



Michigan Liquor Control

# Laws & Rules

2023

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## 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, including labor, to a licensee. It does not matter how nominal the value of the good or service is.

There are limited exceptions to this prohibition, outlined in the list below. Unless the item or service is listed below, you CANNOT provide it to a licensee in any manner. For the items listed below, you may choose to provide them in any manner you like. You can provide it for free, sell it, loan it, or charge a deposit.

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 third 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:

- Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a retailer.
  - Between a wholesaler and a retailer.
  - 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):
- 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**

R436.1315

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 vendor 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 purposes 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 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 the 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 7.
- (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 winemaker, 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 winemaker, 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 winemaker, 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 winemaker, 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, winemaker, 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, including the name of the retailer(s):

- 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 by preventing large multi-national brewers and wineries from taking punitive action against distributors for also selling smaller competing brands.

Sec. 603.

- (1) Except as provided in subsections (5) to (9), subsections (14) to (16), 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 (5) to (9), subsections (14) to (16), 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 (5) to (9), subsections (14) to (16), 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 (5) to (9), subsections (14) to (16), 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 on 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 must 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 Alcohol and Tobacco Tax and Trade Bureau:
  - (a) A winemaker participating with 1 or more winemakers 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 operation in accordance with 27 CFR 25.52.
- (10) A manufacturer shall not have any direct or indirect interest in a wholesaler.
- (11) A winemaker shall not collectively deliver wine, with any other winemaker, to retailers.
- (12) Except for a warehouse, all licensees in this state must 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), 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) does not prohibit a class C, tavern, class A hotel, or class B hotel licensee from receiving a brewpub license or a microbrewer or brewer from having an on-site restaurant.

(15) A person licensed in the supplier tier may manufacture a private label of beer, wine, or mixed spirit drink for a retailer if the Commission determines that all the following requirements are met:

(a) The supplier registers the private label with the Commission as required under R 436.1611, R 436.1719, and R 436.1829 of the Michigan Administrative Code.

(b) The supplier, independent of the retailer's involvement, appoints 1 or more wholesalers to distribute the private label as required under section 307 or 401, as applicable. However, if the supplier is a microbrewer, the supplier may distribute the private label in accordance with section 203a.

(c) The supplier complies with and does not violate section 305 or 403, as applicable.

(d) The wholesaler engages in commercially reasonable efforts to make the private label available to a retailer that places an order for the private label beer, wine, or mixed spirit drink.

(e) An appointed wholesaler remains the wholesaler for the private label and any brand extensions of the private label regardless of whether the retailer switches the supplier that manufactures the private label unless the wholesaler is terminated under section 305 or 403, as applicable.

(16) The Commission shall not issue a wholesaler license to a producer of nonalcoholic beverages or an entity that the producer of nonalcoholic beverages has a direct or indirect ownership or financial interest in if the producer of nonalcoholic beverages or the entity the producer of nonalcoholic beverages has a direct or indirect ownership or financial interest in has a direct or indirect ownership or financial interest in a person licensed in the supplier tier.

(17) As used in this section:

(a) "Manufacturer" means, notwithstanding section 109(2), a winemaker, small winemaker brewer, microbrewer, manufacturer of spirits, distiller, small distiller, brandy manufacturer, mixed spirit drink manufacturer, direct shipper, a licensee with an approved tasting room, or a person licensed by the Commission to perform substantially similar functions.

(b) "Private label" means a brand of beer, wine, or mixed spirit drink that is manufactured by a supplier on behalf of a retailer using the retailer's recipe or intellectual property.

(c) "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, winemaker, distiller, or brandy manufacturer has received written approval from 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, winemaker, 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, winemaker, distiller, brandy manufacturer, its parent company, subsidiary, or affiliate has not acquired, developed, sold, leased, financed, maintained, operated, or promoted more than seven 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 one 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 the 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 – MANDATORY EFT

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.

