

HOUSE BILL No. 4917

September 29, 2015, Introduced by Reps. Kesto, Heise, Iden and Vaupel and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled "Michigan liquor control code of 1998," by amending section 609 (MCL 436.1609), as amended by 2014 PA 353.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 609. (1) Except as provided in this section and sections
2 605 and 1029, a manufacturer, mixed spirit drink manufacturer,
3 warehouser, wholesaler, outstate seller of beer, outstate seller of
4 wine, outstate seller of mixed spirit drink, or vendor of spirits
5 shall not aid or assist any other vendor by gift, loan of money or
6 property of any description, or other valuable thing, or by the
7 giving of premiums or rebates, and a vendor shall not accept the
8 same. However, if manufacturers of spirits reduce the price of
9 their products, the manufacturer of spirits may refund the amount
10 of the price reductions to specially designated distributor
11 licensees in a manner prescribed by the commission.

1 (2) A manufacturer, mixed spirit drink manufacturer,
2 warehouse, wholesaler, outstate seller of beer, outstate seller of
3 wine, outstate seller of mixed spirit drink, or vendor of spirits
4 may, in a manner consistent with rules, regulations, and orders
5 made by the commission, provide another licensee with advertising
6 items that promote the brands and prices of alcoholic liquor
7 produced by the manufacturer; sold by the outstate seller of beer,
8 the outstate seller of wine, or the outstate seller of mixed spirit
9 drink; or distributed by the wholesaler. Except as otherwise
10 provided under subsection (3), (4), or (5), the advertising items
11 ~~shall~~**MUST** not have any use or value beyond the actual advertising
12 of brands and prices of the alcoholic liquor.

13 (3) Except for those orders that were approved for specific
14 sponsorships or festivals, a manufacturer, mixed spirit drink
15 manufacturer, warehouse, wholesaler, outstate seller of beer,
16 outstate seller of wine, outstate seller of mixed spirit drink, or
17 vendor of spirits may provide goods and services to another
18 licensee that were approved by the commission ~~pursuant to~~**UNDER**
19 rules or orders adopted ~~prior to~~**BEFORE** January 1, 2014 and the
20 following items:

- 21 (a) Alcoholic liquor recipes literature.
22 (b) Calendars and matchbooks.
23 (c) Removable tap markers or signs.
24 (d) Table tents.
25 (e) Shelf talkers.
26 (f) Bottle neckers.
27 (g) Cooler stickers.

1 (h) Buttons, blinking and nonblinking.

2 (i) Menu clip-ons.

3 (j) Mirrors.

4 (k) Napkin holders.

5 (l) Spirits cold shot tap machines.

6 (m) Alcoholic liquor drink menus.

7 (n) Keg couplers that are lent to an on-premises retailer.

8 (o) Sporting event or entertainment tickets.

9 (4) A wholesaler may sell brand logoed items to an off-
10 premises licensee if those brand logoed items are contained within
11 the packaging of an alcoholic liquor product that is to be sold to
12 a consumer.

13 (5) A retailer shall not use or possess, at its licensed
14 premises, advertising items that have a use or value beyond the
15 actual advertising of brands and prices of alcoholic liquor except
16 for those **ITEMS** allowed ~~in~~**UNDER** subsections (3) and (4) or as
17 otherwise ~~provided in~~**ALLOWED UNDER** this subsection. A retailer may
18 possess and use brand logoed barware that advertises spirits ~~as~~
19 ~~long as these~~**IF THE** items are purchased from a manufacturer of
20 spirits, vendor of spirits, salesperson, broker, or barware
21 retailer. A retailer may possess and use brand logoed barware that
22 advertises beer or wine ~~as long as these~~**IF THE** items are purchased
23 from a barware retailer. A retailer shall maintain the receipts of
24 all purchased brand logoed barware for at least 3 years and shall
25 make those receipts available for inspection by the commission as
26 provided in section 217. Beginning in the 2015 licensing year, a
27 retailer shall disclose, in a manner as prescribed by the

1 commission on the application for renewal of an existing license,
2 if any barware was purchased by the retailer during the immediately
3 preceding license year.

4 (6) In addition to the penalties provided under section 903, a
5 manufacturer of beer or wine, mixed spirit drink manufacturer,
6 warehouser, wholesaler, outstate seller of beer, outstate seller of
7 wine, or outstate seller of mixed spirit drink that provides or
8 sells barware and is not authorized to provide or sell barware is
9 subject to a fine in an amount of up to \$2,500.00 as determined by
10 the commission. Multiple violations resulting from the same
11 incident may be treated as a single violation for purposes of
12 issuance of any penalty imposed under this act.

