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Act No. 126

Public Acts of 2020

Approved by the Governor

July 1, 2020

Filed with the Secretary of State

July 1, 2020

EFFECTIVE DATE: July 1, 2020

**STATE OF MICHIGAN**

**100TH LEGISLATURE**

**REGULAR SESSION OF 2020**

**Introduced by Senator Nesbitt**

**ENROLLED SENATE BILL NO. 942**

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 205, 233, 536, 609c, and 1014 (MCL 436.1205, 436.1233, 436.1536, 436.1609c, and 436.2014), section 205 as amended by 2015 PA 246, section 536 as amended by 2019 PA 131, section 609c as added by 2017 PA 130, and section 1014 as added by 2015 PA 47.

*The People of the State of Michigan enact:*

Sec. 205. (1) The commission shall, as provided in section 203(1), by order appoint authorized distribution agents to warehouse and deliver spirits in this state to ensure that all retail licensees are properly serviced with spirits. An authorized distribution agent is subject to uniform requirements, including business operating procedures, that the commission may prescribe by rule, subject to this section.

(2) A person is eligible for appointment by the commission as an authorized distribution agent if all of the following circumstances exist:

(a) The person satisfies all applicable commission rules prescribing qualifications for licensure promulgated under section 215.

(b) The person has entered into a written agreement or contract with a supplier of spirits to warehouse and deliver a brand or brands of spirits of that supplier of spirits.

(c) The person has an adequate warehousing facility located in this state to store spirits from which all delivery of spirits to retail licensees must be made.

(3) An authorized distribution agent shall not have a direct or indirect interest in a supplier of spirits or in a retailer. A supplier of spirits or a retailer shall not have a direct or indirect interest in an authorized distribution agent. An authorized distribution agent shall not hold title to spirits.

(4) An authorized distribution agent shall deliver to each retailer located in its assigned distribution area on at least a weekly basis if the order meets the minimum requirements. Except that in a week that accompanies a state holiday, the commission may order a modified delivery schedule if a retailer will not wait longer than 9 days between deliveries because of the modified delivery schedule. The commission shall provide for an integrated online ordering system for spirits and shall require the continuance of any ordering system in existence on the activation date of the system established under section 206. The commission shall set minimum requirements that must be a sufficient number of bottles to comprise not more than 2 cases. A retailer may pick up the product at the authorized distribution agent's warehouse. To avoid occasional emergency outages of spirits, a retail licensee may make up to 12 special emergency orders to an authorized distribution agent in each calendar year. An authorized distribution agent shall make a special emergency order available to the retail licensee within 18 hours of the placing of the order. An authorized distribution agent shall make a special emergency order placed on Saturday or Sunday available to the retail licensee before noon on the following Monday. An authorized distribution agent may impose a fee of up to $20.00 to deliver a special emergency order to a retail licensee.

(5) In locations inaccessible to a motor vehicle as that term is defined by section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, an authorized distribution agent shall arrange that a delivery of spirits to a retailer be in compliance with the following procedures:

(a) After processing an order from a retailer, an authorized distribution agent shall contact a retailer to confirm the quantity of cases or bottles, or both, and the exact dollar total of the order.

(b) The authorized distribution agent shall coordinate with the retailer the date and time a driver is scheduled to deliver the order to a ferry transport dock, shall arrange any ferry, drayage, or other appropriate service, and shall pick up the retailer's payment at that time.

(c) The ferry transport company or company representing any other form of conveyance shall take the retailer's payment to the mainland dock and give that payment to the authorized distribution agent's driver.

(d) The ferry transport company or company representing any other form of conveyance shall transport the order to the drayage or other appropriate company at the island dock for immediate delivery to the retailer.

(e) The drayage or other appropriate company shall deliver the order to the retailer.

(6) An authorized distribution agent is responsible for the payment of all transportation and delivery charges imposed by the ferry, drayage, or other conveyance company and is responsible for all breakage and any shortages, whether attributable to the ferry, drayage, or other conveyance company or any combination of those companies, until the order is delivered to the retailer's establishment. This subsection does not prevent the authorized distribution agent from seeking reimbursement or damages from any company conveying the authorized distribution agent's product.

(7) Except as otherwise provided in subsection (4), an authorized distribution agent shall not charge a delivery fee or a split-case fee for delivery of spirits sold by the commission to a retailer.