Pursuant to MLCC Administrative Order No. 2023-01, all transactions between distributors and retailers for the sale of beer, wine, and mixed spirit drink must be via EFT as set forth below:

- (1) Beginning March 31, 2023, except as provided in Section C, all payments by retailer licensees to Wholesaler licensees for the purchase of beer, wine, or mixed spirit drink must be made by electronic funds transfer (EFT) payment.
- (2) All EFT payments must comply with the following provisions:
  - (a) The Wholesaler licensee must initiate the EFT payment transmittal by initiating the withdrawal of the funds from the retailer's account.
  - (b) The EFT payment transmittal to the banking institution must occur no later than the next banking business day from the date of the delivery of the beer, wine, or mixed spirit drink order to the retailer licensee.
  - (c) A single EFT payment may be made to a Wholesaler licensee making deliveries to multiple locations of a chain retailer on the same business day. Retailer and wholesaler must maintain a store-by-store detailed record to ensure that individual delivery invoices may be traced to the EFT payment.
- (3) A Wholesaler licensee may only accept cash, check, or money order in the following instances:
  - (a) When accepting payment for a non-sufficient funds EFT payment.
  - (b) During temporary service interruptions of the third-party payment processing company.
  - (c) By written order of the Commission, Hearing Commissioner, or Administrative Law Judge.
  - (d) Sales to the holder of a Special License.
  - (e) For thirty (30) days following the issuance of a license to a retailer.
- (4) To maintain control of its ability to receive payment, the Wholesaler licensee must be solely responsible for selecting a third-party payment processing company to facilitate the EFT payments in accordance with the provisions set forth in the order. A Wholesaler licensee must not select a third-party payment processing company to facilitate EFT payments that does not meet the requirements of this order or that requires more than thirty (30) days' notice from the Wholesaler licensee to terminate its agreement with the third-party payment processing company.
- (5) A retailer licensee making a non-sufficient funds EFT payment to a Wholesaler is subject to a violation under MCL 436.1903b.

## 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. Distributors are not required to wait until the effective date on the license to deliver beer, wine, or mixed spirit drink.

## 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 an MLCC-approved salesperson accreditation program. The Michigan Beer & Wine Wholesalers association offers a salesperson accreditation program that can be found [here](#). This accreditation must also be obtained every three years upon renewal of the salesperson license, and it cannot be completed more than 120 days before submission of the renewal application. The MLCC application for a salesperson license can be found [here](#).

## **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 AND MALT/SUGAR-BASED SELTZERS**

- (1) A manufacturer or wholesaler shall file with the Commission a schedule of net cash prices to the retailer for all brands of case and keg beer for its market area. If a person sells beer that has not received a registration number from the Commission in violation of subrule (1)(d) of R 436.1611 of the Michigan Administrative Code and if a wholesaler files a schedule of net cash prices as required under this subsection, both of the following apply:
  - (a) The wholesaler is not considered to have violated subrule (1)(d) of R 436.1611 of the Michigan Administrative Code.
  - (b) A retailer is not considered to have violated subrule (1)(d) of R 436.1611 of the Michigan Administrative Code.
- (2) A manufacturer or wholesaler shall file with the Commission a beer package price change for its market area. The manufacturer or wholesaler shall file the price change 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 of 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.
- (6) A net cash price filed under subsection (1) and a price change filed under subsection (2) are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, until 1 year after the net cash price or price change is filed, as applicable.
- (7) The Commission shall periodically compare a manufacturer's or wholesaler's filing under subsection (1) or (2) with the manufacturer's or wholesaler's tax filing under section 409.
- (8) This section does not apply to a brewpub.
- (9) Beginning July 1, 2020, the Commission shall not implement or enforce subrule (1)(c) and (d) of R 436.1611 of the Michigan Administrative Code for products manufactured by a brewer and for products that a microbrewer or brewer sell exclusively at its tasting room or to a beer festival. As used in this subsection, "beer festival" means that term as defined in section 526.

## **WINE AND MIXED SPIRIT DRINK**

- (10) A manufacturer or wholesaler shall file with the Commission a schedule of the net cash prices to retailers for all wine, mixed wine drink, and mixed spirit drink by kind, type, size, and brand.
- (11) A manufacturer or wholesaler shall file with the Commission a wine, mixed wine drink, and mixed spirit drink price change for its market area. The manufacturer or wholesaler shall file the price change before its effective date. A price change under this subsection must continue for at least 2 weeks after the effective date.
- (12) A manufacturer or wholesaler shall not charge a retailer a fee in addition to the net cash prices filed under this section, except for a split case fee. If a manufacturer or wholesaler charges a split case fee to a retailer, the fee must be at the same per unit rate, non-discriminatory, and not be based on a sliding scale. A manufacturer or wholesaler shall file with the Commission a split case fee charged under this subsection.
- (13) A manufacturer or wholesaler shall not sell wine, mixed wine drink, and mixed spirit drink at a quantity discount.
- (14) A net cash price filed under subsection (10) and a price change filed under subsection (11) are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243 until 1 year after the net cash price or price reduction is filed, as applicable.
- (15) The Commission shall periodically compare a manufacturer's or wholesaler's filing under subsections (10) and (11) with the manufacturer's or wholesaler's tax filing under section 301.
- (16) The regulation described in this section is necessary for both of the following reasons:
- (a) To promote temperance and the public health and welfare.
  - (b) To promote a stable 3-tier distribution system with orderly markets for wine and malt beverage products in which there is no price discrimination by a wholesaler in its sales to retailers within the wholesaler's sales territory.

