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Michigan House of Representatives
State Capitol
Lansing, Michigan 48909-7514

Ladies and Gentleman:

As presented, Enrolled House Bill 6007 would modernize many elements of the Michigan Liquor Control Code of 1998 ("Code") in ways that would benefit the hospitality and tourism industry in this state, including the growing craft brewery and winery sectors of the Michigan economy. I wholeheartedly support provisions of the bill that would expand options for consumers to purchase alcoholic beverages, including on Sundays and holidays, enable Michigan wineries and craft breweries to increase exposure for their products, and protect Michigan consumers and job providers by safeguarding Michigan's three-tier system for the distribution and sale of alcoholic beverages.

While these important reforms are included in Enrolled House Bill 6007, other provisions of the bill potentially would undermine protections under Michigan's three-tier system, establish a new, unlevel playing field on which some Michigan businesses would be forced to compete, and diminish otherwise positive elements of the legislation. These concerns were not addressed, and may have been exacerbated by, the abbreviated legislative debate on the bill. Three provisions of the bill are particularly problematic.

First, Section 545 would enable an unlimited number of Michigan restaurants and other food establishments to sell and deliver alcoholic liquor directly to consumers at off-premises locations. While this change undoubtedly would benefit the restaurant industry, it also would be highly detrimental to many small businesses currently authorized to sell alcoholic beverages for off-premises consumption by consumers. These same job providers recently saw their business curtailed by the enactment of Public Act 474 of 2008, which prohibited them from delivering to customers at off-premises locations. Public Act 474 was necessitated by a ruling of the United States District Court for the Eastern District of Michigan holding that provisions of the Code that enabled only in-state retailers to deliver alcoholic beverages directly to consumers were unconstitutional. The Court indicated that laws requiring an "entity to maintain residency in the home state in order to compete on equal terms" with in-state businesses violate the Commerce Clause." Within days of that decision, the Legislature presented me with a bill prohibiting all retailers, both in-state and out-state, from delivering alcoholic beverages to Michigan consumers. Proponents of the 2008 legislation argued that it was necessary to prevent a flood of unregulated out-of-state liquor from entering Michigan and undermining the protections of the three-tier system. I signed that bill into law. Unfortunately, Section 545 of Enrolled House Bill 6007 would

leave Michigan vulnerable to a similar legal challenge, increasing the risk of costly litigation. If the bill is enacted, in-state food establishments would be authorized to deliver alcoholic liquor directly to consumers but out-state food establishments would not. This directly contradicts the rationale for Public Act 474. Either that rationale remains and the Commerce Clause still requires that in-state food establishments be treated in the same manner as out-state food establishments or the rationale no longer applies and the restriction on the delivery of alcoholic liquor by in-state retailers imposed under Public Act 474 should be lifted. Unfortunately, this legislation does neither.

Second, Section 513 appears to be a local or special act with applicability limited only to specifically designated universities and community colleges. Because Section 29 of Article IV of the Michigan Constitution of 1963 prohibits the Legislature from passing a local or special act in any case where a general act can be made applicable, this provision is vulnerable to a constitutional challenge and increases the risk of costly litigation. The licenses authorized under Section 513 could instead be enabled by generally applicable language, eliminating this vulnerability and providing greater certainty to the entities affected.

Third, Section 537 would authorize the provision of free samples of wine totaling up to nine ounces. I believe this amount is too high. I could support a lower amount consistent with lower free sample sizes authorized in other states.

Accordingly, as provided under Section 33 of Article IV of the Michigan Constitution of 1963, I disapprove Enrolled House Bill 6007 and return the legislation without signature. I look forward to working with the Legislature to enact revised legislation that addresses the concerns raised while continuing to benefit consumers and businesses in Michigan.

Respectfully,



Jennifer M. Granholm
Governor