(8) An authorized distribution agent or prospective authorized distribution agent shall maintain and make available to the commission or its representatives, on notice, any contract or written agreement it has with a supplier of spirits or other authorized distribution agent for the warehousing and delivering of spirits in this state.

(9) For a violation of this act, a rule promulgated under this act, or the terms of an order appointing an authorized distribution agent, an authorized distribution agent is subject to the suspension, revocation, forfeiture, and penalty provisions of sections 903(1) and 907 in the same manner in which a licensee would be subject to those provisions. An authorized distribution agent aggrieved by a penalty imposed by the commission may invoke the hearing and appeal procedures of section 903(2) and rules promulgated under section 903.

(10) A specially designated distributor may sell to an on-premises retailer up to 120 liters of spirits during any calendar year and an on-premises retailer may purchase, collectively from specially designated distributors, up to 120 liters of spirits during any calendar year. Notwithstanding any other provision of this act or rule promulgated under this act, a specially designated distributor is only liable for knowingly violating this section. An on-premises retailer shall maintain and make available to the commission on request records verifying the purchases described in this subsection. For each month in which an on-premises retailer purchases spirits under this subsection, the on-premises retailer shall submit a report to the commission indicating the purchases the on-premises retailer made under this subsection during that month. Within 30 days after the effective date of the amendatory act that added this sentence, the commission shall establish the method and form for the electronic reporting of purchases made under this subsection by on-premises retailers. The commission shall not require an on-premises retailer to submit a report under this subsection in less than monthly intervals and shall not require a report from an on-premises retailer in a month in which the on-premises retailer did not purchase spirits under this subsection.

(11) In addition to paying a vendor of spirits the acquisition price for purchasing spirits, the commission may pay a vendor of spirits an additional amount of not less than $4.50 and not more than $8.25 for each case of spirits purchased as an offset to the costs being incurred by that vendor of spirits in contracting with an authorized distribution agent for warehousing and delivering spirits to retailers. The payment described in this subsection may not be included in the cost of purchasing spirits by the commission and is not subject to the commission's markup, special taxes, or state sales tax. The per-case offset established by this subsection may be increased by the state administrative board each January to reflect reasonable increases in the authorized distribution agent's cost of warehousing and delivering. As used in this subsection, "case" means a container holding twelve 750 ml bottles of spirits or other containers containing spirits that are standard to the industry.

Sec. 233. (1) The commission shall establish uniform prices for the sale of alcoholic liquor by specially designated distributors. The prices must return a gross profit to the commission of not less than 51% and not greater than 65%. If alcoholic liquor purchased by the commission has not met sales standards established by the commission for 6 months, the commission may sell the alcoholic liquor at a price to be approved by the state administrative board.

(2) Notwithstanding subsection (1), the commission may establish by rule prices for the sale of alcoholic liquor to hospitals, charitable institutions, and military establishments located in this state.

(3) Except as otherwise provided in this subsection, specially designated distributors and on-premises licensees are entitled to a 17% discount from the uniform prices described in subsection (1) on alcoholic liquor purchased from this state. Beginning with the enactment date of the amendatory act that added this sentence until 12 months after the enactment date, on-premises licensees are entitled to a 23% discount from the uniform prices described in subsection (1) on alcoholic liquor purchased from this state.

Sec. 536. (1) Except as provided in section 105(13), the commission shall allow a person to be licensed as more than 1 type of manufacturer in this state.

(2) A person that holds more than 1 type of manufacturing license in this state shall meet all applicable provisions of this act for each type of manufacturing license the person holds.

(3) Subject to the requirements of this section and section 537, the commission may approve a licensed manufacturer to operate 1 or more tasting rooms.

(4) Brewers and micro brewers shall not have more approved tasting rooms than allowed in section 411.

(5) A tasting room may be jointly operated by 2 or more manufacturers if either of the following conditions is met:

(a) The manufacturers are owned by the same person and their manufacturing premises share the same address.

(b) The manufacturers are not owned by the same person and their manufacturing premises do not share the same address.

(6) A tasting room is treated as licensed premises for purposes of this act.

(7) An approved tasting room located on the manufacturing premises of 1 or more manufacturers that are owned by the same person and whose manufacturing premises share the same address must comply with all of the following:

(a) The commission must approve and issue an on-premises tasting room permit to the manufacturer or manufacturers.

(b) The manufacturer or manufacturers must pay the $100.00 initial permit fee, which is renewable annually.

