

STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

**Introduced by Reps. Dianda, Haugh, Kelly, McBroom, Yonker, Stanley, Driskell, Cochran, Kivela, Dillon,
Howrylak, Rendon, Lauwers, LaVoy, Franz, Irwin and Oakes**

ENROLLED HOUSE BILL No. 4573

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to prohibit the use of certain devices for the dispensing of alcoholic vapor; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending sections 525, 529, 541, and 903 (MCL 436.1525, 436.1529, 436.1541, and 436.1903), section 525 as amended by 2014 PA 353, section 541 as amended by 2008 PA 489, and section 903 as amended by 2010 PA 175.

The People of the State of Michigan enact:

Sec. 525. (1) Except as otherwise provided in this section, the following license fees shall be paid upon issuance of the license or as otherwise provided in this act and are subject to allocation under section 543:

(a) Manufacturers of spirits, not including makers, blenders, and rectifiers of wines containing 21% or less alcohol by volume, \$1,000.00.

(b) Manufacturers of beer, \$50.00 per 1,000 barrels, or fraction of a barrel, production annually with a maximum fee of \$1,000.00, and in addition \$50.00 for each motor vehicle used in delivery to retail licensees. A fee increase does not apply to a manufacturer of less than 15,000 barrels production per year.

(c) Outstate seller of beer, delivering or selling beer in this state, \$1,000.00.

(d) Wine makers, blenders, and rectifiers of wine, including makers, blenders, and rectifiers of wines containing 21% or less alcohol by volume, \$100.00. The small wine maker license fee is \$25.00.

(e) Outstate seller of wine, delivering or selling wine in this state, \$300.00.

(f) Outstate seller of mixed spirit drink, delivering or selling mixed spirit drink in this state, \$300.00.

(g) Dining cars or other railroad or Pullman cars selling alcoholic liquor, \$100.00 per train.

(h) Wholesale vendors other than manufacturers of beer, \$300.00 for the first motor vehicle used in delivery to retail licensees and \$50.00 for each additional motor vehicle used in delivery to retail licensees.

(i) Watercraft, licensed to carry passengers, selling alcoholic liquor, a minimum fee of \$100.00 and a maximum fee of \$500.00 per year computed on the basis of \$1.00 per person per passenger capacity.

(j) Specially designated merchants, for selling beer or wine for consumption off the premises only but not at wholesale, \$100.00 for each location regardless of whether the location is part of a system or chain of merchandising.

(k) Specially designated distributors licensed by the commission to distribute spirits and mixed spirit drink in the original package for the commission for consumption off the premises, \$150.00 per year, and an additional fee of \$3.00 for each \$1,000.00 or major fraction of that amount in excess of \$25,000.00 of the total retail value of merchandise purchased under each license from the commission during the previous calendar year.

(l) Hotels of class A selling beer and wine, a minimum fee of \$250.00 and \$1.00 for each bedroom in excess of 20, but not more than \$500.00 total.

(m) Hotels of class B selling beer, wine, mixed spirit drink, and spirits, a minimum fee of \$600.00 and \$3.00 for each bedroom in excess of 20. If a hotel of class B sells beer, wine, mixed spirit drink, and spirits in more than 1 public bar, a fee of \$350.00 shall be paid for each additional public bar, other than a bedroom.

(n) Taverns, selling beer and wine, \$250.00.

(o) Class C license selling beer, wine, mixed spirit drink, and spirits, \$600.00. Subject to section 518(2), if a class C licensee sells beer, wine, mixed spirit drink, and spirits in more than 1 bar, a fee of \$350.00 shall be paid for each additional bar. In municipally owned or supported facilities in which nonprofit organizations operate concession stands, a fee of \$100.00 shall be paid for each additional bar.

(p) Clubs selling beer, wine, mixed spirit drink, and spirits, \$300.00 for clubs having 150 or fewer accredited members and \$1.00 for each member in excess of 150. Clubs shall submit a list of members by a sworn affidavit 30 days before the closing of the license year. The sworn affidavit shall be used only for determining the license fees to be paid under this subdivision. This subdivision does not prevent the commission from checking a membership list and making its own determination from the list or otherwise. The list of members and additional members is not required of a club paying the maximum fee. The maximum fee shall not exceed \$750.00 for any 1 club.