13 (7) An on-premises retailer that hosts an on-premises brand
14 promotional event conducted by a wholesaler or supplier has 14 days
15 after the event to remove from the premises any brand logoed
16 merchandise from the event to maintain compliance with this
17 section.

18 (8) This act and rules promulgated under this act do not
19 prevent a retailer that holds an off-premises license only from
20 purchasing brand logoed inventory and selling that inventory to its
21 customers.

22 (9) Beginning after September 25, 2015, the commission may, by
23 rule, add an item to or remove an item from the definition of
24 barware. The commission shall not add or remove more than 1 item
25 per rule and shall not promulgate more than 1 rule at a time on the
26 definition of barware. The commission shall not issue a rule that
27 adds refrigerator systems, draft systems, or furniture to the

1 definition of barware. A rule, regulation, or order adopted after
2 January 1, 2014 that is not adopted in accordance with this
3 subsection and that is not consistent with this section or is in
4 conflict with this section is void and unenforceable.

5 (10) As used in this section:

6 **(A) "ADVERTISING" DOES NOT INCLUDE A SOCIAL MEDIA PROMOTION.**

7 **(B) ~~(a)~~**"Barware" means the following brand logoed items:

8 (i) Trays.

9 (ii) Coasters.

10 (iii) Napkins.

11 (iv) Shirts.

12 (v) Hats.

13 (vi) Pitchers.

14 (vii) Drinkware that is intended to be reused.

15 (viii) Bar mats.

16 (ix) Buckets.

17 (x) Bottle openers.

18 (xi) Stir rods.

19 (xii) Patio umbrellas.

20 (xiii) Any packaging used to hold and deliver the alcoholic
21 liquor purchased by the retailer.

22 (xiv) Any other items that have been added by the commission
23 ~~pursuant to~~ **UNDER** subsection (9).

24 **(C) ~~(b)~~**"Barware retailer" means a person that offers brand
25 logoed barware for sale to retailers, whether or not it is in their
26 ordinary course of business, and that is not licensed as, or
27 directly or indirectly affiliated with, a manufacturer of beer or

1 wine, mixed spirit drink manufacturer, warehouse, wholesaler,
 2 outstate seller of beer, outstate seller of wine, or outstate
 3 seller of mixed spirit drink. For purposes of this subdivision, a
 4 licensing agreement that authorizes use of a brand logo ~~does~~**IS** not
 5 ~~constitute~~a direct or indirect affiliation.

6 (D) ~~(e)~~"Broker" means a person, other than an individual,
 7 that is licensed by the commission and that is employed or
 8 otherwise retained by a manufacturer of spirits or a vendor of
 9 spirits to sell, promote, or otherwise assist in the sale or
 10 promotion of spirits.

11 (E) ~~(d)~~"Indirectly affiliated" means, for purposes of this
 12 section only, that a person owns 5% or more of the voting interest
 13 of another person.

14 (F) ~~(e)~~"Other valuable thing" means ~~any goods, services, A~~
 15 **GOOD, SERVICE**, or intangible ~~goods~~**GOOD** that ~~are~~**IS** given, loaned,
 16 leased, or sold to another licensee that ~~have~~**HAS** value regardless
 17 of whether the value is nominal and includes, but is not limited
 18 to, ~~goods, services, A GOOD, SERVICE~~, or intangible ~~goods~~**GOOD** that
 19 ~~provided any~~**PROVIDES A** benefit, regardless of how nominal, to the
 20 licensee. ~~other than advertising~~**OTHER VALUABLE THING DOES NOT**
 21 **INCLUDE ANY OF THE FOLLOWING:**

22 (i) **ADVERTISING** the brands and prices of alcoholic liquor
 23 produced by the manufacturer; ~~—~~sold by the outstate seller of
 24 beer, the outstate seller of wine, or the outstate seller of mixed
 25 spirit drink; ~~—~~or distributed by the wholesaler. ~~—except for~~

26 (ii) **A consumable** ~~goods~~**GOOD**. ~~and those goods, services,~~

27 (iii) **A GOOD, SERVICE**, or intangible ~~goods~~**GOOD** approved by rule

1 or order of the commission ~~prior to~~ **BEFORE** January 1, 2014.

2 **(iv) A SOCIAL MEDIA PROMOTION.**

3 **(G)** ~~(F)~~-"Salesperson" means a person who is employed by a
4 vendor of spirits or a broker and who is licensed by the commission
5 to sell, deliver, or promote, or otherwise assist in the sale of,
6 spirits in this state.

7 **(H) "SOCIAL MEDIA PROMOTION" MEANS A PROMOTION BY A VENDOR ON**
8 **A WEBSITE, SOCIAL MEDIA, OR ANY OTHER ELECTRONIC MEDIA.**

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