(c) The manufacturer or manufacturers must be approved for the on-premises tasting room permit by the local legislative body in which the proposed licensed premises will be located, except in a city having a population of 600,000 or more or as provided in subsection (17).

(d) The manufacturer or manufacturers must comply with the server training requirements of section 906.

(e) The manufacturer or manufacturers must file with the commission proof of financial responsibility providing security for liability under section 801(2) of not less than $50,000.00 as provided in section 803.

(f) A separate on-premises tasting room permit is not required for each license type for a person licensed by the commission under any combination of brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer licenses issued to that person at the same manufacturing premises.

(g) The commission shall not issue to a manufacturer or manufacturers a Sunday sales permit, catering permit, dance permit, entertainment permit, specific purpose permit, extended hours permit, or authorization for outdoor service unless the commission has issued an on-premises tasting room permit to the manufacturer or manufacturers. A Sunday sales permit, catering permit, dance permit, entertainment permit, specific purpose permit, extended hours permit, or authorization for outdoor service may be issued concurrently with the issuance of an on-premises tasting room permit.

(h) A brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer may own and operate a restaurant or allow another person to operate a restaurant as part of the on-premises tasting room on the manufacturing premises. If the brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer allows another person to operate a restaurant on the manufacturing premises, the brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer must hold a participation permit naming as a participant the other person. The other person must meet the requirements for a participant in R 436.1041(3) of the Michigan Administrative Code.

(8) Subject to subsection (10), an approved tasting room located off the manufacturing premises of 1 or more manufacturers, other than a brewer, micro brewer, or mixed spirit drink manufacturer, that are owned by the same person and whose manufacturing premises share the same address must comply with all of the following:

(a) The commission must approve and issue an off-premises tasting room license to the manufacturer or manufacturers.

(b) The manufacturer or manufacturers must pay the $100.00 initial license fee, which is renewable annually.

(c) The manufacturer or manufacturers must be approved for the off-premises tasting room license by the local legislative body in which the proposed licensed premises will be located, except in a city having a population of 600,000 or more or as provided in subsection (17).

(d) The manufacturer or manufacturers must comply with the server training requirements of section 906 at the off-premises tasting room.

(e) The manufacturer or manufacturers must file with the commission proof of financial responsibility providing security for liability under section 801(2) of not less than $50,000.00 as provided in section 803 for the off-premises tasting room.

(f) A separate off-premises tasting room license is not required for each license type for a person licensed by the commission under any combination of wine maker, small wine maker, distiller, small distiller, or brandy manufacturer licenses issued to that person at the same manufacturing premises.

(g) The commission shall not issue to a manufacturer or manufacturers a Sunday sales permit, catering permit, dance permit, entertainment permit, specific purpose permit, extended hours permit, authorization for outdoor service, or permission to maintain a direct connection to unlicensed premises unless the commission has issued an off-premises tasting room license to the manufacturer or manufacturers. A Sunday sales permit, catering permit, dance permit, entertainment permit, specific purpose permit, extended hours permit, authorization for outdoor service, or permission to maintain a direct connection to unlicensed premises may be issued concurrently with the issuance of an off-premises tasting room license.

(9) Subject to subsection (10), an approved jointly operated tasting room located off the manufacturing premises of 2 or more manufacturers, other than a brewer, micro brewer, or mixed spirit drink manufacturer, that are not owned by the same person and whose manufacturing premises do not share the same address must comply with all of the following:

(a) The commission must approve and issue a joint off-premises tasting room license to each of the manufacturers.

(b) Each manufacturer must pay the $100.00 initial license fee, which is renewable annually.

(c) Each manufacturer must be approved for a joint off-premises tasting room license by the local legislative body in which the proposed licensed premises will be located, except in a city having a population of 600,000 or more or as provided in subsection (17).

(d) Each manufacturer must comply with the server training requirements of section 906 at the jointly operated off-premises tasting room.

(e) Each manufacturer must file with the commission proof of financial responsibility providing security for liability under section 801(2) of not less than $50,000.00 as provided in section 803 for the jointly operated off-premises tasting room.

(f) Any management agreements with an unlicensed manager of the jointly operated off-premises tasting room must comply with the requirements of R 436.1041 of the Michigan Administrative Code and all the manufacturers must hold a participation permit naming as a participant the unlicensed manager. The unlicensed manager must meet the requirements for a participant in R 436.1041(3) of the Michigan Administrative Code.