## **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, wine, or mixed spirit drink as applicable or a manufacturer that sells

direct to a retailer as provided under section 203(19) or a wholesaler may replace that beer, wine, or mixed spirit drink for any of the following reasons:

- (a) The beer, wine, or mixed spirit drink is outdated.
  - (b) The beer, wine, or mixed spirit drink is defective.
  - (c) An error in the beer, wine, or mixed spirit drink delivered.
  - (d) The beer, wine, or mixed spirit drink may no longer be lawfully sold.
  - (e) The termination of the retailer's business.
  - (f) The formula, proof, label, or container of the beer, wine, or mixed spirit drink is changed.
  - (g) The beer, wine, or mixed spirit drink is discontinued.
  - (h) The retailer is only open a portion of the year, and the beer, wine, or mixed spirit drink 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, wine, or mixed spirit drink that the manufacturer or wholesaler sold to the retailer.
- (4) Beginning March 1, 2020, a manufacturer may refund to a wholesaler up to the amount the wholesaler paid for beer, wine, or mixed spirit drink, as applicable, or a manufacturer may replace that beer, wine, or mixed spirit drink for either of the following reasons:
- (a) The wholesaler purchased the beer, wine, or mixed spirit drink from the manufacturer, and the wholesaler refunded to the retailer the amount the retailer paid for that beer, wine, or mixed spirit drink or replaced that beer, wine, or mixed spirit drink under subsection (1) or (2).
  - (b) The beer, wine, or mixed spirit drink that the wholesaler purchased from the manufacturer has gone out of date while in possession of the wholesaler.

## 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 microbrewer, 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 microbrewer, Michigan-licensed brewpub, or Michigan-licensed wholesaler shall maintain complete records of expenses and compensation of salespersons and representatives for four 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 (INCLUDING NON-ALCOHOLIC BEER) AND MALT/SUGAR-BASED SELTZERS

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. Instructions and form can be found [here](#).

## WINE

For wine tax reporting, you must show a breakdown of the different pack sizes and calculate the total liters for each pack size. Instructions and form can be found [here](#).

## 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. Instructions and form can be found [here](#).

## ALL REPORTING

- Tax forms and tax payments are due quarterly. These reports and payments must be postmarked no later than April 15th, July 15th, October 15th, and January 15th to avoid late fees and interest. Monthly submissions are acceptable but not required.
- We do NOT accept online submission of tax reports or tax payments for the excise tax. All payments and forms must be mailed to the mailing address provided on the tax form.
- Wholesaler Report of Purchases (LC-155) is due quarterly. These forms must be submitted by April 15, July 15, October 15, and January 15. Monthly submissions are still acceptable but not required.

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 a 1% interest fee per month until paid.
- **CIDER and MEAD** are reported as **WINE**.
- **Malt-based and sugar-based seltzer** products are reported as **BEER**, including non-alcoholic 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 the MLCC with 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](mailto:MLCCFinanceBeerTax@michigan.gov)
- [MLCCFinanceWineTax@michigan.gov](mailto:MLCCFinanceWineTax@michigan.gov)
- [MLCCFinanceMixedSpiritTax@michigan.gov](mailto: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-LICENSEE 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.

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

MCL 436.1609g

- (1) If a wholesaler sells non-alcoholic products to a retailer, this act does not apply to the sale, marketing, merchandising, or distribution of the non-alcoholic products except the following:
- (a) The wholesaler shall comply with section 609.