(q) Warehousemen, to be fixed by the commission with a minimum fee for each warehouse of \$50.00.

(r) Special licenses, a fee of \$50.00 per day, except that the fee for that license or permit issued to any bona fide nonprofit association, duly organized and in continuous existence for 1 year before the filing of its application, is \$25.00. Not more than 12 special licenses may be granted to any organization, including an auxiliary of the organization, in a calendar year.

(s) Airlines licensed to carry passengers in this state that sell, offer for sale, provide, or transport alcoholic liquor, \$600.00.

(t) Brandy manufacturer, \$100.00.

(u) Mixed spirit drink manufacturer, \$100.00.

(v) Brewpub, \$100.00.

(w) Class G-1, \$1,000.00.

(x) Class G-2, \$500.00.

(y) Motorsports event license, the amount as described and determined under section 518(2).

(z) Small distiller, \$100.00.

(aa) Wine auction license, \$50,000.00.

(bb) Nonpublic continuing care retirement center license, \$600.00.

(cc) Conditional license approved under subsection (6) and issued under subsection (7), \$300.00.

(2) The fees provided in this act for the various types of licenses shall be prorated on a quarterly basis for a portion of the effective period of the license based upon the approval date of the application. An applicant or licensee that has submitted an application for a license that will be effective for less than 9 months shall pay a prorated license fee. Notwithstanding subsection (1), the initial license fee for any licenses issued under section 531(3) or (4) is \$20,000.00. The renewal license fee shall be the amount described in subsection (1). However, the commission shall not impose the \$20,000.00 initial license fee for applicants whose license eligibility was already approved on July 20, 2005.

(3) If the commission requires an applicant to submit fingerprints, the applicant shall have the fingerprints taken by a local law enforcement agency, the department of state police, or any other person qualified to take fingerprints as determined by the department of state police. The applicant shall submit the fingerprints and the appropriate state and federal fees, which shall be borne by the applicant, to the department of state police and the federal bureau of investigation for a criminal history check. After conducting the criminal history check, the department of state police shall provide the commission with a report of the criminal history check. The report shall contain criminal history record

information concerning the person who is the subject of the criminal history check that is maintained by the department of state police. If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted pursuant to this act and stored in its automated fingerprint identification system (AFIS) database, the department of state police shall notify the commission.

(4) Except in the case of any resort or resort economic development license issued under section 531(2), (3), (4), or (5) or a license issued under section 521a, the commission shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. The application is considered to be received the date the application is received by any agency or department of this state. If the commission determines that an application is incomplete, the commission shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility upon an applicant determined otherwise ineligible for issuance of a license. The 90-day period is tolled for the following periods under any of the following circumstances:

(a) If notice is sent by the commission of a deficiency in the application, until the date all of the requested information is received by the commission.

(b) For the time required to complete actions required by a person, other than the applicant or the commission, including, but not limited to, completion of construction or renovation of the licensed premises; mandated inspections by the commission or by any state, local, or federal agency; approval by the legislative body of a local unit of government; criminal history or criminal record checks; financial or court record checks; or other actions mandated by this act or rule or as otherwise mandated by law or local ordinance.

(5) If the commission fails to issue or deny a license within the time required by this section, the commission shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the commission to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The commission shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(6) If, in addition to a completed application under this section, an applicant submits a separate form requesting a conditional license with an acceptable proof of financial responsibility form under section 803, and an executed property document, the commission shall, after considering the arrest and conviction records or previous violation history in the management, operation, or ownership of a licensed business, approve or deny a conditional license. A conditional license issued under subsection (7) for the transfer of an existing license at the same location shall include any existing permits and approvals held in connection with that license. The following applicants may request a conditional license:

(a) An applicant seeking to transfer ownership of or interest in an existing license at the same location to sell alcoholic liquor for consumption on or off the premises.

(b) An applicant seeking an initial license other than a specially designated distributor license or a license for the sale of alcoholic liquor for consumption on the premises.

(7) The commission shall issue a conditional license to applicants approved under subsection (6) within 20 business days after receipt of a completed application and a completed conditional license request form and documentation for a conditional license at a single location. The commission may take up to 30 business days to issue conditional licenses to approved applicants seeking conditional licenses at multiple locations.