(g) A Sunday sales permit, dance permit, entertainment permit, specific purpose permit, extended hours permit, authorization for outdoor service, or permission to maintain a direct connection to unlicensed premises may be issued in conjunction with a jointly operated off-premises tasting room. All manufacturers licensed at the jointly operated off-premises tasting room location must hold the same permits, permissions, and authorizations at the location.

(h) A violation of this act or the administrative rules by any manufacturer on the premises of the jointly operated off-premises tasting room is a violation by all the manufacturers licensed at the jointly operated off-premises tasting room.

(10) Approved off-premises tasting rooms or jointly operated off-premises tasting rooms described in subsections (8) and (9) must comply with all of the following:

(a) A wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may have 1 of the following:

(*i*) No more than 5 off-premises tasting room licenses issued under subsection (8) under which alcoholic liquor manufactured by the wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may be sold by the glass for consumption on the premises or samples may be sold or given away for consumption on the premises as provided in subsection (14)(b) and (c).

(*ii*) No more than 5 joint off-premises tasting room licenses issued under subsection (9) under which alcoholic liquor manufactured by the wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may be sold by the glass for consumption on the premises or samples may be sold or given away for consumption on the premises as provided in subsection (14)(b) and (c).

(*iii*) A combination of no more than 5 off-premises tasting room licenses issued under subsection (8) and joint off-premises tasting room licenses issued under subsection (9) under which alcoholic liquor manufactured by the wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may be sold by the glass for consumption on the premises or samples may be sold or given away for consumption on the premises as provided in subsection (14)(b) and (c).

(*iv*) No more than the equivalent number of off-premises tasting room licenses issued under subsection (8), joint off-premises tasting room licenses issued under subsection (9), or a combination of off-premises tasting room licenses issued under subsection (8) and joint off-premises tasting room licenses issued under subsection (9) that were issued before October 1, 2018 under which alcoholic liquor manufactured by the wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may be sold by the glass for

consumption on the premises or samples may be sold or given away for consumption on the premises as provided in subsection (14)(b) and (c).

(b) Notwithstanding the limitation in subdivision (a), a wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may have any number of off-premises tasting room licenses or joint off-premises tasting room licenses under which alcoholic liquor manufactured by the wine maker, small wine maker, distiller, small distiller, or brandy manufacturer may only be sold or given away as samples for consumption on the premises as provided in subsection (14)(d).

(c) A wine maker, small wine maker, distiller, small distiller, or brandy manufacturer must designate at the time of application whether the tasting room location for which the off-premises tasting room license or the joint off-premises tasting room license application is being made will sell by the glass as provided in subdivision (a) or provide only samples as provided in subdivision (b). The designation made for the off-premises tasting room license or the joint off-premises tasting room license must not be changed after the license has been issued.

(d) All wine makers, small wine makers, distillers, small distillers, or brandy manufacturers licensed at the same approved jointly operated off-premises tasting room must have an identical designation under subdivision (c).

(e) A wine maker, small wine maker, distiller, small distiller, or brandy manufacturer that has an off-premises tasting room or jointly operated off-premises tasting room location that was approved by the commission before December 19, 2018 must submit to the commission in writing a designation as required under subdivision (c) by April 1, 2019.

(11) A wine maker, small wine maker, brewer, micro brewer, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer may add a nonalcoholic mixing ingredient or an alcoholic mixing ingredient manufactured by the wine maker, small wine maker, brewer, micro brewer, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer to sampled or purchased alcoholic liquor if the sampled or purchased alcoholic liquor is consumed on the premises of the approved tasting room.

(12) A manufacturer is not a retailer under this act merely because the manufacturer has a tasting room.

(13) A manufacturer with an approved tasting room may sample and sell alcoholic liquor only as specifically allowed in this act.

(14) A manufacturer may do all of the following:

(a) Sell alcoholic liquor it manufactured for consumption off the premises in an approved tasting room under subsections (7) to (9).

(b) Subject to subsection (10)(a), sell alcoholic liquor it manufactured by the glass for consumption on the premises of an approved tasting room under subsections (7) to (9).

(c) Subject to subsection (10)(a), sell or give away samples of any size of alcoholic liquor it manufactured for consumption on the premises of an approved tasting room under subsections (7) to (9).