- (b) The wholesaler shall not do either of the following:
  - (i) Provide free non-alcoholic products to a retailer.
  - (ii) Provide credit to a retailer.
- (2) If a wholesaler separately owns or has a direct or indirect financial interest in a company that sells non-alcoholic products, this act does not apply to the company that sells non-alcoholic products if all of the following conditions are met:
  - (a) The company that sells non-alcoholic products is not a wholesaler.
  - (b) The company that sells non-alcoholic products and the wholesaler have separate sales and delivery employees.
  - (c) The company that sells non-alcoholic products and the wholesaler use separate delivery vehicles.
  - (d) The company that sells non-alcoholic products and the wholesaler keep separate finances.
  - (e) The company that sells non-alcoholic products does not engage in an activity on behalf of the wholesaler that would violate section 609.
- (3) If a wholesaler separately owns or has a direct or indirect financial interest in a company that sells non-alcoholic products, the wholesaler and the company that sells non-alcoholic products may do all of the following:
  - (a) Share human resources departments.
  - (b) Have a joint payroll.
  - (c) Lease warehouse space to each other.
  - (d) Have joint vehicle maintenance.
  - (e) Jointly recycle beverage containers.
  - (f) Share warehouse employees and equipment.

## **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 Aid and Assistance rules that govern alcoholic product. The law does allow a licensed wholesaler to provide a quantity discount to a licensed retailer for the non-alcoholic product. In addition, a wholesaler may offer channel pricing to retailers but may not provide free 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 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 SAMPLES**

To maintain compliance, licensed wholesalers must follow the guidelines for alcoholic product (R436.1863) when providing samples of non-alcoholic product to a licensed retailer.

## 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 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 THE 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 must lease the warehouse space it occupies. Certain shared services are also permitted, as noted on page 19.

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 a clear attempt to use the separate company as a conduit to violate the Code and Rules.

## NON-ALCOHOLIC CONTRACT CONSIDERATIONS

Unlike beer and wine, non-alcoholic contracts do not operate under franchise law. Success of your NA business will depend on your ability to negotiate provisions into your contract. It is incumbent upon companies to prepare model non-alcoholic contracts that enshrine protections found in franchise law. A model contract can start the dialogue or serve as a comparison point when evaluating the supplier's contract.

## TERM

Contracts contain one of two types of terms, set or perpetual. A perpetual term continues until terminated for good cause, whereas a set term last for a given length of time upon which the agreement terminates unless renewed. Perpetual term, with a for good cause termination provision, is the ideal, as it provides the most certainty and protection on a wholesaler's investment. Should the supplier object to a perpetual term, seek a longer term (5+ years) with automatic renewal and for cause termination.

## EXCLUSIVITY

A distribution agreement should grant exclusive rights in the territory. Often a supplier will attempt to reserve certain channels for alternative means of distribution. Carefully read and evaluate channels to explain why they should be assigned to you. Require that any alterations to reserve channels must be agreed upon in writing, and violations require payment of an invasion fee to the wholesaler.

## PRODUCTS

Similar to channels, a supplier might seek to limit products in your agreement. Exclusivity should extend to all products available in your territory and extend to any new products brought to market.

## TERRITORY

Provide a clear and accurate description of the agreement territory and prohibit alterations without mutual consent in writing.

## TERMINATION AND NONRENEWAL

Require a provision that the contract may not be terminated or not renewed without good cause. Do not leave “good cause” undefined in the agreement, or the supplier will utilize a vague definition to justify termination. The National Beer Wholesalers Association suggests this language: Good cause shall be defined as the failure to substantially comply without reasonable excuse or justification with a reasonable material requirement of the supplier.

A notice period and opportunity to cure a deficiency are also key elements of termination protection that need to be enshrined in your agreement.

## GOVERNING LAW AND VENUE

In the event of a dispute, governing law dictates the state laws the agreement operates under, and venue establishes the court where proceedings take place. Generally, wholesalers will want to argue for applying Michigan law and their local court system. Pursuing legal action in another state adds an extra layer of difficulty and acts as a deterrent in pursuing equitable outcomes.

## DISPUTE RESOLUTION

Arbitration is often the preferred dispute resolution of suppliers. If your contract includes an arbitration provision that the supplier is unwilling to remove, negotiate for the application of your state laws and a right to appeal an error of law to court. Stipulate that the American Arbitration Association will be utilized over JAMS or other for-profit arbiters.

## THC/CBD-INFUSED BEVERAGES

Cannabis-derived products are illegal for wholesalers to carry or sell. THC-infused beverages are controlled by the Cannabis Regulatory Agency in Michigan, which licenses marijuana products from seed to sale. Infused beverages must utilize marijuana grown in Michigan by a licensed grower, must be processed by a licensed processor, transported by a licensed secure transporter, and sold at a licensed retailer.