(8) A conditional license approved under subsection (6) and issued under subsection (7) is nontransferable and nonrenewable. A conditional license approved under subsection (6) and issued under subsection (7) expires when the commission issues an order of denial of the license application that serves as the basis for the conditional license after all administrative remedies before the commission have been exhausted, expires 20 business days after the commission issues an order of approval of the license application that serves as the basis for the conditional license, expires when the licensee or conditional licensee notifies the commission in writing that the initial application should be canceled, or expires 1 year after the date the conditional license was issued, whichever occurs first. If a conditionally approved licensee fails to maintain acceptable proof of its financial responsibility, the commission shall, after due notice and proper hearing, suspend the conditional license until the licensee files an acceptable proof of financial responsibility form under section 803. If a conditional license is revoked, the conditional licensee shall not recover from a unit of local government any compensation for property, future income, or future economic loss due to the revocation.

(9) Upon issuing a conditional license under subsection (7), the commission shall, until the conditional license expires under subsection (8), place an existing license under subsection (4) in escrow in compliance with R 436.1107 of the Michigan administrative code. If the conditional license expires because a transfer of an existing license was denied or because the license was not transferred within the 1-year period, an existing licensee may do 1 of the following:

(a) Request that the commission release the license from escrow.

(b) Keep the license in escrow. The escrow date for compliance with R 436.1107 of the Michigan administrative code shall be the date the conditional license expires.

(10) The chair of the commission shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with liquor license issues. The chair of the commission shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the commission received and completed within the 90-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees under subsection (5).

(11) As used in this section, "completed application" means an application complete on its face and, except as otherwise provided under this section, submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

Sec. 529. (1) A license or an interest in a license shall not be transferred from 1 person to another without the prior approval of the commission. For purposes of this section, the transfer in the aggregate to another person during any single licensing year of more than 10% of the outstanding stock of a licensed corporation or more than 10% of the total interest in a licensed limited partnership is considered to be a transfer requiring the prior approval of the commission.

(2) Not later than July 1 of each year, each privately held licensed corporation and each licensed limited partnership shall notify the commission as to whether any of the shares of stock in the corporation, or interest in the limited partnership, have been transferred during the preceding licensing year. The commission may investigate the transfer of any number of shares of stock in a licensed corporation, or any amount of interest in a licensed limited partnership, for the purpose of ensuring compliance with this act and the rules promulgated under this act.

(3) Except as otherwise provided in subdivisions (a) through (f), after approval by the commission of a transfer subject to subsection (1), an applicant or licensee shall pay the commission a transfer fee equal to the fee provided in this act for the class of license being transferred. A transfer fee shall be prorated on a quarterly basis for a portion of the effective period of the license based upon the approval date of the application. If a person holding more than 1 license or more than 1 interest in a license at more than 1 location, but in the name of a single legal entity, transfers all of the licenses or interests in licenses simultaneously to another single legal entity, the transfers shall be considered 1 transfer for purposes of determining a transfer fee, payable in an amount equal to the highest license fee provided in this act for any of the licenses, or interests in licenses, being transferred. A transfer fee shall not be required in regard to any of the following:

(a) The transfer, in the aggregate, of less than 50% of the outstanding shares of stock in a licensed corporation or less than 50% of the total interest in a licensed limited partnership during any licensing year.

(b) The exchange of the assets of a licensed sole proprietorship, licensed general partnership, or licensed limited partnership for all outstanding shares of stock in a corporation in which either the sole proprietor, all members of the general partnership, or all members of the limited partnership are the only stockholders of that corporation. An exchange under this subdivision shall not be considered an application for a license for the purposes of section 501.

(c) The transfer of the interest in a licensed business of a deceased licensee, a deceased stockholder, or a deceased member of a general or limited partnership to the deceased person's spouse or children.

(d) The removal of a member of a firm, a stockholder, a member of a general partnership or limited partnership, or association of licensees from a license.

(e) The addition to a license of the spouse, son, daughter, or parent of any of the following:

(i) A licensed sole proprietor.

(ii) A stockholder in a licensed corporation.