(d) Subject to subsection (10)(b), sell or give away samples of alcoholic liquor it manufactured for consumption on the premises of an approved tasting room under subsections (8) and (9) under all of the following conditions:

(*i*) A wine maker or small wine maker may offer samples of wine that do not exceed 3 ounces per sample.

(*ii*) A brandy manufacturer may offer samples of brandy that do not exceed 1/2 ounce per sample.

(*iii*) A distiller or small distiller may offer samples of spirits or mixed drinks that do not exceed 1/2 ounce per sample.

(15) A manufacturer issued a license before December 19, 2018 that intends to sell for consumption off its licensed premises or sell, serve, and allow consumption on its licensed premises of alcoholic liquor as allowed under this section and section 537 must comply with this section by April 1, 2019.

(16) The revenue received from subsection (7) must be deposited into the liquor control enforcement and license investigation revolving fund under section 543(9).

(17) Local approval under subsection (7)(c), (8)(c), or (9)(c) is not required for a tasting room that was in existence before December 19, 2018.

(18) A small distiller or distiller that also holds a mixed spirit drink manufacturer license may do all of the following:

(a) Sell mixed spirit drink it manufactured for consumption off the licensed premises of an approved tasting room under subsections (8) and (9).

(b) Subject to subsection (10)(a), sell mixed spirit drink it manufactured for consumption on the premises of an approved tasting room under subsections (8) and (9).

(c) Subject to subsection (10)(a), sell or give away samples of any size of mixed spirit drink it manufactured for consumption on the premises of an approved tasting room under subsections (8) and (9).

(d) Subject to subsection (10)(b), sell or give away samples that do not exceed 3 ounces per sample of mixed spirit drink it manufactured for consumption on the premises of an approved tasting room under subsections (8) and (9).

Sec. 609c. (1) A manufacturer that sells direct to a retailer as provided under section 203a or a wholesaler may refund to a retailer the amount the retailer paid for beer or wine, as applicable, or a manufacturer that sells direct to a retailer as provided under section

203a or a wholesaler may replace that beer or wine for any of the following reasons:

(a) The beer or wine is outdated.

(b) The beer or wine is defective.

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

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

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

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

(g) The beer or wine is discontinued.

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

(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 203a 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 203a or a wholesaler may only issue a refund or replacement under this section for beer or wine that the manufacturer or wholesaler sold to the retailer.

(4) Beginning March 1, 2020, a manufacturer may refund to a wholesaler up to the amount the wholesaler paid for beer or wine, as applicable, or a manufacturer may replace that beer or wine for either of the following reasons:

(a) The wholesaler purchased the beer or wine from the manufacturer and the wholesaler refunded to the retailer the amount the retailer paid for that beer or wine or replaced that beer or wine under subsection (1) or (2).

(b) The beer or wine that the wholesaler purchased from the manufacturer has gone out of date while in possession of the wholesaler.

Sec. 1014. (1) An on-premises licensee shall not sell, offer to sell, or advertise the sale of an unlimited quantity of alcoholic liquor at a specific price unless all of the following conditions are met:

(a) The sale, offer, or advertisement is in connection with a private function.

(b) The on-premises licensee has entered into a written agreement with the organizer of the private function stating all of the following:

(*i*) The date and time the event will be held.

(*ii*) The location of the event.

(*iii*) The terms under which alcohol will be sold and served during the event.

(c) The on-premises licensee makes available to the commission and local law enforcement, on notice, the written agreement described in subdivision (b).

(2) An on-premises licensee shall not sell, offer to sell, or advertise the sale of 3 or more identical drinks containing alcoholic liquor to an individual for the individual's consumption for 1 price. If 3 or more identical drinks containing alcoholic liquor are served to an individual at 1 time, the price charged for the third and each additional drink must be the same as the price charged for the first drink. Except on prior written order by the commission, an on-premises licensee shall not sell alcoholic liquor to an individual under this subsection for a price that is less than the on-premises licensee's cost for the alcoholic liquor.

(3) As used in this section, "private function" means an event that meets all of the following conditions:

(a) It is a prearranged private party, private function, or private event for a specific social or business occasion.

(b) Attendance is only by invitation or reservation.

(c) It is not open to the general public.

(d) The guests are served in an outdoor service area or room that is well-defined and clearly marked and designated and used exclusively for the event.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

(a) House Bill No. 5343.

(b) House Bill No. 5781.

(c) House Bill No. 5811.

This act is ordered to take immediate effect.

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