CBD-infused food and beverages are illegal nationwide, as the Food and Drug Administration has not created a pathway to market. The FDA has called on Congress to create a new regulatory structure for CBD products, as they do not fit any of the FDA’s available structures. Until a new structure is created or the FDA’s safety concerns are addressed, CBD-infused food and beverage will remain illegal.



## **ALLOCATION**

The law requires that when demand exceeds supply of a beer, wine, or mixed spirit drink, suppliers and distributors must engage in commercially reasonable efforts to fulfill orders placed by their respective customers.

This means that when suppliers and distributors allocate product the plan must be fair and reasonable and cannot arbitrarily discriminate against certain retailers.

As a best practice, distributors should have an objective and measurable standard that is fair and equitable when determining how products are allocated. This will ensure compliance with the law and protect distributors if a retailer ever complains to the MLCC that an order was not filled by a distributor. Past sales history and other data are examples of objective measurables that can be used to determine standards.

## **PRIVATE LABELS**

The allocation law also specifically applies to private labels. Therefore, distributors must not limit the availability of private labels to retailers that are associated with the private label. Arbitrary purchase requirements that favor retailers associated with the private label are also not permitted. An example of an arbitrary purchase requirement would be to limit sales to a quantity no smaller than a pallet.

## **MIXED SPIRIT DRINK**

Regulations surrounding mixed spirit drink products, commonly referred to as “RTDs,” are often confused with full spirits products because they are spirits based. However, mixed spirit drink is specifically defined under the code and is not regulated like full spirits products. Rather, mixed spirit drink is subject to most of the regulations applicable to beer and or wine. Common areas of questions include:

Price post and hold – the wine price post and hold law applies to mixed spirit drink.

Providing brand logoed merchandise and barware – the beer and wine restrictions apply to mixed spirit drink.

Franchise law – the wine franchise law applies to mixed spirit drink.

## **PRODUCT RECALL OR SUPPLIER-ORDERED REMOVAL**

If a beer, wine, or mixed spirit drink product is subject to a recall or if a supplier requires a distributor to remove a product from a territory the supplier must notify the MLCC and affected distributors. Within seven business days after the recall or determination, distributors must notify the Commission when the removal and destruction of the affected product began and the expected completion date. Distributors must notify the Commission upon completion of the removal and destruction of the affected products.

The supplier is required to reimburse distributors for all costs reasonably associated with the removal and destruction of the product. Payment must be made within 30 days after the destruction of the products.

## **ELECTRONIC COUPONS**

Electronic rebate coupons for alcoholic liquor are authorized to be provided directly to consumers from a supplier or manufacturer. Distributors must not participate in funding or providing electronic coupons, except for providing retailers signs promoting the coupons in accordance with the general regulations on signs.

The restrictions on electronic rebate coupons are as follows:

- A manufacturer or supplier shall only issue coupons that state a specific expiration date and specific cash refund value on the coupons. The refund may be paid by cash, by check, by debit card, through electronic funds transfer to a bank account, or through an internet or mobile payment account.
- A manufacturer or supplier shall not issue coupons that result in the retail customer's purchase of alcoholic liquor being below the retailer's cost.
- A manufacturer or supplier may issue coupons that can be applied to more than 1 specific product sold by that manufacturer or supplier but must state the manufacturer or supplier to which they apply.
- A manufacturer or supplier shall issue coupons that require the retail customer to purchase at least 1 product of alcoholic liquor to redeem a coupon. A manufacturer or supplier may issue coupons that require the retail customer to purchase 2 or more alcoholic liquor products from the same manufacturer or supplier to redeem the coupon.
- A manufacturer or supplier shall not issue coupons that require the purchase of a product other than alcoholic liquor.
- A wholesaler shall not pay for or participate in the offering of coupons except for providing signs that promote the electronic rebate coupon in accordance with section 610a.
- A manufacturer shall only issue coupons that may be redeemable after a purchase of alcoholic liquor at all retail locations where that alcoholic liquor is sold.

## **BRAND EXTENSIONS**

Brand extensions extend across all categories of beer, wine, and mixed spirit drink. For example, if the original brand is a beer and a brand extension is developed that is a wine or mixed spirit drink, the distributor has rights to that extension.

Additionally, if a new supplier produces a brand extension, the distributor has rights to that extension.