(iii) A member of a licensed general partnership, licensed limited partnership, or other licensed association.

(f) The occurrence of any of the following events:

(i) A corporate stock split of a licensed corporation.

(ii) The issuance to a stockholder of a licensed corporation of previously unissued stock as compensation for services performed.

(iii) The redemption by a licensed corporation of its own stock.

(4) A nonrefundable inspection fee of \$70.00 shall be paid to the commission by an applicant or licensee at the time of filing any of the following:

(a) An application for a new license or permit.

(b) A request for approval of a transfer of ownership or location of a license.

(c) A request for approval to increase or decrease the size of the licensed premises, or to add a bar.

(d) A request for approval of the transfer in any licensing year of any of the shares of stock in a licensed corporation from 1 person to another, or any part of the total interest in a licensed limited partnership from 1 person to another.

(5) An inspection fee shall be returned to the person who paid the fee if the purpose of the inspection was to inspect the physical premises of the licensee, and the inspection was not actually conducted. An inspection fee is not required for any of the following:

(a) The issuance or transfer of a special license, salesperson license, limited alcohol buyer license, corporate salesperson license, hospital permit, military permit, or Sunday sale of spirits permit.

(b) The issuance of a new permit, or the transfer of an existing permit, if the permit is issued or transferred simultaneously with the issuance or transfer of a license or an interest in a license.

(c) The issuance of authorized but previously unissued corporate stock to an existing stockholder of a licensed corporation.

(d) The transfer from a corporation to an existing stockholder of any of the corporation's stock that is owned by the corporation itself.

(6) All inspection fees collected under this section shall be deposited in the special fund in section 543 for carrying out of the licensing and enforcement provisions of this act.

Sec. 541. (1) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license or specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises, if both of the following conditions are met:

(a) One or both of the following conditions exist:

(i) The applicant or licensee is located in a neighborhood shopping center composed of 1 or more commercial establishments organized or operated as a unit that is related in location, size, and type of shop to the trade area that the unit serves and consists of not less than 50,000 square feet of gross leasable retail space, and that provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space.

(ii) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(b) The site of payment and selection of alcoholic liquor is not less than 50 feet from that point where motor vehicle fuel is dispensed.

(2) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license or specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises, if all of the following conditions are met:

(a) The applicant is located in a township with a population of 7,000 or less that is not contiguous with any other township. For purposes of this subdivision, a township is not considered contiguous by water.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$12,500.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(c) The applicant has the approval of the township, as evidenced by a resolution duly adopted by the township and submitted with the application to the commission.

(3) The commission shall not prohibit an applicant for or the holder of a specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

(a) The applicant or licensee is located in either of the following:

(i) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of 31,000 or more.

(ii) A city, incorporated village, or township with a population of 4,000 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$10,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(4) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

(a) The applicant or licensee is located in either of the following:

(i) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of 31,000 or more.

(ii) A city, incorporated village, or township with a population of 4,000 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$12,500.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(5) A person who was issued a specially designated merchant license or specially designated distributor license at a location at which another person owned, operated or maintained motor vehicle fuel pumps at the same location may have or acquire an interest in the ownership, operation or maintenance of those motor vehicle fuel pumps.

(6) The commission may transfer ownership of a specially designated merchant license or specially designated distributor license to a person who owns or is acquiring an interest in motor vehicle fuel pumps already in operation at the same location at which the license is issued.

(7) Notwithstanding R 436.1129 of the Michigan administrative code, the holder of a specially designated merchant license for a primary location may also sell beer and wine from a secondary location under the specially designated merchant license issued for the primary location if all of the following apply:

(a) The secondary location is owned or leased by the holder of the specially designated merchant license for the primary location.

(b) The holder of the specially designated merchant license qualified for or holds the specially designated merchant license for the primary location under subsection (1), (2), (3), (4), or (5).

(c) The holder of the specially designated merchant license for the primary location also owns or operates motor vehicle fuel pumps at the secondary location.

(d) Beer and wine are only transported between the primary location and the secondary location by an employee of the holder of the specially designated merchant license or an employee of a subsidiary or affiliate of that licensed holder.

(8) As used in this section:

(a) "Primary location" means a licensed premises that meets the conditions under subsection (1)(a) and (b).

