents.
- Do **NOT** pay tax on wholesale to wholesale transactions. Tax is to be paid only on sales to **RETAIL** licensees.
- Do not report and pay tax on non-alcoholic product, out-of-state sales, or sales to the military or an Indian reservation.
- If you have paid taxes on non-alcoholic product or on-product from Michigan microbreweries or Michigan wineries since February 2015, you may request a credit using the Claim for Recovery of Beer, Mixed Spirit Drink, or Wine Taxes (LCMW-811), which is located on our website. Upon verification, a credit letter will be issued to you.
- **EMAIL** your Wholesalers Monthly Report of Purchases along with your purchase invoices and sales reports to the appropriate mailbox listed below.
- Please remember, if you do not distribute Beer or Wine or Mixed Spirit Drink, you are still required to file a tax form in January of each year for each type of product. This form should state that you do not distribute that particular type of product.
- Please use the most current and accurate forms. Forms are posted on our website, <http://www.michigan.gov/lcc>, under the Financial Management Division Forms section of the Commission Forms webpage.
- Please provide to the MLCC an email address for communications from the Commission.

If you have any questions regarding this information or to submit tax reports, please contact the MLCC Financial Management Division at the appropriate email address:

MLCCFinanceBeerTax@michigan.gov

MLCCFinanceWineTax@michigan.gov

MLCCFinanceMixedSpiritTax@michigan.gov

The Michigan Liquor Control Commission does not process or collect Michigan sales tax and cannot advise on sales tax related questions. All sales tax questions should be directed to the Michigan Department of Treasury at 517-636-6925.

### **SALES OF ALCOHOLIC LIQUOR**

#### **Sales to Non-Licensees Exceptions – Hospitals, Military Installations & Employees**

MCL 436.1607

(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.

#### Tied in Sales Prohibited

R436.1651

(3) A licensee shall not engage in tied-in sales of beer, wine, beer and wine, or any alcoholic liquor with any non-alcoholic product sold by the licensee.

R436.1735

(3) A licensee shall not engage in tied-in sales of beer, wine, or beer and wine

### **SALES OF NON-ALCOHOLIC PRODUCTS**

A number of members have been expanding the products they deliver to include non-alcoholic products. While the products are non-alcoholic, the potential to violate the Michigan Liquor Control Code (the Code) and/or MLCC rules (the Rules) still exists.

#### Non-alcoholic Product Delivered to a Licensed Retailer

When delivering non-alcoholic product to a licensed retailer, the bottom line is that a licensed wholesaler must follow the Code and the Rules that govern alcoholic product. The MLCC has approved one exception; a licensed wholesaler can provide a quantity discount to a licensed retailer for the non-alcoholic product.

Wholesalers should keep in mind that they are required to treat an unlicensed retailer that is related to a licensed retailer as if the unlicensed retailer is licensed. For example, Company X owns three Joe's Markets, two of the locations are unlicensed but the third location has a license. A licensed wholesaler is required to treat the two unlicensed locations as if they are licensed because they are all owned by a common entity.

While the licensed wholesaler cannot give away merchandise, a supplier of only non-alcoholic product (one that does not also supply alcoholic) can give away merchandise to a licensed or unlicensed retailer but the supplier must deliver and install the merchandise. The unlicensed supplier could also pay a shelf fee to a licensed or unlicensed retailer. However, the MLCC has indicated that a licensed wholesaler cannot participate in such a program, whether directly or indirectly.

#### Non-alcoholic Product Delivered to an Unlicensed Retailer

When delivering non-alcoholic product to a non-licensed retailer; a licensed wholesaler is not bound by the Code and the Rules governing alcoholic product. However, as mentioned previously a licensed wholesaler should take care to ensure that the unlicensed retailer is not related to a licensed retailer.

#### Creation of a Separate Company

The only way that a licensed wholesaler can avoid the Code and the Rules while delivering non-alcoholic product to both licensed and unlicensed retailers is to set up a separate company. The MLCC allows licensed wholesalers to establish a separate company (separate non-licensed sales/delivery people, separate trucks etc.) to deliver the non-alcoholic product to both licensed and unlicensed retailers. However, the new unlicensed company must truly be a separate company and not just a sales division of

the licensed wholesaler. If the MLCC suspects that the separate company is only a sham company, they will issue a citation to the licensed wholesaler for violations of the Code and Rules.

The separate company can give away things like coolers. In this scenario, the separate company **MUST** be taking the sales orders and delivering the product, not just the cooler. If the licensed wholesaler still sells and delivers the product, the new company will not be considered separate and will not be allowed to give away things like coolers.

**TRANSACTIONS INVOLVING THE OPERATION OF A SEPARATE COMPANY** As indicated above, a separate company must be truly separate from the licensed wholesaler. This means that it must have its own delivery vehicles, drivers and sales team. However, this does not require separate ownership. Accordingly, the separate company can have the same ownership, officers and board of directors as the licensed wholesaler. In addition, the separate company can also use the same warehouse as the licensed wholesaler; however, it should probably lease the warehouse space that it occupies.

The MLCC has also stated that the separate company cannot be used to simply set up accounts with licensed retailers, pay slot fees and utilize things like free fills and then transfer or assign the account to a licensed wholesaler. In other words, the separate company cannot do all of the things that would violate the Code and Rules as a way to set up an account and then transfer the account to the licensed wholesaler. The commission considers this type of transaction as a clear attempt to use the separate company as a conduit to violate the Code and Rules.