(b) "Secondary location" means real property that includes at least 1 building and 1 or more motor fuel pumps and is located on or adjacent to the primary location.

Sec. 903. (1) The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, upon due notice and proper hearing, may suspend or revoke any license upon a violation of this act or any of the rules promulgated by the commission under this act. The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, may assess a penalty of not more than \$300.00 for each violation of this act or rules promulgated under this act, or not more than \$1,000.00 for each violation of section 801(2), in addition to or in lieu of revocation or suspension of the license, which penalty shall be paid to the commission and deposited with the state treasurer and shall be credited to the general fund of the state. The commission shall hold a hearing and order the suspension or revocation of a license if the licensee has been found liable for 3 or more separate violations of section 801(2) which violations occurred on different occasions in the same building within a 24-month period unless such violations for the sale, furnishing, or giving alcoholic liquor to a minor were discovered by the licensee and disclosed to an appropriate law enforcement agency immediately upon discovery. A retail licensee who sells, offers to sell, accepts, furnishes, possesses, or allows the consumption of spirits in violation of section 901(6) is subject to an administrative fine of not more than \$2,500.00 per occurrence and the following license sanctions after notice and opportunity for an administrative hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328:

(a) For a first violation, a license revocation or suspension for between 1 and 30 days.

(b) For a second violation in the same building, a license revocation or suspension for between 31 and 90 days.

(c) For a third or subsequent violation in the same building, revocation of the license.

(2) The commission shall provide a procedure by which a licensee who is aggrieved by any penalty imposed under subsection (1) and any suspension or revocation of a license ordered by the commission, a commissioner, or a duly authorized agent of the commission may request a hearing for the purpose of presenting any facts or reasons to the commission as to why the penalty, suspension, or revocation should be modified or rescinded. Any such request shall be in writing and accompanied by a fee of \$25.00. The commission, after reviewing the record made before a commissioner or a duly authorized agent of the commission, may allow or refuse to allow the hearing in accordance with the commission's rules. The right to a hearing provided in this subsection, however, shall not be interpreted by any court as curtailing, removing, or annulling the right of the commission to suspend or revoke licenses as provided for in this act. A licensee does not have a right of appeal from the final determination of the commission, except by leave of the circuit court. Notice of the order of suspension or revocation of a license or of the assessment of a penalty, or both, shall be given in the manner prescribed by the commission. The suspension or revocation of a license or the assessment of a penalty, or both, by the commission or a duly authorized agent of the commission does not prohibit the institution of a criminal

prosecution for a violation of this act. The institution of a criminal prosecution for a violation of this act or the acquittal or conviction of a person for a violation of this act does not prevent the suspension or revocation of a license or the assessment of a penalty, or both, by the commission. In a hearing for the suspension or revocation of a license issued under this act, proof that the defendant licensee or an agent or employee of the licensee demanded and was shown, before furnishing any alcoholic liquor to a minor, a motor vehicle operator or chauffeur license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of the person, may be offered as evidence in a defense to a proceeding for the suspension or revocation of a license issued under this act. A licensee who has reason to believe that a minor has used fraudulent identification to purchase alcoholic liquor in violation of section 703 shall file a police report concerning the violation with a local law enforcement agency and shall also present the alleged fraudulent identification to the local law enforcement agency at the time of filing the report if the identification is in the possession of the licensee. The commission may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding the utilization by licensees of equipment designed to detect altered or forged driver licenses, state identification cards, and other forms of identification.

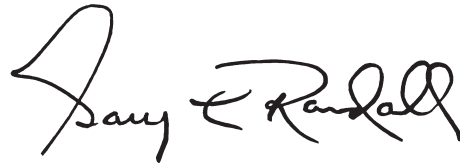
(3) In addition to the hearing commissioners provided for in section 209, the chairperson of the commission may designate not more than 2 duly authorized agents to hear violation cases. A person appointed under this subsection shall be a member in good standing of the state bar of Michigan.

(4) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall have, in the hearing of violation cases, the same authority and responsibility as does a hearing commissioner under this act and the rules promulgated under this act.

(5) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall be ineligible for appointment to the commission for a period of 1 year after the person ceases to serve as a duly authorized agent.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor